HB
159

COMMITTEE REPORT

HOUSE

2/13/81 FURTHER: FINANCE

(5)

Date: 3-2-82

Mr. Speaker:

The Committee on LABOR & COMMERCE has had HB 159

"An Act relating to workers' compensation; and providing for an effective date."

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[X] replace with CS for _____ [ ] same title [ ] new title

and recommends _____

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note

[ ] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING
DO PASS

Terry Gardiner

Bert Kogan

Terry Martin

Bob Loomis

MEMBERS HAVING
OTHER RECOMMENDATIONS:

Terry Martin
CHAIRMAN

H 60 (Rev. 12/78)

HB 1579 – Workers Comp.
H. Labor & Commerce 1981-1982

Date Filed & Read.

Work draft rec'd. 1-19-82
CS being worked

Referrals

Common Law – 1-25-82 thru 1-28-82 – 3-2-82 – CS adopted – Notified Legal & Fiscal
action held 8:30th 3-3-82 pck CS – Print & Chief Clerk's office @ 8:30 A.M.

[redacted] Notify 2-4-82 Tom Finley – 586-3811
when next scheduled.

PLEASE NOTE: THE FOLLOWING PAGES WERE TREATED AS A UNIT IN THE ORIGINAL DOCUMENT

YELLOW ☐ SAME (1)

BLUE ☐ DELETED (2)

RED ☐ NEW (3)

THE ABOVE COLOR CODE WAS USED ON THE ORIGINAL TWO DOCUMENTS OF CSHB 159 (L & C).

DOCUMENT #1 pages 1 thru end (page 10)

DOCUMENT # 2 pages 1 thru end (page 46)

THE CIRCLED NUMBERS (1, 2, and 3) ARE PLACED IN FRONT OF THEIR RESPECTIVE COLOR CODED LINES IN THE ORIGINAL DOCUMENTS.

IF CLARIFICATION IS NEEDED, THE ORIGINAL DOCUMENTS MAY BE REVIEWED AT THE ALASKA STATE ARCHIVES.

Sofo ✓✓✓✓

1–

Original sponsor: Rules/Legislative Council

IN THE HOUSE BY THE LABOR AND COMMERCE COMMITTEE

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

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWELFTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to workers' compensation; and providing for an effective date."

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

(3) * Section 1. AS 18.80.220(a)(4) is amended to read: Sec 66 P 44

We do not have built in insurance 2nd injury Fd. ok.

(4) an employer, labor organization or employment agency to discharge, expel or otherwise discriminate against a person because he has Consider Fed tie ins. peril. Offer of Fed Contract Compliance To Fed. Laws. [Keeps handicapped + prev-injured]

(A) opposed any practices forbidden under AS 18.80.200 - 18.80.280; [OR BECAUSE HE HAS]

(B) filed a complaint, testified or assisted in a proceeding under this chapter; or

(C) filed a claim for workers' compensation benefits under AS 23.30; Sec 13 P 13

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

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

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

Sec 17 P17

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

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

Sec 26 P22

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

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

Sec 30 P 23

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

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

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

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

(b) If the employee is unable to designate a health care provider [PHYSICIAN] and the emergency nature of the injury requires immediate medical care, or if he does not desire to designate a health care provider [PHYSICIAN] and so advises the employer, the employer shall designate the health care provider [PHYSICIAN]. Designation under this subsection, however, does not prevent the employee from subsequently designating a health care provider [PHYSICIAN] for continuance of required medical care.

Sec 31 P24,25

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

(c) No claim for medical or surgical treatment is valid and enforceable as against the employer unless, within 20 [TWENTY] days following the first treatment (3) and following the time set by the board for (3) notice of subsequent treatments, the health care provider [PHYSICIAN] giving the treatment or the employee receiving it furnishes to the

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

Sec 32 P24

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

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

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

Sec 36 P26

(1) * Sec. 9. AS 23.30.105(a) is amended to read:

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

Sec 40 P30

(1) * Sec. 10. AS 23.30.110(c) is amended to read:

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

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

Sec 45 P33

(1)* Sec. 11. AS 23.30.155(j) is amended to read:

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

Sec 46 P33

(1)* Sec. 12. AS 23.30.155 is amended by adding new subsections to read:

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

(o) If the board determines that it is in the interest of an injured employee and that a substantial hardship will not be imposed on the employer, the liability of the employer for all or part of compensation payable under AS 23.30.190 may be discharged by the payment of a lump sum.

Sec 51 P36

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

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

Sec 52 P 36,37

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

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

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

(2) The calculation required by this subsection does not apply if the recipient is absent from Alaska for medical or rehabilitation services not reasonably available in Alaska.

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

(4) Application of this subsection may not result in a reduction of the weekly compensation rate to less than $65 a week except as provided in (a) of this section.

(1) Sec 53 P 37

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

(d) In a jurisdiction for which no average weekly wage is computed by the United States Secretary of Labor for the purposes of unemployment insurance, the average weekly wage shall be as determined by the commissioner.

Sec 55 P 38,39,40

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

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

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

Sec 56 P40

(1) * Sec. 17. AS 23.30.191 is repealed and reenacted to read:

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

Sec 58 P41

(1) * Sec. 18. AS 23.30.215(a)(1) is amended to read:

(1) reasonable and necessary funeral expenses not exceeding

(3) ~~$2,500~~ [$1,000];

(3) * Sec. 19. AS 23.30.220(2) is amended to read:

(2) the average weekly wage is [THAT MOST FAVORABLE TO THE EMPLOYEE] calculated by dividing 456 [52] into the total wages earned, including self-employment, in the highest paid three consecutive years out of [ANY ONE OF] the five [THREE] calendar years immediately preceding the injury;

Sec 63 P43

(1) * Sec. 20. AS 23.30.250 is amended to read:

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

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

Sec 68 P45

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

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

Sec 70 P45

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

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

Sec 71 P45,46

(I) * Sec. 23. AS 23.30.265 is amended by adding new paragraphs to read:

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

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

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

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

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

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

Original sponsor: Rules/Legislative Council (for the Workers' Compensation Study Commission)

office copy

IN THE HOUSE

BY THE LABOR AND COMMERCE COMMITTEE

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

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWELFTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to workers' compensation; and providing for an effective date."

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

* Section 1. The purpose of sec. 3 of this Act is to provide both protection for injured employees and flexibility for employers in making the alternative of self-insurance available to those employers required under AS 23.30 to provide workers' compensation insurance coverage for their employees.

(2) * Sec. 2. AS 21.39.030(a)(4) is amended to read:

(4) risks may be grouped by classifications for the establishment of rates and minimum premiums <u>and shall be segregated and developed separately for workers' compensation insurance on construction projects that are extraordinary in scope or nature</u>; classification rates may be modified to produce rates for individual risks in accordance with rating plans which establish standards for measuring variations in hazards or expense provisions, or both; the standards may measure any differences among risks that can be demonstrated to have a probable effect upon losses or expenses;

(2) * Sec. 3. AS 21 is amended by adding a new chapter to read:

CHAPTER 62. WORKERS' COMPENSATION SELF-INSURANCE.

Sec. 21.62.010. SELF-INSURANCE. An employer or two or more employers having a common management or two or more employers having a common interest may elect to pay directly the compensation required in AS 23.30 after providing satisfactory proof of financial ability to

make direct payments and receiving a self-insurance certificate from the director.

(2) Sec. 21.62.020. SELF-INSURANCE FUND. (a) A workers' compensation self-insurance group formed by two or more employers having a common interest shall establish and keep a self-insurance fund with a minimum balance to be determined by the director, but not less than $250,000. The director may adopt regulations to maintain the solvency of the fund.

(b) The fund shall be administered by a board of trustees selected by members of the common interest self-insurance group.

(c) A majority of the trustees of the fund must be members of the self-insurance group.

(d) A trustee of a fund may not be an owner, officer, or employee of the service company used by the common interest self-insurance group which established the fund.

(e) The common interest self-insurance group shall adopt bylaws governing the operation of the fund.

Sec. 21.62.030. APPLICATION. (a) An employer desiring to become an individual self-insurer or two or more employers having common management desiring to become a group self-insurer shall submit an application to the division on a form prescribed by the director.

(b) The trustees of the fund of a common interest group desiring to become a group self-insurer shall submit an application to the division on a form prescribed by the director.

(c) An applicant for self-insurance shall answer all questions on the application. The answers shall be sworn to and notarized. The application shall be submitted at least 90 days before the proposed effective date or renewal date of the self-insurance certificate.

Sec. 21.62.040. CONTENTS OF APPLICATION. An applicant for self-

-L 20A (2)

insurance shall submit the following with the application for self-insurance:

(1) evidence of working capital of an amount which establishes the financial strength and liquidity to pay normal compensation claims promptly;

(2) the proposed amount of retention per loss and retention in the aggregate;

(3) the proposed program of excess insurance coverage;

(4) proof that the applicant has ample facilities and competent personnel to service the self-insurance plan or a copy of a signed service agreement with an approved service company to provide that service;

(5) the location in this state where all records of self-insured loss will be maintained;

(6) a description of any loss control or safety programs to be used by the applicant;

(7) Any further evidence which the director may require to establish the ability of the applicant to meet its obligations under AS 23.30.

Sec. 21.62.050. DOCUMENTS REQUIRED OF INDIVIDUAL SELF-INSURER. In addition to the information required under AS 21.62.040, an application for individual self-insurance shall be accompanied by

(1) a financial statement not more than three months old at the time of the application showing a net worth of not less than $500,000;

(2) an agreement to fully discharge by cash payment all amounts required to be paid under AS 23.30.

Sec. 21.62.060. DOCUMENTS REQUIRED OF COMMON MANAGEMENT SELF-INSURANCE GROUP. In addition to the information required under AS 21.-

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62.040, an application for group self-insurance by a common management group shall be accompanied by

(1) a financial statement not more than three months old at the time of application for each member of the group showing a combined net worth of all members of the group to be not less than $500,000;

(2) an indemnity agreement jointly and severally binding each member of the common management self-insurance group to fully discharge by cash payment all amounts required to be paid under AS 23.-30.

Sec. 21.62.070. DOCUMENTS REQUIRED OF COMMON INTEREST SELF-INSURANCE GROUP. In addition to the information required under AS 21.-62.040, an application for group self-insurance by the trustees of the fund of a common interest group shall be accompanied by

(1) a financial statement not more than three months old at the time of the application for each member applying for coverage on the inception date of the fund showing a combined net worth of all members of the common interest self-insurance group of not less than $1,000,000;

(2) an indemnity agreement jointly and severally binding the fund and each member of the common interest self-insurance group to fully discharge by cash payment all amounts required to be paid under AS 23.30;

(3) An individual application for each member of the common interest self-insurance group applying for coverage under the fund;

(4) a set of bylaws or a trust agreement which shall govern the operation of the fund;

(5) proof of the existence of the minimum balance in the fund as required under AS 21.62.020(a);

(6) an estimate of all administrative expenses of the fund

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for the period for which the self-insurance certificate is to be issued.

Sec. 21.62.080. REVIEW AND DECISION OF DIRECTOR. (a) The director shall review the contents of an application for self-insurance and determine whether the applicant has the financial ability to meet its obligations under AS 23.30.

(b) The director shall determine the amount of excess insurance coverage necessary for the discharge of the obligations of the employer under AS 23.30 and the protection of the applicant.

(c) The director may require a surety bond under AS 21.62.100 as a condition to issuance of a self-insurance certificate.

(d) The director shall give written notice to the applicant not later than 30 days before the proposed effective date of his approval or denial of an application for self-insurance. If the application is approved, the notice shall list the conditions which must be met before the self-insurance certificate is issued. If the application is denied, the notice shall state the specific reasons for the denial.

(e) A decision of the director is subject to the hearing and appeal procedure under AS 21.06.180 - 21.06.230.

Sec. 21.62.090. SELF-INSURANCE CERTIFICATE. Upon approval of an application and receipt of proof of any conditions established under AS 21.62.080(d), the director shall issue a self-insurance certificate to the applicant. The self-insurance certificate shall be on a form prescribed by the director and shall be issued for a period of one year.

Sec. 21.62.100. BOND. (a) With each application for self-insurance or application for renewal of a self-insurance certificate the director may require a corporate surety bond to secure the payment of obligations under AS 23.30 as they are incurred. The bond shall be on a form prescribed by the director and shall be issued by a corporate

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surety authorized under AS 21.09 to do business in this state. The amount of the bond for each year shall be equal to or greater than the aggregate retention of the self-insurer but not less than $25,000.

(b) A bond secured in compliance with this section may not be cancelled, exchanged, or replaced unless 60 days written notice is given to the director and to the self-insurer.

Sec. 21.62.110. EXCESS INSURANCE. (a) The director shall determine the amount and kind of excess insurance required of an applicant for self-insurance based on the financial strength, past history of loss, and degree of hazard in the operations of the applicant and any other factors he considers appropriate.

(b) Excess insurance coverage shall be written by a casualty insurer authorized under AS 21.09 to do business in this state, except that the director may approve a policy of excess insurance with coverage starting at $1,000,000 with an insurer writing insurance in this state under AS 21.33.

(c) A policy of excess insurance issued under this chapter may not be cancelled unless the excess insurer gives 60 days written notice by certified mail to the director and to the self-insurer.

(d) The policy of excess insurance shall contain a provision that the director may order the payment of obligations due under the terms of the policy to a party other than the employer if necessary to assure the prompt payment of benefits to injured employees.

(e) A policy of excess insurance under this chapter shall cover each employer named in the application for self-insurance under AS 21.-62.030 and no other employers.

Sec. 21.62.120. SERVICING FOR SELF-INSURERS. (a) It is the sole responsibility of a self-insurer to provide competent persons to service its programs for claims adjusting, underwriting, and loss control.

Original sponsor: Rules/Legislative Council (for the Workers' Compensation Study Commission)

office copy

IN THE HOUSE

BY THE LABOR AND COMMERCE COMMITTEE

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

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWELFTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to workers' compensation; and providing for an effective date."

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

* Section 1. The purpose of sec. 3 of this Act is to provide both protection for injured employees and flexibility for employers in making the alternative of self-insurance available to those employers required under AS 23.30 to provide workers' compensation insurance coverage for their employees.

(2) * Sec. 2. AS 21.39.030(a)(4) is amended to read:

(4) risks may be grouped by classifications for the establishment of rates and minimum premiums <u>and shall be segregated and developed separately for workers' compensation insurance on construction projects that are extraordinary in scope or nature</u>; classification rates may be modified to produce rates for individual risks in accordance with rating plans which establish standards for measuring variations in hazards or expense provisions, or both; the standards may measure any differences among risks that can be demonstrated to have a probable effect upon losses or expenses;

(2) * Sec. 3. AS 21 is amended by adding a new chapter to read:

CHAPTER 62. WORKERS' COMPENSATION SELF-INSURANCE.

Sec. 21.62.010. SELF-INSURANCE. An employer or two or more employers having a common management or two or more employers having a common interest may elect to pay directly the compensation required in AS 23.30 after providing satisfactory proof of financial ability to

make direct payments and receiving a self-insurance certificate from the director.

(2) Sec. 21.62.020. SELF-INSURANCE FUND. (a) A workers' compensation self-insurance group formed by two or more employers having a common interest shall establish and keep a self-insurance fund with a minimum balance to be determined by the director, but not less than $250,000. The director may adopt regulations to maintain the solvency of the fund.

(b) The fund shall be administered by a board of trustees selected by members of the common interest self-insurance group.

(c) A majority of the trustees of the fund must be members of the self-insurance group.

(d) A trustee of a fund may not be an owner, officer, or employee of the service company used by the common interest self-insurance group which established the fund.

(e) The common interest self-insurance group shall adopt bylaws governing the operation of the fund.

Sec. 21.62.030. APPLICATION. (a) An employer desiring to become an individual self-insurer or two or more employers having common management desiring to become a group self-insurer shall submit an application to the division on a form prescribed by the director.

(b) The trustees of the fund of a common interest group desiring to become a group self-insurer shall submit an application to the division on a form prescribed by the director.

(c) An applicant for self-insurance shall answer all questions on the application. The answers shall be sworn to and notarized. The application shall be submitted at least 90 days before the proposed effective date or renewal date of the self-insurance certificate.

Sec. 21.62.040. CONTENTS OF APPLICATION. An applicant for self-

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insurance shall submit the following with the application for self-insurance:

(1) evidence of working capital of an amount which establishes the financial strength and liquidity to pay normal compensation claims promptly;

(2) the proposed amount of retention per loss and retention in the aggregate;

(3) the proposed program of excess insurance coverage;

(4) proof that the applicant has ample facilities and competent personnel to service the self-insurance plan or a copy of a signed service agreement with an approved service company to provide that service;

(5) the location in this state where all records of self-insured loss will be maintained;

(6) a description of any loss control or safety programs to be used by the applicant;

(7) Any further evidence which the director may require to establish the ability of the applicant to meet its obligations under AS 23.30.

Sec. 21.62.050. DOCUMENTS REQUIRED OF INDIVIDUAL SELF-INSURER. In addition to the information required under AS 21.62.040, an application for individual self-insurance shall be accompanied by

(1) a financial statement not more than three months old at the time of the application showing a net worth of not less than $500,000;

(2) an agreement to full, discharge by cash payment all amounts required to be paid under AS 23.30.

Sec. 21.62.060. DOCUMENTS REQUIRED OF COMMON MANAGEMENT SELF-INSURANCE GROUP. In addition to the information required under AS 21.-

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62.040, an application for group self-insurance by a common management group shall be accompanied by

(1) a financial statement not more than three months old at the time of application for each member of the group showing a combined net worth of all members of the group to be not less than $500,000;

(2) an indemnity agreement jointly and severally binding each member of the common management self-insurance group to fully discharge by cash payment all amounts required to be paid under AS 23.-30.

Sec. 21.62.070. DOCUMENTS REQUIRED OF COMMON INTEREST SELF-INSURANCE GROUP. In addition to the information required under AS 21.-62.040, an application for group self-insurance by the trustees of the fund of a common interest group shall be accompanied by

(1) a financial statement not more than three months old at the time of the application for each member applying for coverage on the inception date of the fund showing a combined net worth of all members of the common interest self-insurance group of not less than $1,000,000;

(2) an indemnity agreement jointly and severally binding the fund and each member of the common interest self-insurance group to fully discharge by cash payment all amounts required to be paid under AS 23.30;

(3) An individual application for each member of the common interest self-insurance group applying for coverage under the fund;

(4) a set of bylaws or a trust agreement which shall govern the operation of the fund;

(5) proof of the existence of the minimum balance in the fund as required under AS 21.62.020(a);

(6) an estimate of all administrative expenses of the fund

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for the period for which the self-insurance certificate is to be issued.

Sec. 21.62.080. REVIEW AND DECISION OF DIRECTOR. (a) The director shall review the contents of an application for self-insurance and determine whether the applicant has the financial ability to meet its obligations under AS 23.30.

(b) The director shall determine the amount of excess insurance coverage necessary for the discharge of the obligations of the employer under AS 23.30 and the protection of the applicant.

(c) The director may require a surety bond under AS 21.62.100 as a condition to issuance of a self-insurance certificate.

(d) The director shall give written notice to the applicant not later than 30 days before the proposed effective date of his approval or denial of an application for self-insurance. If the application is approved, the notice shall list the conditions which must be met before the self-insurance certificate is issued. If the application is denied, the notice shall state the specific reasons for the denial.

(e) A decision of the director is subject to the hearing and appeal procedure under AS 21.06.180 - 21.06.230.

Sec. 21.62.090. SELF-INSURANCE CERTIFICATE. Upon approval of an application and receipt of proof of any conditions established under AS 21.62.080(d), the director shall issue a self-insurance certificate to the applicant. The self-insurance certificate shall be on a form prescribed by the director and shall be issued for a period of one year.

Sec. 21.62.100. BOND. (a) With each application for self-insurance, or application for renewal of a self-insurance certificate the director may require a corporate surety bond to secure the payment of obligations under AS 23.30 as they are incurred. The bond shall be on a form prescribed by the director, and shall be issued by a corporate

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surety authorized under AS 21.09 to do business in this state. The amount of the bond for each year shall be equal to or greater than the aggregate retention of the self-insurer but not less than $25,000.

(b) A bond secured in compliance with this section may not be cancelled, exchanged, or replaced unless 60 days written notice is given to the director and to the self-insurer.

Sec. 21.62.110. EXCESS INSURANCE. (a) The director shall determine the amount and kind of excess insurance required of an applicant for self-insurance based on the financial strength, past history of loss, and degree of hazard in the operations of the applicant and any other factors he considers appropriate.

(b) Excess insurance coverage shall be written by a casualty insurer authorized under AS 21.09 to do business in this state, except that the director may approve a policy of excess insurance with coverage starting at $1,000,000 with an insurer writing insurance in this state under AS 21.33.

(c) A policy of excess insurance issued under this chapter may not be cancelled unless the excess insurer gives 60 days written notice by certified mail to the director and to the self-insurer.

(d) The policy of excess insurance shall contain a provision that the director may order the payment of obligations due under the terms of the policy to a party other than the employer if necessary to assure the prompt payment of benefits to injured employees.

(e) A policy of excess insurance under this chapter shall cover each employer named in the application for self-insurance under AS 21.62.030 and no other employers.

Sec. 21.62.120. SERVICING FOR SELF-INSURERS. (a) It is the sole responsibility of a self-insurer to provide competent persons to service its programs for claims adjusting, underwriting, and loss control.

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(b) A self-insurer may contract with one or more approved service companies to provide these services on a full-time basis.

(c) The department shall adopt regulations for approving service companies under this section.

Sec. 21.62.130. RECORDS. (a) A self-insurer or a service company on behalf of a self-insurer shall maintain all claims records at a location in the state.

(b) The records of a self-insurer which relate to self-insurance under this chapter are subject to guidelines established by the director concerning their retention and the review of those records by the director.

(c) All claims files of a self-insurer are subject to review by the director during normal business hours at a location in the state as stated in the application for self-insurance.

Sec. 21.62.140. REPORTS. The director may by regulation require reports concerning payroll, losses, reserves, financial condition, and other matters reasonably related to the ability of a self-insurer to meet its obligations under AS 23.30. Failure to comply with these regulations is cause for revocation of a self-insurance certificate.

Sec. 21.62.150. INDEMNITY AGREEMENT. The director may by regulation establish the provisions of the indemnity agreement required under AS 21.62.060(2) and 21.62.070(2). An indemnity agreement may contain other provisions that are consistent with the provisions adopted by regulation.

Sec. 21.62.160. REVOCATION OF A SELF-INSURANCE CERTIFICATE. (a) Failure to comply with the provisions of this chapter or AS 23.30 is grounds for revocation of a self-insurance certificate.

(b) The director shall give a self-insurer 30 days written notice of a proposed revocation of a self-insurance certificate. The notice

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of proposed revocation shall contain a statement of the reasons for revocation. Revocation is effective 30 days after a self-insurer receives a notice of proposed revocation unless the self-insurer requests a hearing within 15 days after receiving notice of proposed revocation. Revocation shall be stayed until the hearing process is completed.

(c) A self-insurer may appeal an order under this section as provided in AS 21.06.230.

Sec. 21.62.170. INDEXING. The director may adopt regulations to provide for a revision of the dollar amounts in AS 21.62.020(a), 21.62.050(1), 21.62.060(1), 21.62.070(1), 21.62.100(a), and 21.62.110(f) to reflect devaluation of those amounts due to inflation.

Sec. 21.62.200. DEFINITIONS. In this chapter

(1) "common interest self-insurance group" means a group of employers that are in the same or similar type of business and includes unrelated businesses which are owned or controlled by the same person or persons if one of the unrelated businesses is the same or similar type of business as the other businesses in the group;

(2) "common management self-insurance group" means a group of employers which have businesses that are owned or controlled by the same persons;

(3) "fund" means a self-insurance fund;

(4) "trustee" means a person elected by a common interest self-insurance group for a stated term to direct the administration of a fund.

* Sec. 4. AS 18.80.220(a)(4) is amended to read:

(4) an employer, labor organization or employment agency to discharge, expel or otherwise discriminate against a person because he has

(A) opposed any practices forbidden under AS 18.80.-

200 - 18.80.280; [OR BECAUSE HE HAS]

(B) filed a complaint, testified or assisted in a proceeding under this chapter; or

(C) filed a claim for workers' compensation benefits under AS 23.30;

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* Sec. 5. AS 21.36.190(d) is amended to read:

(d) This section does not apply to workers' compensation insurance when issued to an association of employers in the same rating classification [FORMED FOR PURPOSES OTHER THAN THE PURCHASE OF INSURANCE] and which as a group

(1) has a constitution and bylaws;

(2) incorporates a safety program;

[(3) AS A GROUP HAS PREFERRED CHARACTERISTICS OVER SIMILAR RISKS WRITTEN ON AN INDIVIDUAL BASIS;] and

(4) has filed and received approval from the director for the rating program to be applied to the group.

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* Sec. 6. AS 21.39.040(d) is amended to read:

(d) Subject to the exceptions [EXCEPTION] specified in (e) of this section and AS 21.39.045, each filing shall be on file for a waiting period of 15 days before it becomes effective, which period may be extended by the director for an additional period not to exceed 15 days if he gives written notice within the waiting period to the insurer or rating organization which made the filing stating that he needs additional time for the consideration of the filing. Upon written application by the insurer or rating organization, the director may authorize a filing which he has reviewed to become effective before the expiration of the waiting period. A filing shall be considered to meet the requirements of this chapter unless disapproved by the director within the waiting period.

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* Sec. 7. AS 21.39 is amended by adding a new section to read:

Sec. 21.39.045. WORKERS' COMPENSATION RATE FILINGS. (a) A filing of workers' compensation rates by a rating organization shall be limited to provisions for claim payment and may not include allowances for expenses, taxes, or profit, except as necessary for full rate development for an assigned risk pool under AS 21.39.155.

(b) If each rate in a schedule of workers' compensation rates for a specific classification of risks filed by an insurer is not lower than the rate for each respective classification filed by a rating organization in accordance with (a) of this section and approved by the director, the schedule of rates filed by the insurer is effective immediately and the waiting period in AS 21.39.040(d) is not required.

(c) Notwithstanding (b) of this section, the director may require an insurer to comply with the waiting period in AS 21.39.040(d) for a rate filing or part of a rate filing if he determines that the rate filing or part of the rate filing is excessive, inadequate, or unfairly discriminatory.

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* Sec. 8. AS 21.39.070 is amended by adding new subsections to read:

(c) Notwithstanding (a) of this section, a filing by an insurer of an independent deductible or loss reimbursement plan is not considered a deviation under this section.

(d) Notwithstanding (a) of this section, a filing of workers' compensation rates under AS 21.39.045(b) is not a deviation under this section.

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* Sec. 9. AS 23.30.010 is amended to read:

Sec. 23.30.010. COVERAGE. Benefits are [COMPENSATION IS] payable under this chapter in respect of disability or death of an employee.

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* Sec. 10. AS 23.30.015 is amended to read:

Sec. 23.30.015. BENEFITS [COMPENSATION] WHERE THIRD PERSONS ARE

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LIABLE. (a) If on account of disability or death for which benefits [COMPENSATION IS] payable under this chapter the person entitled to the benefits [COMPENSATION] believes that a third person other than the employer or a fellow employee is liable for damages, he need not elect whether to receive benefits [COMPENSATION] or to recover damages from the third person.

(b) Acceptance of benefits [COMPENSATION] under an award in a compensation order filed by the board operates as an assignment to the employer of all rights of the person entitled to benefits [COMPENSATION] and the personal representative of a deceased employee to recover damages from the third person unless the person or representative entitled to benefits [COMPENSATION] commences an action against the third person within one year after an award.

(c) Payment of compensation into the second-injury fund as a result of death operates as an assignment to the employer of all rights of the representative of the deceased to recover damages from the third person.

(d) An employer under an assignment may either institute proceedings for the recovery of damages or may compromise with a third person, either without or after instituting an action.

(e) An amount recovered by the employer under an assignment, whether by action or compromise, shall be distributed as follows:

(1) The employer shall retain an amount equal to

(A) the expenses incurred by him in respect to the action or compromise, including a reasonable attorney fee determined by the board;

(B) the cost of all benefits actually furnished by him under this chapter;

(C) all amounts paid as compensation and second-injury

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fund payments;

(D) the present value of all amounts payable later as compensation (present value to be computed from a schedule prepared by the board), and the present value of the cost of all benefits to be furnished later under AS 23.30.095 (as estimated by the board), the amounts so computed and estimated to be retained by the employer as a trust fund to pay compensation and cost of benefits as they become due and to pay any finally remaining excess sum to the person entitled to benefits [COMPENSATION] or to the representative; and

(2) the employer shall pay any excess to the person entitled to benefits [COMPENSATION] or to his representative.

(f) Even if an employee, his representative, or his employer brings an action or settles a claim against the third person, the employer shall pay the benefits [AND COMPENSATION] required by this chapter.

(g) If the employee or his representative recovers damages from the third person, the employee or representative shall promptly pay to the employer the total amounts paid by the employer under (e)(1)(A), (B), and (C) of this section, insofar as the recovery is sufficient after deducting all litigation costs and expenses. Any excess recovery by the employee or representative shall be credited against any amount payable by the employer thereafter.

(h) If compromise with a third person is made by the person entitled to benefits [COMPENSATION] or his representative of an amount less than the benefits [COMPENSATION] to which the person or representative would be entitled, the employer is liable for benefits [COMPENSATION] stated in (f) of this section only if the compromise is made with his written approval.

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(i) If the employer is insured and the carrier has assumed the payment of benefits [COMPENSATION] the carrier shall be subrogated to all the rights of the employer.

(j) Notice of the commencement of an action against a third party shall be given to the board and to all interested parties within 30 days.

(2) * Sec. 11. AS 23.30.020 is amended to read:

Sec. 23.30.020. CHAPTER PART OF CONTRACT OF HIRE. This chapter constitutes part of every contract of hire, express or implied, and every contract of hire shall be construed as an agreement on the part of the employer to pay and on the part of the employee to accept benefits [COMPENSATION] in the manner provided in this chapter for all personal injuries sustained.

(2) * Sec. 12. AS 23.30.025(b) is amended to read:

(b) All policies of insurance companies insuring the payment of benefits [COMPENSATION] under this chapter are conclusively presumed to cover all the employees and the entire benefits [COMPENSATION] liability of the insured employer employed at or in connection with the business of the employer carried on, maintained, or operated at the location or locations set out [FORTH] in that [SUCH] policy or agreement. A provision in a policy attempting to limit or modify the liability of the company issuing it is wholly void except as provided in (c) of this section.

(2) Sec 2 Page 1

(1) * Sec. 13. AS 23.30.025 is amended by adding a new subsection to read:

(c) An insurer may issue a policy of insurance insuring the payment of benefits under this chapter which provides for a deductible amount to be paid by the employer. A policy with a deductible provision

must be approved by the director of insurance and must provide that the

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deductible amount be paid by the insurer to the employee on behalf of the employer. After payment of the deductible by the insurer, the insurer may recover the deductible amount from the employer. The failure of an employer to reimburse an insurer for the deductible amount does not relieve the insurer from any other obligation it may have under the policy of insurance. An insurer is not required to apply for a deviation under AS 21.39.070 in order to issue a policy under this subsection. This subsection does not apply to a policy of excess insurance purchased by a self-insurer.

(2) * Sec. 14. AS 23.30.030 is amended to read:

Sec. 23.30.030. REQUIRED POLICY PROVISIONS. A policy of a company insuring the payment of <u>benefits</u> [COMPENSATION] under this chapter is considered to contain the provisions set out in (1) - (7) of this section.

(1) The insurer assumes in full all the obligations to pay physician's fees, nurse's charges, hospital services, hospital supplies, medicine, prosthetic devices, transportation charges to the nearest point where adequate medical facilities are available, burial expenses, and compensation or death benefits imposed upon the insured under the provisions of this chapter.

(2) The policy is made subject to the provisions of this chapter and its provisions relative to the liability of the insured employer to pay physician's fees, nurse's charges, hospital services, hospital supplies, medicines, prosthetic devices, transportation charges to the nearest point where adequate medical facilities are available, burial expenses, compensation or death benefits to and for [SAID] employees or beneficiaries, the acceptance of the liability by the insured employer, the adjustment, trial and adjudication of claims for the physician's fees, nurse's charges, hospital services, hospital

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supplies, medicines, prosthetic devices, transportation charges to the nearest point where adequate medical facilities are available, burial expenses, compensation or death benefits and the liability of the insurer to pay the same are considered a part of this policy contract.

(3) As between the insurer and the employee or his beneficiaries, notice to or knowledge of the occurrence of the injury on the part of the insured employer is notice or knowledge on the part of the insurer; jurisdiction of the insured employer for the purpose of this chapter is jurisdiction of the insurer; and the insurer, in all things, is bound by and subject to the orders, awards, judgments and decrees made against the insured employer under this chapter.

(4) The insurer will promptly pay to the person entitled to them the benefits conferred by this chapter, including physician's fees, nurse's charges, hospital services, hospital supplies, medicines, prosthetic devices, transportation charges to the nearest point where adequate medical facilities are available, burial expenses, and all installments of compensation or death benefits awarded or agreed upon under this chapter. The obligation of the insurer is not affected by a default of the insured employer after the injury, or by default in giving a notice required by this policy. The policy is a direct promise by the insurer to the person entitled to physician's fees, nurse's charges, fees for hospital services, charges for medicines, prosthetic devices, transportation charges to the nearest point where adequate medical facilities are available, and hospital supplies, charges for burial, compensation or death benefits, and is enforceable in the name of that person. The insurer shall provide claims facilities through its own staffed adjusting facilities located within the state, or by independent, licensed, resident adjusters with power to effect settlement within the state.

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(5) A termination of the policy by cancellation is not effective as to the employees of the insured employer covered by it until 20 days after written notice of the termination has been received by the board. If the employer has a contract with the state or a home rule or other political subdivision of the state, and his policy is cancelled due to nonpayment of a premium, the termination of the policy is not effective as to the employees of the insured employer covered by it until 20 days after written notice of the termination has been received by the contracting agency, and the agency has the option of continuing the payments on behalf of the employer in order to keep the policy in force. If, however, the employer has secured insurance with another insurance carrier, cancellation is effective as of the date of the new coverage.

(6) All claims for compensation, death benefits, physician's fees, nurse's charges, hospital services, hospital supplies, medicines, prosthetic devices, transportation charges to the nearest point where adequate medical facilities are available, and burial expenses, may be made directly against either the employer or the insurer, or both, and the order or award of the board may be made against either the employer or the insurer or both.

(7) If the insurer fails or refuses to pay a final award or judgment (except during the pendency of an appeal) made against it, or its insured, or if it fails or refuses to comply with a provision of this chapter, the director of insurance [COMMISSIONER] shall revoke the approval of the policy form, and may not accept further proofs of insurance from it until it has paid the award or judgment or has complied with the violated provision of this chapter, and has resubmitted its policy form and received the approval of the form by the insurance commissioner.

(2) * Sec. 15. AS 23.30.045(a) is amended to read:

Sec. 23.30.045. EMPLOYER'S LIABILITY FOR BENEFITS [COMPENSATION]. (a) An employer is liable for and shall secure the payment to his employees of the benefits [COMPENSATION] payable under AS 23.30.050, 23.30.095, 23.30.145, and 23.30.185 - 23.30.215. If the employer is a subcontractor, the contractor is liable for and shall secure the payment of the benefits [COMPENSATION] to employees of the subcontractor unless the subcontractor secures the payment.

(2) * Sec. 16. AS 23.30.045(b) is amended to read:

(b) Benefits are [COMPENSATION IS] payable irrespective of fault as a cause for the injury.

(1) → Sec 3 P2

* Sec. 17. AS 23.30.045(c) is amended to read:

(c) For a person eligible for vocational rehabilitation service under this chapter (3) or AS 23.15.080 [AND] who is placed with an employer for service [WITHOUT WAGES] at the request of the board or the division [OFFICE] of vocational rehabilitation to give him on the job training, work readiness, [OR] work therapy experience [,] or work sampling, the liability set out in (a) of this section applies to the state rather than to the employer.

(2) * Sec. 18. AS 23.30.045(d) is amended to read:

(d) No contract may be awarded by the state or a home rule or other political subdivision of the state to an employer unless the employer [PERSON] to whom the contract is to be awarded has submitted to the contracting agency proof, furnished by the insurance carrier, of current coverage by workers' compensation insurance from an insurance company or association authorized to transact the business of workers' compensation insurance in this state or proof, furnished by the director of insurance [BOARD], of a current certificate of self-insurance from the director of insurance [BOARD]. The employer [PERSON] to whom

the contract is awarded shall keep his workers' compensation insurance policy in effect during the life of the contract with the state or political subdivision. If the state or the political subdivision of the state fails to obtain proof of coverage or self-insurance or to protect itself under (e) of this section, and an employee of the contractor is injured during the term of the contract, the state or the political subdivision is liable for workers' compensation to the employee if the employee is unable to recover from the employer because of the employer's lack of financial assets. The state or the political subdivision is not liable, however, to the employee for workers' compensation if the employee can recover from the employer under (a) and (b) of this section.

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* Sec. 19. AS 23.30.045(e) is amended to read:

(e) When a contracting agency of the state or a political subdivision receives notice that the workers' compensation insurance policy of an employer to whom the agency has awarded a contract has been cancelled due to nonpayment of a premium, without being replaced by a comparable policy, the agency may either terminate the contract with the employer or continue the premium payments on his behalf in order to keep the policy in force during the life of the agency's contract. If the agency chooses to keep the policy in force, it may deduct its payments from the contract price or bring an action against the employer to recover the amount of the payments. When the contracting agency receives notice that the <u>director of insurance</u> [BOARD] has revoked a certificate of self-insurance held by a person to whom a contract has been awarded, the agency may terminate the contract. This subsection does not limit the causes of action or remedies which the state or political subdivision may have against the employer.

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* Sec. 20. AS 23.30.055 is amended to read:

Sec. 23.30.055. EXCLUSIVENESS OF LIABILITY. The liability of an employer prescribed in AS 23.30.045 is exclusive and in place of all other liability of the employer and any fellow employee to the employee, his legal representative, husband or wife, parents, dependents, next of kin, and anyone otherwise entitled to recover damages from the employer or fellow employee at law or in admiralty on account of the injury or death. However, if an employer fails to secure payment of benefits [COMPENSATION] as required by this chapter, an injured employee or his legal representative in case death results from the injury may elect to claim benefits [COMPENSATION] under this chapter, or to maintain an action against the employer at law or in admiralty for damages on account of the injury or death. In that action the defendant may not plead as a defense that the injury was caused by the negligence of a fellow servant, or that the employee assumed the risk of his employment, or that the injury was due to the contributory negligence of the employee.

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* Sec. 21. AS 23.30.060 is amended to read:

Sec. 23.30.060. ELECTION OF DIRECT PAYMENT PRESUMED. (a) An employer is conclusively presumed to have elected to pay benefits [COMPENSATION] directly to employees for injuries sustained arising out of and in the course of the employment according to the provisions of this chapter, until notice in writing of insurance, stating the name and address of the insurance company and the period of insurance, is given to the employee.

(b) The notice shall be posted and kept on the premises of the employer or on the premises where the employer's operations are being carried on in three conspicuous places, at the office of the employer, at the mess house or boarding house if there is one, and in some conspicuous place on the premises or works. The notice shall be sub-

stantially in the following form, and the signature shall be witnessed by two witnesses:

EMPLOYER'S NOTICE OF INSURANCE

To the employees of the undersigned:

You and each of you are hereby notified that the undersigned is insured in the.....Insurance Company, whose address is.....and that the period covered by the insurance.....in accordance with the terms, conditions and provisions to pay benefits [COMPENSATION] to employees of the undersigned for injuries received as provided in the Act of the State of Alaska, known as the "Alaska Workers' Compensation Act"

Signed.....

.....

Witness:

.....

(2) * Sec. 22. AS 23.30.070(e) is amended to read:

(e) If the employer or the carrier has been given notice, or the employer (or his agent in charge of the business in the place where the injury occurred) or the carrier has knowledge of an injury or death of an employee and fails, neglects, or refuses to file a report of it as required by the provisions of (a) of this section, the limitations in AS 23.30.105(a) do not begin to run against the claim of the injured employee or his dependents entitled to benefits [COMPENSATION,] or in favor of either the employer or the carrier, until the report has been furnished as required by the provisions of (a) of this section.

(2) * Sec. 23. AS 23.30.070(f) is amended to read:

(f) An employer who fails or refuses to send a report required of him by this section or who fails or refuses to send the report required

by (a) of this section within the time required shall, if so required by the board, pay the employee or his legal representative or other person entitled to benefits [COMPENSATION] by reason of the employee's injury or death an additional award equal to 20 percent of the compensation [AMOUNTS] which was [WERE] unpaid when due. The award shall be against either the employer or his insurance carrier, or both.

(2) * Sec. 24. AS 23.30.075(a) is amended to read:

(a) An employer under this chapter, unless exempted, shall either [,] insure and keep insured for his liability under this chapter in an insurance company or association duly authorized to transact the business of workers' compensation insurance in this state, or shall furnish the director of insurance [BOARD] satisfactory proof of his financial ability to pay directly the benefits [COMPENSATION] provided for. If an employer elects to pay directly, the director of insurance [BOARD] may, in his [ITS] discretion, require

(1) the deposit of an acceptable security, indemnity or bond to secure the payment of benefit [COMPENSATION] liabilities as they are incurred; and

(2) proof of excess insurance.

(2) * Sec. 25. AS 23.30.075(b) is amended to read:

(b) An employer who fails to insure and keep insured employees subject to this chapter or fails to obtain a certificate of self-insurance from the board, upon conviction, is punishable by a fine of not more than $1,000, or by imprisonment for not more than one year, or by both. If an employer is a corporation, all persons who, at the time of the injury or death, had authority to insure the [SAID] corporation or apply for a certificate of self-insurance, and the person actively in charge of the business of the [SUCH] corporation shall be subject to the penalties prescribed in this subsection [HEREIN] and shall be

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personally, jointly, and severally liable together with the corporation for the payment of all [COMPENSATION OR OTHER] benefits for which the corporation is liable under this chapter if the [SAID] corporation at the [SUCH] time is not insured or qualified as a self-insurer.

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→ Sec 4 P2

* Sec. 26. AS 23.30.080 is amended by adding a new subsection to read:

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

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* Sec. 27. AS 23.30.085(a) is amended to read:

(a) An employer subject to this chapter, unless exempted, shall initially file evidence of his compliance with the insurance provisions of this chapter with the board, in the form prescribed by it. The employer shall also give evidence of compliance within 10 days after the termination of his insurance by expiration or cancellation. These requirements do not apply to an employer who has certification from the director of insurance [BOARD] of his financial ability to pay benefits [COMPENSATION] directly without insurance.

(2)

* Sec. 28. AS 23.30.090 is amended to read:

Sec. 23.30.090. SELF-INSURANCE CERTIFICATES. If an employer has complied with the provisions of this chapter relating to self-insurance, the director of insurance [BOARD] shall issue him a certificate which shall remain in force for a period fixed by the director of insurance [BOARD]. The director of insurance [BOARD] may, upon at least 10 days' notice and a hearing, revoke a self-insurance certificate upon satis-

factory proof that an employer is no longer entitled to it. After revocation the director of insurance [BOARD] may grant a new certificate to an employer, upon his petition and satisfactory proof of his financial ability as provided in this chapter. The director of insurance shall notify the contracting agency of the state or of a political subdivision of the state when it revokes the self-insurance certificate of an employer holding a contract with the state or a political subdivision of the state. An employer authorized as a self-insurer shall provide claims facilities through its own staffed adjusting facilities located within the state, or independent, licensed, resident adjustors with power to effect settlement within the state.

(2)

* Sec. 29. AS 23.30.092 is amended to read:

Sec. 23.30.092. VOLUNTEER AMBULANCE ATTENDANTS, POLICEMEN AND FIREMEN INSURANCE. A political subdivision may elect to provide benefits [AND COMPENSATION] to its volunteer ambulance attendants, policemen or firemen by obtaining insurance which would provide its volunteer ambulance attendants, policemen or firemen with benefits [AND COMPENSATION] at least equivalent to those conferred upon volunteer ambulance attendants, policemen or firemen by this chapter, and the election shall be considered compliance with the coverage and insurance provisions of this chapter. The election shall be made by filing copies of the insurance policy or policies with the commissioner.

(1)

→ Sec 5 P 2+3

* Sec. 30. AS 23.30.095(a) is amended to read:

(a) The employer shall furnish medical, surgical, and other attendance or treatment, nurse and hospital service, medicine, crutches, and apparatus for the period which the nature of the injury or the process of recovery requires [, NOT EXCEEDING TWO YEARS FROM AND AFTER THE DATE OF INJURY TO THE EMPLOYEE. HOWEVER, IF THE CONDITION REQUIRING THE TREATMENT, APPARATUS, OR MEDICINE IS A LATENT ONE, THE TWO-YEAR

PERIOD RUNS FROM THE TIME THE EMPLOYEE HAS KNOWLEDGE OF THE NATURE OF HIS DISABILITY AND ITS RELATIONSHIP TO HIS EMPL(MENT AND AFTER-DISABLEMENT. IT SHALL BE ADDITIONALLY PROVIDED ' IAT, IF CONTINUED TREATMENT OR CARE OR BOTH BEYOND THE TWO-YEAR PERIOD IS INDICATED, THE INJURED EMPLOYEE HAS THE RIGHT OF REVIEW BY THE BOARD. THE BOARD MAY AUTHORIZE CONTINUED TREATMENT OR CARE OR BOTH AS THE PROCESS OF RECOVERY MAY REQUIRE]. When medical care is required, the injured employee may designate a (3) [illegible] physician inside the state to render the care except in cases where, in the judgment of the board, care or treatment or both can best be administered by the selection of another (3) licensed physician. Upon procuring the services of a (3) licensed physician, the injured employee shall give proper notification of his selection to the employer within a reasonable time after first being treated. [IF FOR ANY REASON DURING THE PERIOD WHEN MEDICAL CARE IS REQUIRED THE EMPLOYEE WISHES TO CHANGE TO ANOTHER PHYSICIAN, HE MAY DO SO IN ACCORDANCE WITH RULES PRESCRIBED BY THE BOARD.]

Sec 7 P 3+4

(1) * Sec. 31. AS 23.30.095(c) is amended to read:

(c) No claim for medical or surgical treatment is valid and enforceable as against the employer unless, within 20 [TWENTY] days following each visit for [THE FIRST] treatment, the physician giving the treatment or the employee receiving it furnishes to the employer and the board notice of the injury and treatment, preferably on a form prescribed by the board. The board shall [MAY], however, excuse the failure to furnish notice within 20 days when it finds it to be in the interest of justice to do so, and it may, upon application by a party in interest, make an award for the reasonable value of the medical or surgical treatment so obtained by the employee.

(1) Sec 8 P 4

* Sec. 32. AS 23.30.095(e) is amended to read:

(e) The employee shall, after an injury, at reasonable times

during the continuance of his disability if requested by his employer or, when ordered by the board, submit himself to an examination by a physician or surgeon authorized to practice medicine under the laws of the state in which the employee may be found, furnished and paid for by the employer. [THE EMPLOYEE HAS THE RIGHT TO HAVE A PHYSICIAN, PAID FOR BY THE EMPLOYER, PRESENT AT THE EXAMINATION OR EXAMINATIONS.] No fact relative to the injury or claim communicated to or otherwise learned by a physician or surgeon who may have attended or examined the employee, or who may have been present at an examination is privileged, either in the hearings provided for in this chapter or an action to recover damages against an employer who is subject to the benefits [COMPENSATION] provisions of this chapter. If an employee refuses to submit himself to any examination provided for in this section [HEREIN], his rights to compensation shall be suspended until the obstruction or refusal ceases, and his compensation during the period of suspension may, in the discretion of the board or the court determining an action brought for the recovery of damages under this chapter [HEREUNDER], be forfeited. The board in any case of death may require an autopsy at the expense of the party requesting the autopsy. No autopsy may be held without notice first being given to the widow or widower or next of kin if they reside in the state or their whereabouts can be reasonably ascertained, of the time and place of the autopsy and reasonable time and opportunity given the widow or widower or next of kin to have a representative present to witness the autopsy. If no adequate notice is given, the findings from the autopsy may be suppressed on motion made to the board or to the superior court, as the case may be.

(2) * Sec. 33. AS 23.30.100(a) is amended to read:

Sec. 23.30.100. NOTICE OF INJURY OR DEATH. (a) Notice of an injury or death in respect to which benefits are [COMPENSATION IS]

payable under this chapter shall be given within 30 days after the date of the [SUCH] injury or death to the board and to the employer.

(2) * Sec. 34. AS 23.30.100(b) is amended to read:

(b) The notice shall be in writing, contain the name and address of the employee and a statement of the time, place, nature, and cause of the injury or death, and be signed by the employee or by a person on his behalf, or in case of death, by a person claiming to be entitled to benefits [COMPENSATION] for the death or by a person on his behalf.

(2) * Sec. 35. AS 23.30.100(d) is amended to read:

(d) Failure to give notice does not bar a claim under this chapter

(1) if the employer (or his agent in charge of the business in the place where the injury occurred) or the carrier had knowledge of the injury or death and the board determines that the employer or carrier has not been prejudiced by failure to give notice;

(2) if the board excuses the failure on the ground that for some satisfactory reason notice could not be given;

(3) unless objection to the failure is raised before the board at the first hearing of a claim for benefits [COMPENSATION] in respect to the injury or death.

Sec 9 pg 5

(1) * Sec. 36. AS 23.30.105 is amended to read:

Sec. 23.30.105. TIME FOR FILING OF CLAIMS. (1) (a) The right to benefits [COMPENSATION FOR DISABILITY] under this chapter is barred unless a claim for them [IT] is filed within two years after the employee has knowledge of the nature of his disability and its relation to his employment and after disablement. The [HOWEVER, THE MAXIMUM TIME FOR FILING THE CLAIM IN ANY EVENT OTHER THAN ARISING OUT OF AN OCCUPATIONAL DISEASE SHALL BE FOUR YEARS FROM THE DATE OF INJURY, AND THE] right to benefits [COMPENSATION] for death is barred unless a

claim for benefits [THEREFORE] is filed within one year after the death. If [, EXCEPT THAT IF] payment of benefits [COMPENSATION] has been made without an award on account of the injury or death, a claim may be filed within one year [TWO YEARS] after the date of the last payment. It is additionally provided that, in the case of a latent injury [DEFECTS PERTINENT TO AND CAUSING COMPENSABLE DISABILITY], the injured employee has full right to claim as shall be determined by the board, time limitations notwithstanding.

(2) (b) Failure to file a claim within the period prescribed in (a) of this section is not a bar to benefits [COMPENSATION] unless objection to the failure is made at the first hearing of the claim in which all parties in interest are given reasonable notice and opportunity to be heard.

(2) (c) If a person who is entitled to benefits [COMPENSATION] under this chapter is mentally incompetent or a minor, the provisions of (a) of this section are not applicable so long as he has no guardian or other authorized representative, but are applicable in the case of a person who is mentally incompetent or a minor from the date of appointment (guardian or other representative, or in the case of a minor, if no guardian is appointed before he becomes of age, from the date he becomes of age.

(2) (d) If recovery is denied to a person, in a suit brought at law or in admiralty to recover damages in respect to injury or death, on the ground that he was an employee and that the defendant is an employer within the meaning of this chapter and that the employer has secured benefits [COMPENSATION] to the employee under this chapter, the limitation of time prescribed in (a) of this section begins to run only from the date of termination of the suit.

* Sec. 37. AS 23.30.106(b) is amended to read:

(2)

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(b) The payment or award of benefits under the workers' compensation law of another state, territory, province, or foreign nation to an employee or his dependents otherwise entitled on account of the injury or death to the benefits under this chapter is not a bar to a claim for benefits under this chapter; however, a claim under this chapter must be filed within the time limits set out in this chapter. If benefits are [COMPENSATION IS] paid or awarded under this section:

(1) the medical and related benefits furnished or paid for by the employer under another workers' compensation law on account of the injury or death shall be credited against the medical and related benefits to which the employee would have been entitled under this chapter had claim been made solely under this chapter;

(2) the amount of all income benefits paid or awarded the employee under another workers' compensation law shall be credited against the total amount of income benefits which would have been due the employee under this chapter had claim been made solely under this chapter;

(3) the total amount of death benefits paid or awarded under another workers' compensation law shall be credited against the total amount of death benefits due under this chapter.

(2) * Sec. 38. AS 23.30.106(c) is amended to read:

(c) If an employee is entitled to the benefits of this chapter by reason of an injury sustained in this state in employment by an employer who is domiciled in another state and who has not secured the payment of benefits [COMPENSATION] as required by this chapter, the employer or his carrier may file with the board a certificate, issued by the commission or agency of the other state having jurisdiction over workers' compensation claims, certifying that the employer has secured the payment of benefits [COMPENSATION] under the workers' compensation law

of the other state and that with respect to that injury the employee is entitled to the benefits provided under that law. In that event

(1) the filing of the certificate shall constitute an appointment by the employer or his carrier of the board as his agent for acceptance of the service of process in a proceeding brought by the employee or his dependents to enforce his or their rights under this chapter on account of the injury;

(2) the board shall send to the employer or carrier, by registered or certified mail to the address shown on the certificate, a true copy of any notice of claim or other process served on the director by the employee or his dependents in any proceeding brought to enforce his or their rights under this chapter;

(3) if the employer is a qualified self-insurer under the workers' compensation law of the other state, the employer, upon submission of evidence satisfactory to the board of his ability to meet his liability to the employee under this chapter, shall be considered to be a qualified self-insurer under this chapter;

(4) if the employer's liability under the workers' compensation law of another state is insured, the employer's carrier, as to the employee or his dependents only, shall be considered to be an insurer authorized to write insurance under and be subject to this chapter; however, unless its contract with the employer requires it to pay an amount equivalent to the [COMPENSATION] benefits provided by this chapter, its liability for income benefits or medical and related benefits may not exceed the amounts of the benefits for which the insurer would have been liable under the workers' compensation law of the other state;

(5) if the amount for which the employer's insurance is liable under (3) and (4) of this subsection is less than the total [OF

THE COMPENSATION] benefits to which the employee is entitled under this chapter, the board may, if it considers it necessary, require the employer to file security satisfactory to the board to secure the payment of benefits due the employee or his dependents under this chapter; and

(6) upon compliance with the preceding requirements of (c) of this section, the employer, as to the employee only, shall be considered to have secured the payment of benefits [COMPENSATION] under this chapter.

* Sec. 39. AS 23.30.110(a) is amended to read:

(a) Subject to the provisions of AS 23.30.105, a claim for benefits [COMPENSATION] may be filed with the board in accordance with its regulations at any time after the first seven days of disability following an injury, or at any time after death, and the board may hear and determine all questions in respect to the claim.

Sec 10 P5+6

* Sec. 40. AS 23.30.110(c) is amended to read:

(c) The board shall make the investigation which it considers necessary in respect of the claim, and upon application of an interested party shall order a hearing on it. If a hearing on a claim is ordered, the board shall give the claimant and other interested parties at least 10 days' notice of the hearing, served personally upon the claimant and other interested parties or sent by registered mail, and shall, within 30 [20] days after the hearing is held [HAD], by order, reject the claim or make an award in respect to it. [IF NO HEARING IS ORDERED WITHIN 20 DAYS AFTER NOTICE IS GIVEN AS PROVIDED IN (b) OF THIS SECTION, THE BOARD SHALL BY ORDER REJECT THE CLAIM OR MAKE AN AWARD IN RESPECT TO IT.]

* Sec. 41. AS 23.30.120 is amended to read:

Sec. 23.30.120. PRESUMPTIONS. In a proceeding for the enforce-

ment of a claim for benefits [COMPENSATION] under this chapter it is presumed, in the absence of substantial evidence to the contrary, that

(1) the claim comes within the provisions of this chapter;

(2) sufficient notice of the claim has been given;

(3) the injury was not occasioned solely by the intoxication of the injured employee;

(4) the injury was not occasioned by the wilful intention of the injured employee to injure or kill himself or another.

(2) * Sec. 42. AS 23.30.130 is amended to read:

Sec. 23.30.130. MODIFICATION OF AWARDS. (a) Upon its own initiative, or upon the application of any party in interest on the ground of a change in conditions, including, for the purposes of AS 23.30.175, a change in residence, or because of a mistake in its determination of a fact, the board may, before one year after the date of the last payment of benefits [COMPENSATION,] whether or not a compensation order has been issued, or before one year after the rejection of a claim, review a compensation case in accordance with the procedure prescribed in respect of claims in AS 23.30.110. In accordance with AS 23.30.110 the board may issue a new compensation order which terminates, continues, reinstates, increases, or decreases the compensation, or award benefits [COMPENSATION].

(b) A new order does not affect benefits [COMPENSATION] previously paid, except that an award increasing the compensation rate may be made effective from the date of the injury, and if part of the compensation due or to become due is unpaid, an award decreasing the compensation rate may be made effective from the date of the injury, and payment made earlier in excess of the decreased rate shall be deducted from the unpaid compensation, in the manner the board determines.

(2) * Sec. 43. AS 23.30.140 is amended to read:

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Sec. 23.30.140. APPOINTMENT OF GUARDIAN BY COURT. The board may require the appointment of a guardian or other representative by a competent court for any person who is mentally incompetent or a minor to receive benefits [COMPENSATION] payable to the person under this chapter and to exercise the powers granted to or to perform the duties required of the person under this chapter. If the board does not require the appointment of a guardian to receive the compensation of a minor, appointment for this purpose is not necessary.

(2) * Sec. 44. AS 23.30.145 is amended to read:

Sec. 23.30.145. ATTORNEY FEES. (a) Fees for legal services rendered in respect to a claim are not valid unless approved by the board, and the fees may not be less than 25 percent on the first $1,000 of benefits [COMPENSATION] or part of the first $1,000 of benefits [COMPENSATION] and 10 percent of all sums in excess of $1,000 of benefits [COMPENSATION]. When the board advises that a claim has been controverted, in whole or in part, the board may direct that the fees for legal services be paid by the employer or carrier in addition to benefits [COMPENSATION] awarded; the fees may be allowed only on the amount of benefits [COMPENSATION] controverted and awarded. When the board advises that a claim has not been controverted, but further advises that bona fide legal services have been rendered in respect to the claim, then the board shall direct the payment of the fees out of the benefits [COMPENSATION] awarded. In determining the amount of fees the board shall take into consideration the nature, length and complexity of the services performed, transportation charges, and the benefits resulting from the services to the compensation beneficiaries.

(b) If an employer fails to file timely notice of controversy or fails to pay [COMPENSATION OR MEDICAL AND RELATED] benefits within 15 days after it becomes due or otherwise resists the payment of [COMPEN-

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SATION OR MEDICAL AND RELATED] benefits and if the claimant has employed an attorney in the successful prosecution of his claim, the board shall make an award to reimburse the claimant for his costs in the proceedings, including a reasonable attorney fee. The award is in addition to the [COMPENSATION OR MEDICAL AND RELATED] benefits ordered.

(c) If proceedings are had for review of an [A COMPENSATION OR MEDICAL AND RELATED BENEFITS] order before a court, the court may allow or increase an attorney's fees. The fees are in addition to [COMPENSATION OR MEDICAL AND RELATED] benefits ordered and shall be paid as the court may direct.

(1) Sec 11 P6

* Sec. 45. AS 23.30.155(j) is amended to read:

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

(1) Sec 12 P6

* Sec. 46. AS 23.30.155 is amended by adding new subsections to read:

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

(o) Whenever the board determines that it is in the interest of an injured employee and that a substantial hardship will not be imposed on the employer, the liability of the employer for all or part of compensation payable under AS 23.30.190 may be discharged by the payment of a lump sum.

(2)

* Sec. 47. AS 23.30 is amended by adding new sections to read:

Sec. 23.30.157. AVAILABILITY FOR EMPLOYMENT. (a) An injured employee who receives compensation or medical and related benefits under this chapter and who is not employed shall register with the employment service operated by the state and shall report to job inter-

views and referrals arranged by the employment service.

(b) An employee described in (a) of this section who is unemployed and has received 10 or more job referrals within the preceding three years may not receive further benefits under this chapter unless the employee is determined to be permanently totally disabled in accordance with AS 23.30.180.

(2) Sec. 23.30.159. OTHER EARNINGS. (a) An injured employee who receives compensation or medical and related benefits shall report monthly any wages earned during the preceding month

(1) to the board; or

(2) if the employer elects to pay benefits directly, to the director of insurance.

(b) An employee who fails to report wages as required under (a) of this section may not receive benefits under this chapter until those reports are made.

(2) * Sec. 48. AS 23.30.160 is amended to read:

Sec. 23.30.160. ASSIGNMENT AND EXEMPTION FROM CLAIMS OF CREDITORS. No assignment, release, or commutation of [COMPENSATION OR] benefits due or payable under this chapter, except as provided by this chapter, is valid, and the [COMPENSATION AND] benefits are exempt from all claims of creditors and from levy, execution, and attachment or other remedy for recovery or collection of a debt. This exemption may not be waived.

(2) * Sec. 49. AS 23.30.165 is amended to read:

Sec. 23.30.165. LIEN. (a) Each employee and beneficiary entitled to <u>benefits</u> [COMPENSATION] under the provisions of this chapter has a lien for the full amount of his <u>benefits</u> [COMPENSATION], including costs and disbursements of suit and attorney fees allowed, upon all of the property in connection with the construction, preservation, mainte-

nance or operation of which the work of the employee was being performed at the time of his injury or death. For example: in the case of an employee injured or killed while engaged in mining or in work connected with mining, the lien extends to the entire mine and all property used in connection with it; and in the case of an employee injured or killed while engaged in fishing or in the packing, canning, or salting of fish, or other branch of the fish industry, the lien extends to the entire packing, fishing, salting or canning plant or establishment and all property used in connection with it; and this is the case with other businesses, industries, works, occupations and employments.

(b) The lien is prior and paramount to any other lien on the property, except a lien for wages or materials as provided by law, and is of equal rank with a lien for wages or materials.

(c) The lien extends to all right, title, interest and claim of the employer in the property affected by the lien.

(d) A person claiming a lien under this chapter shall, within one year after the date of the injury from which the claim of benefits [COMPENSATION] arises, file for record in the office of the recorder of the recording district in which the property affected by the lien is located a notice of lien signed and verified by the claimant or someone on his behalf, and stating in substance, the name of the person injured or killed out of which injury or death the claim of benefits [COMPENSATION] arises, the name of the employer of the injured or deceased person at the time of the injury or death, a description of the property affected or covered by the lien and the name of the owner or reputed owner of the property.

(e) The lien for benefits [COMPENSATION] provided for in this section may be enforced by equitable proceedings as in the enforcement

of other liens upon real or personal property, within 10 months after the cause of action arises. Nothing in this section prevents an attachment of property as security for the payment of benefits [COMPENSATION].

(2) * Sec. 50. AS 23.30.170(a) is amended to read:

(a) In case of default by the employer in the payment of benefits [COMPENSATION] due under an award of benefits [COMPENSATION] for a period of 30 days after the benefits are [COMPENSATION IS] due, the person to whom the benefits are [COMPENSATION IS] payable may, within one year after the default, apply to the board making the compensation order for a supplementary order declaring the amount of the default. After investigation, notice, and hearing, as provided in AS 23.30.110, the board shall make a supplementary order declaring the amount of the default The order shall be filed in the same manner as the compensation order.

(1) Sec 13 P6

* Sec. 51. AS 23.30.175(b) is repealed and reenacted to read:

(b) After June 30 and before December 1 of each year, the commissioner shall adopt and publish the average weekly wage for the preceding calendar year as computed by the United States Secretary of Labor for the purposes of unemployment insurance. In determining the rate of compensation the commissioner shall use the average weekly wage figure for each jurisdiction, including Alaska, for which the Secretary of Labor computes an average weekly wage. These figures are the applicable average weekly wages for those jurisdictions for the following calendar year. The average weekly wage for Alaska is the amount determined by dividing (1) the total wages paid by all employers covered by the Alaska Employment Security Act by (2) the average monthly employment reported by those employers for the same period and dividing the result by 52.

(1) Sec 14 P7

* Sec. 52. AS 23.30.175(c) is repealed and reenacted to read:

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

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

(2) The calculation required by this subsection does not apply if

(A) the average weekly wage of the recipient and the resulting compensation rate is determined under AS 23.30.220(2) by use of wages earned in jurisdictions other than Alaska; or

(B) the absence of the recipient is for medical or rehabilitation services not reasonably available in Alaska.

(3) Application of this subsection may not result in a reduction of the weekly compensation rate to less than $65 a week except as provided in (a) of this section.

(1) Sec 15 P 7

* Sec. 53. AS 23.30.175(d) is repealed and reenacted to read:

(d) In a jurisdiction for which no average weekly wage is computed by the United States Secretary of Labor for the purposes of unemployment insurance, the average weekly wage shall be as determined by the commissioner.

(2)

* Sec. 54. AS 23.30.180 is amended to read:

Sec. 23.30.180. PERMANENT TOTAL DISABILITY. In case of total disability adjudged to be permanent 66-2/3 percent of the injured employee's average weekly wages shall be paid to the employee during the continuance of the total disability. Permanent [LOSS OF BOTH

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HANDS, OR BOTH ARMS, OR BOTH FEET, OR BOTH LEGS, OR BOTH EYES, OR OF ANY TWO OF THEM, IN THE ABSENCE OF CONCLUSIVE PROOF TO THE CONTRARY, CONSTITUTES PERMANENT TOTAL DISABILITY. IN ALL OTHER CASES PERMANENT] total disability is determined in accordance with the facts.

(1) * Sec. 55. AS 23.30.190 Sec 16 P7/8 is amended to read:

(2) Sec. 23.30.190. COMPENSATION FOR PERMANENT PARTIAL DISABILITY. (a) In case of disability partial in character but permanent in quality the compensation is 66-2/3 percent of the injured employee's average weekly wages in addition to compensation for temporary total disability or temporary partial disability paid in accordance with AS 23.30.185 or 23.30.200, respectively, and shall be paid to the employee as follows:

(2) (1) arm lost, 156 [280] weeks compensation, not to exceed $43,680;

(2) (2) leg lost, 156 [248] weeks compensation, not to exceed $40,320;

(2) (3) hand lost, 156 [212] weeks compensation, not to exceed $33,600;

(2) (4) foot lost, 156 [173] weeks compensation, not to exceed $28,700;

(2) (5) eye lost, 140 weeks compensation, not to exceed $22,400;

(2) (6) thumb lost, 51 weeks compensation, not to exceed $10,400;

(2) (7) first finger lost, 28 weeks compensation, not to exceed $6,440;

(2) (8) great toe lost, 26 weeks compensation, not to exceed $5,320;

(2) (9) second finger lost, 18 weeks compensation, not to exceed $4,200; third finger lost, 18 weeks compensation, not to exceed $3,500;

(2) (10) toe other than great toe lost, eight weeks compensation, not to exceed $2,240;

(2) (11) fourth finger lost, seven weeks compensation, not to exceed $2,100;

(2) (12) loss of hearing of one ear, 52 weeks compensation, not exceeding $7,280; loss of hearing of both ears, 156 [200] weeks compensation, not to exceed $28,000;

(2) (13) compensation for loss of more than one phalange of a digit shall be the same as for loss of the entire digit; compensation for loss of the first phalange is one-half of the compensation for loss of the entire digit;

(2) (14) amputation between the elbow and the wrist is considered equivalent to the loss of an arm, and amputation between the knee and ankle is considered equivalent to the loss of a leg;

(2) (15) compensation for loss of binocular vision or for 80 percent or more of the vision of an eye is the same as for loss of the eye;

(2) (16) compensation for loss of two or more digits, or one or more phalanges of two or more digits of a hand or foot may be proportioned to the resulting loss of use of the injured hand or foot, but may not exceed the compensation for loss of a hand or foot;

(2) (17) compensation for permanent total loss of use of a member is the same as for loss of the member;

(2) (18) compensation for permanent partial loss or loss of use of a member may be for proportionate loss or loss of use of the member;

(2) (19) in addition to other allowable compensation, the board shall award proper and equitable compensation up to $10,000 for

(2) (A) serious disfigurement of face, head and, when such disfigurement is likely to handicap the employee in securing or holding employment, for serious disfigurement of neck or limbs normally exposed, or

(B) partial or total loss of or loss of use of a part or function of the body not otherwise provided for under this section;

(20) in all other cases in this class of disability the compensation is 66-2/3 percent of the difference between his average weekly wages and his wage-earning capacity after the injury in the same employment or otherwise, payable during the continuance of the partial disability, but subject to reconsideration of the degree of the impairment by the board on its own motion or upon application of a party in interest; [WHENEVER THE BOARD DETERMINES THAT IT IS IN THE INTEREST OF JUSTICE, THE LIABILITY OF THE EMPLOYER FOR COMPENSATION, OR ANY PART OF IT AS DETERMINED BY THE BOARD, MAY BE DISCHARGED BY THE PAYMENT OF A LUMP SUM;]

(21) in a case in which there is a loss of, or loss of use of more than one member or parts of more than one member set out in (1) - (18) of this subsection [SECTION], not amounting to permanent total disability, the award of compensation is for the loss of, or loss of use of, each member or part of the member, which awards shall run consecutively, except that where the injury affects only two or more digits of the same hand or foot, (16) of this subsection [SECTION] applies.

(b) Total compensation paid under (a)(20) of this section may not continue for more than 156 weeks or exceed $60,000.

Sec 17 P8

* Sec. 56. AS 23.30.191 is repealed and reenacted to read:

Sec. 23.30.191. EXPENSES FOR REHABILITATING INJURED EMPLOYEES. An employee, who, as a result of injury, is or may be expected to be totally or partially incapacitated for his normal occupation and who, under the direction of the board, is being rehabilitated to engage in a remunerative occupation, may receive compensation necessary for his

rehabilitation of 66-2/3 percent of his average weekly wage subject to the maximum payable under AS 23.30.175.

(2) * Sec. 57. AS 23.30.210(b) is amended to read:

(b) At any time after death, or after 30 days subsequent to the date of injury, the employer and the employee or the beneficiary or beneficiaries, as the case may be, have the right to reach an agreement in regard to a claim for injury or death under this chapter [HEREUNDER] in accordance with the applicable schedule [HEREOF], but a memorandum of the agreement in a form prescribed by the board shall be filed with the board. Otherwise, the agreement is void for any purpose. If approved by the board, the agreement is enforceable the same as an order or award of the board and discharges the liability of the employer for the benefits [COMPENSATION] notwithstanding the provisions of [AS 23.30.130,] AS 23.30.160 [,] and AS 23.30.245(b) [AS 23.30.245]. The agreement shall be approved by the board only when the terms conform to the provisions of this chapter and, if it involves or is likely to involve permanent disability, the board may require an impartial medical examination and a hearing in order to determine whether or not to approve the agreement. The board may approve lump-sum settlements when it appears to be to the best interest of the employee or beneficiary or beneficiaries.

(1) SEC 18 P 8

* Sec. 58. AS 23.30.215(a)(1) is amended to read:

(1) reasonable and necessary funeral expenses not exceeding $2,500; the commissioner by regulation shall annually adjust this limit to reflect increased expenses resulting from inflation [$1,000];

(3) SEC 20 P 8

* Sec. 59. AS 23.30.220(2) is amended to read:

(2) the average weekly wage is [THAT MOST FAVORABLE TO THE EMPLOYEE] calculated by dividing 52 into the total wages earned, including self-employment, in [ANY ONE OF] the [THREE] calendar year

[YEARS] immediately preceding the injury;

(2) * Sec. 60. AS 23.30 is amended by adding a new section to read:

Sec. 23.30.227. OTHER BENEFITS. (a) Notwithstanding any other provision of this chapter, an injured employee may not receive compensation for permanent total, permanent partial, temporary total, or temporary partial disability if he receives unemployment benefits (AS 23.20) for the same period of time.

(b) Notwithstanding any other provision of this chapter, an injured employee may not receive compensation for permanent total, permanent partial, temporary total, or temporary partial disability that exceeds 100 percent of his average weekly wage when added to any sick pay to which he is entitled for the same period of time.

(c) Notwithstanding any other provision of this chapter, the amount of compensation received by an injured employee for permanent total, permanent partial, temporary total, or temporary partial disability shall be reduced by the amount of retirement benefits paid to him for the same period of time.

(2) * Sec. 61. AS 23.30.235 is amended to read:

Sec. 23.30.235. CASES IN WHICH NO <u>BENEFITS ARE</u> [COMPENSATION IS] PAYABLE. No <u>benefits</u> [COMPENSATION] may be paid if the injury was occasioned solely by the intoxication of the employee or by the wilful intention of the employee to injure or kill himself or another.

(2) * Sec. 62. AS 23.30.245 is amended to read:

Sec. 23.30.245. INVALID AGREEMENTS. (a) An agreement by an employee to pay a portion of the premium paid by his employer to a carrier or to contribute to a benefit fund or department maintained by the employer for the purpose of providing <u>benefits</u> [COMPENSATION OR MEDICAL SERVICES AND SUPPLIES] as required by this chapter is not valid. An employer who makes a deduction for this purpose from the pay

200 - 18.80.280; [OR BECAUSE HE HAS]

(B) filed a complaint, testified or assisted in a proceeding under this chapter; or

(C) filed a claim for workers' compensation benefits under AS 23.30;

(2) Sec. 5. AS 21.36.190(d) is amended to read:

(d) This section does not apply to workers' compensation insurance when issued to an association of employers in the same rating classification [FORMED FOR PURPOSES OTHER THAN THE PURCHASE OF INSURANCE] and which as a group

(1) has a constitution and bylaws;

(2) incorporates a safety program;

[(3) AS A GROUP HAS PREFERRED CHARACTERISTICS OVER SIMILAR RISKS WRITTEN ON AN INDIVIDUAL BASIS;] and

(4) has filed and received approval from the director for the rating program to be applied to the group.

(2) Sec. 6. AS 21.39.040(d) is amended to read:

(d) Subject to the exceptions [EXCEPTION] specified in (e) of this section and AS 21.39.045, each filing shall be on file for a waiting period of 15 days before it becomes effective, which period may be extended by the director for an additional period not to exceed 15 days if he gives written notice within the waiting period to the insurer or rating organization which made the filing stating that he needs additional time for the consideration of the filing. Upon written application by the insurer or rating organization, the director may authorize a filing which he has reviewed to become effective before the expiration of the waiting period. A filing shall be considered to meet the requirements of this chapter unless disapproved by the director within the waiting period.

* Sec. 7. AS 21.39 is amended by adding a new section to read:

Sec. 21.39.045. WORKERS' COMPENSATION RATE FILINGS. (a) A filing of workers compensation rates by a rating organization shall be limited to provisions for claim payment and may not include allowances for expenses, taxes, or profit, except as necessary for full rate development for an assigned risk pool under AS 21.39.155.

(b) If each rate in a schedule of workers' compensation rates for a specific classification of risks filed by an insurer is not lower than the rate for each respective classification filed by a rating organization in accordance with (a) of this section and approved by the director, the schedule of rates filed by the insurer is effective immediately and the waiting period in AS 21.39.040(d) is not required.

(c) Notwithstanding (b) of this section, the director may require an insurer to comply with the waiting period in AS 21.39.040(d) for a rate filing or part of a rate filing if he determines that the rate filing or part of the rate filing is excessive, inadequate, or unfairly discriminatory.

* Sec. 8. AS 21.39.070 is amended by adding new subsections to read:

(c) Notwithstanding (a) of this section, a filing by an insurer of an independent deductible or loss reimbursement plan is not considered a deviation under this section.

(d) Notwithstanding (a) of this section, a filing of workers' compensation rates under AS 21.39.045(b) is not a deviation under this section.

* Sec. 9. AS 23.30.010 is amended to read:

Sec. 23.30.010. COVERAGE. Benefits are [COMPENSATION IS] payable under this chapter in respect of disability or death of an employee.

* Sec. 10. AS 23.30.015 is amended to read:

Sec. 23.30.015. BENEFITS [COMPENSATION] WHERE THIRD PERSONS ARE

-L 20A

(2)

LIABLE. (a) If on account of disability or death for which benefits [COMPENSATION IS] payable under this chapter the person entitled to the benefits [COMPENSATION] believes that a third person other than the employer or a fellow employee is liable for damages, he need not elect whether to receive benefits [COMPENSATION] or to recover damages from the third person.

(b) Acceptance of benefits [COMPENSATION] under an award in a compensation order filed by the board operates as an assignment to the employer of all rights of the person entitled to benefits [COMPENSATION] and the personal representative of a deceased employee to recover damages from the third person unless the person or representative entitled to benefits [COMPENSATION] commences an action against the third person within one year after an award.

(c) Payment of compensation into the second-injury fund as a result of death operates as an assignment to the employer of all rights of the representative of the deceased to recover damages from the third person.

(d) An employer under an assignment may either institute proceedings for the recovery of damages or may compromise with a third person, either without or after instituting an action.

(e) An amount recovered by the employer under an assignment, whether by action or compromise, shall be distributed as follows:

(1) The employer shall retain an amount equal to

(A) the expenses incurred by him in respect to the action or compromise, including a reasonable attorney fee determined by the board;

(B) the cost of all benefits actually furnished by him under this chapter;

(C) all amounts paid as compensation and second-injury

(2)

(2)

fund payments;

(D) the present value of all amounts payable later as compensation (present value to be computed from a schedule prepared by the board), and the present value of the cost of all benefits to be furnished later under AS 23.30.095 (as estimated by the board), the amounts so computed and estimated to be retained by the employer as a trust fund to pay compensation and cost of benefits as they become due and to pay any finally remaining excess sum to the person entitled to benefits [COMPENSATION] or to the representative; and

(2) the employer shall pay any excess to the person entitled to benefits [COMPENSATION] or to his representative.

(f) Even if an employee, his representative, or his employer brings an action or settles a claim against the third person, the employer shall pay the benefits [AND COMPENSATION] required by this chapter.

(g) If the employee or his representative recovers damages from the third person, the employee or representative shall promptly pay to the employer the total amounts paid by the employer under (e)(1)(A), (B), and (C) of this section, insofar as the recovery is sufficient after deducting all litigation costs and expenses. Any excess recovery by the employee or representative shall be credited against any amount payable by the employer thereafter.

(h) If compromise with a third person is made by the person entitled to benefits [COMPENSATION] or his representative of an amount less than the benefits [COMPENSATION] to which the person or representative would be entitled, the employer is liable for benefits [COMPENSATION] stated in (f) of this section only if the compromise is made with his written approval.

(i) If the employer is insured and the carrier has assumed the payment of benefits [COMPENSATION] the carrier shall be subrogated to all the rights of the employer.

(j) Notice of the commencement of an action against a third party shall be given to the board and to all interested parties within 30 days.

(2) * Sec. 11. AS 23.30.020 is amended to read:

Sec. 23.30.020. CHAPTER PART OF CONTRACT OF HIRE. This chapter constitutes part of every contract of hire, express or implied, and every contract of hire shall be construed as an agreement on the part of the employer to pay and on the part of the employee to accept benefits [COMPENSATION] in the manner provided in this chapter for all personal injuries sustained.

(2) * Sec. 12. AS 23.30.025(b) is amended to read:

(b) All policies of insurance companies insuring the payment of benefits [COMPENSATION] under this chapter are conclusively presumed to cover all the employees and the entire benefits [COMPENSATION] liability of the insured employer employed at or in connection with the business of the employer carried on, maintained, or operated at the location or locations set out [FORTH] in that [SUCH] policy or agreement. A provision in a policy attempting to limit or modify the liability of the company issuing it is wholly void except as provided in (c) of this section.

(2) Sec 2 Page 1

(1) * Sec. 13. AS 23.30.025 is amended by adding a new subsection to read:

(c) An insurer may issue a policy of insurance insuring the payment of benefits under this chapter which provides for a deductible amount to be paid by the employer. A policy with a deductible provision

must be approved by the director of insurance and must provide that the

deductible amount be paid by the insurer to the employee on behalf of the employer. After payment of the deductible by the insurer, the insurer may recover the deductible amount from the employer. The failure of an employer to reimburse an insurer for the deductible amount does not relieve the insurer from any other obligation it may have under the policy of insurance. An insurer is not required to apply for a deviation under AS 21.39.070 in order to issue a policy under this subsection. This subsection does not apply to a policy of excess insurance purchased by a self-insurer.

(2) * Sec. 14. AS 23.30.030 is amended to read:

Sec. 23.30.030. REQUIRED POLICY PROVISIONS. A policy of a company insuring the payment of <u>benefits</u> [COMPENSATION] under this chapter is considered to contain the provisions set out in (1) - (7) of this section.

(1) The insurer assumes in full all the obligations to pay physician's fees, nurse's charges, hospital services, hospital supplies, medicine, prosthetic devices, transportation charges to the nearest point where adequate medical facilities are available, burial expenses, and compensation or death benefits imposed upon the insured under the provisions of this chapter.

(2) The policy is made subject to the provisions of this chapter and its provisions relative to the liability of the insured employer to pay physician's fees, nurse's charges, hospital services, hospital supplies, medicines, prosthetic devices, transportation charges to the nearest point where adequate medical facilities are available, burial expenses, compensation or death benefits to and for [SAID] employees or beneficiaries, the acceptance of the liability by the insured employer, the adjustment, trial and adjudication of claims for the physician's fees, nurse's charges, hospital services, hospital

supplies, medicines, prosthetic devices, transportation charges to the nearest point where adequate medical facilities are available, burial expenses, compensation or death benefits and the liability of the insurer to pay the same are considered a part of this policy contract.

(3) As between the insurer and the employee or his beneficiaries, notice to or knowledge of the occurrence of the injury on the part of the insured employer is notice or knowledge on the part of the insurer; jurisdiction of the insured employer for the purpose of this chapter is jurisdiction of the insurer; and the insurer, in all things, is bound by and subject to the orders, awards, judgments and decrees made against the insured employer under this chapter.

(4) The insurer will promptly pay to the person entitled to them the benefits conferred by this chapter, including physician's fees, nurse's charges, hospital services, hospital supplies, medicines, prosthetic devices, transportation charges to the nearest point where adequate medical facilities are available, burial expenses, and all installments of compensation or death benefits awarded or agreed upon under this chapter. The obligation of the insurer is not affected by a default of the insured employer after the injury, or by default in giving a notice required by this policy. The policy is a direct promise by the insurer to the person entitled to physician's fees, nurse's charges, fees for hospital services, charges for medicines, prosthetic devices, transportation charges to the nearest point where adequate medical facilities are available, and hospital supplies, charges for burial, compensation or death benefits, and is enforceable in the name of that person. The insurer shall provide claims facilities through its own staffed adjusting facilities located within the state, or by independent, licensed, resident adjusters with power to effect settlement within the state.

(2) [redacted]

(5) A termination of the policy by cancellation is not effective as to the employees of the insured employer covered by it until 20 days after written notice of the termination has been received by the board. If the employer has a contract with the state or a home rule or other political subdivision of the state, and his policy is cancelled due to nonpayment of a premium, the termination of the policy is not effective as to the employees of the insured employer covered by it until 20 days after written notice of the termination has been received by the contracting agency, and the agency has the option of continuing the payments on behalf of the employer in order to keep the policy in force. If, however, the employer has secured insurance with another insurance carrier, cancellation is effective as of the date of the new coverage.

(6) All claims for compensation, death benefits, physician's fees, nurse's charges, hospital services, hospital supplies, medicines, prosthetic devices, transportation charges to the nearest point where adequate medical facilities are available, and burial expenses, may be made directly against either the employer or the insurer, or both, and the order or award of the board may be made against either the employer or the insurer or both.

(7) If the insurer fails or refuses to pay a final award or judgment (except during the pendency of an appeal) made against it, or its insured, or if it fails or refuses to comply with a provision of this chapter, the director of insurance [COMMISSIONER] shall revoke the approval of the policy form, and may not accept further proofs of insurance from it until it has paid the award or judgment or has complied with the violated provision of this chapter, and has resubmitted its policy form and received the approval of the form by the insurance commissioner.

(2) [redacted]

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(2) * Sec. 15. AS 23.30.045(a) is amended to read:

Sec. 23.30.045. EMPLOYER'S LIABILITY FOR BENEFITS [COMPENSATION]. (a) An employer is liable for and shall secure the payment to his employees of the benefits [COMPENSATION] payable under AS 23.30.050, 23.30.095, 23.30.145, and 23.30.185 - 23.30.215. If the employer is a subcontractor, the contractor is liable for and shall secure the payment of the benefits [COMPENSATION] to employees of the subcontractor unless the subcontractor secures the payment.

(2) Sec. 16. AS 23.30.045(b) is amended to read:

(b) Benefits are [COMPENSATION IS] payable irrespective of fault as a cause for the injury.

(1) → SEC 3 P2

* Sec. 17. AS 23.30.045(c) is amended to read:

(c) For a person eligible for vocational rehabilitation service under this chapter (3) or and AS 23.15.080 [AND] who is placed with an employer for service [WITHOUT WAGES] at the request of the board or the division [OFFICE] of vocational rehabilitation to give him on the job training, work readiness, [OR] work therapy experience [,] or work sampling, the liability set out in (a) of this section applies to the state rather than to the employer.

(2) * Sec. 18. AS 23.30.045(d) is amended to read:

(d) No contract may be awarded by the state or a home rule or other political subdivision of the state to an employer unless the employer [PERSON] to whom the contract is to be awarded has submitted to the contracting agency proof, furnished by the insurance carrier, of current coverage by workers' compensation insurance from an insurance company or association authorized to transact the business of workers' compensation insurance in this state or proof, furnished by the director of insurance [BOARD], of a current certificate of self-insurance from the director of insurance [BOARD]. The employer [PERSON] to whom

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the contract is awarded shall keep his workers' compensation insurance policy in effect during the life of the contract with the state or political subdivision. If the state or the political subdivision of the state fails to obtain proof of coverage or self-insurance or to protect itself under (e) of this section, and an employee of the contractor is injured during the term of the contract, the state or the political subdivision is liable for workers' compensation to the employee if the employee is unable to recover from the employer because of the employer's lack of financial assets. The state or the political subdivision is not liable, however, to the employee for workers' compensation if the employee can recover from the employer under (a) and (b) of this section.

(2)

* Sec. 19. AS 23.30.045(e) is amended to read:

(e) When a contracting agency of the state or a political subdivision receives notice that the workers' compensation insurance policy of an employer to whom the agency has awarded a contract has been cancelled due to nonpayment of a premium, without being replaced by a comparable policy, the agency may either terminate the contract with the employer or continue the premium payments on his behalf in order to keep the policy in force during the life of the agency's contract. If the agency chooses to keep the policy in force, it may deduct its payments from the contract price or bring an action against the employer to recover the amount of the payments. When the contracting agency receives notice that the <u>director of insurance</u> [BOARD] has revoked a certificate of self-insurance held by a person to whom a contract has been awarded, the agency may terminate the contract. This subsection does not limit the causes of action or remedies which the state or political subdivision may have against the employer.

(2)

* Sec. 20. AS 23.30.055 is amended to read:

Sec. 23.30.055. EXCLUSIVENESS OF LIABILITY. The liability of an employer prescribed in AS 23.30.045 is exclusive and in place of all other liability of the employer and any fellow employee to the employee, his legal representative, husband or wife, parents, dependents, next of kin, and anyone otherwise entitled to recover damages from the employer or fellow employee at law or in admiralty on account of the injury or death. However, if an employer fails to secure payment of benefits [COMPENSATION] as required by this chapter, an injured employee or his legal representative in case death results from the injury may elect to claim benefits [COMPENSATION] under this chapter, or to maintain an action against the employer at law or in admiralty for damages on account of the injury or death. In that action the defendant may not plead as a defense that the injury was caused by the negligence of a fellow servant, or that the employee assumed the risk of his employment, or that the injury was due to the contributory negligence of the employee.

(2) Sec. 21. AS 23.30.060 is amended to read:

Sec. 23.30.060. ELECTION OF DIRECT PAYMENT PRESUMED. (a) An employer is conclusively presumed to have elected to pay benefits [COMPENSATION] directly to employees for injuries sustained arising out of and in the course of the employment according to the provisions of this chapter, until notice in writing of insurance, stating the name and address of the insurance company and the period of insurance, is given to the employee.

(b) The notice shall be posted and kept on the premises of the employer or on the premises where the employer's operations are being carried on in three conspicuous places, at the office of the employer, at the mess house or boarding house if there is one, and in some conspicuous place on the premises or works. The notice shall be sub-

stantially in the following form, and the signature shall be witnessed by two witnesses:

EMPLOYER'S NOTICE OF INSURANCE

To the employees of the undersigned:

You and each of you are hereby notified that the undersigned is insured in the.....Insurance Company, whose address is.....and that the period covered by the insurance.....in accordance with the terms, conditions and provisions to pay benefits [COMPENSATION] to employees of the undersigned for injuries received as provided in the Act of the State of Alaska, known as the "Alaska Workers' Compensation Act"

Signed.....

.....

Witness:

.....

(2) * Sec. 22. AS 23.30.070(e) is amended to read:

(e) If the employer or the carrier has been given notice, or the employer (or his agent in charge of the business in the place where the injury occurred) or the carrier has knowledge of an injury or death of an employee and fails, neglects, or refuses to file a report of it as required by the provisions of (a) of this section, the limitations in AS 23.30.105(a) do not begin to run against the claim of the injured employee or his dependents entitled to benefits [COMPENSATION,] or in favor of either the employer or the carrier, until the report has been furnished as required by the provisions of (a) of this section.

(2) * Sec. 23. AS 23.30.070(f) is amended to read:

(f) An employer who fails or refuses to send a report required of him by this section or who fails or refuses to send the report required

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by (a) of this section within the time required shall, if so required by the board, pay the employee or his legal representative or other person entitled to benefits [COMPENSATION] by reason of the employee's injury or death an additional award equal to 20 percent of the compensation [AMOUNTS] which was [WERE] unpaid when due. The award shall be against either the employer or his insurance carrier, or both.

(2) Sec. 24. AS 23.30.075(a) is amended to read:

(a) An employer under this chapter, unless exempted, shall either [,] insure and keep insured for his liability under this chapter in an insurance company or association duly authorized to transact the business of workers' compensation insurance in this state, or shall furnish the director of insurance [BOARD] satisfactory proof of his financial ability to pay directly the benefits [COMPENSATION] provided for. If an employer elects to pay directly, the director of insurance [BOARD] may, in his [ITS] discretion, require

(1) the deposit of an acceptable security, indemnity or bond to secure the payment of benefit [COMPENSATION] liabilities as they are incurred; and

(2) proof of excess insurance.

(2) Sec. 25. AS 23.30.075(b) is amended to read:

(b) An employer who fails to insure and keep insured employees subject to this chapter or fails to obtain a certificate of self-insurance from the board, upon conviction, is punishable by a fine of not more than $1,000, or by imprisonment for not more than one year, or by both. If an employer is a corporation, all persons who, at the time of the injury or death, had authority to insure the [SAID] corporation or apply for a certificate of self-insurance, and the person actively in charge of the business of the [SUCH] corporation shall be subject to the penalties prescribed in this subsection [HEREIN] and shall be

personally, jointly, and severally liable together with the corporation for the payment of all [COMPENSATION OR OTHER] benefits for which the corporation is liable under this chapter if the [SAID] corporation at the [SUCH] time is not insured or qualified as a self-insurer.

(1) → See 4 P2

* Sec. 26. AS 23.30.080 is amended by adding a new subsection to read:

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

(i)

* Sec. 27. AS 23.30.085(a) is amended to read:

(a) An employer subject to this chapter, unless exempted, shall initially file evidence of his compliance with the insurance provisions of this chapter with the board, in the form prescribed by it. The employer shall also give evidence of compliance within 10 days after the termination of his insurance by expiration or cancellation. These requirements do not apply to an employer who has certification from the director of insurance [BOARD] of his financial ability to pay benefits [COMPENSATION] directly without insurance.

(2)

* Sec. 28. AS 23.30.090 is amended to read:

Sec. 23.30.090. SELF-INSURANCE CERTIFICATES. If an employer has complied with the provisions of this chapter relating to self-insurance, the director of insurance [BOARD] shall issue him a certificate which shall remain in force for a period fixed by the director of insurance [BOARD]. The director of insurance [BOARD] may, upon at least 10 days' notice and a hearing, revoke a self-insurance certificate upon satis-

factory proof that an employer is no longer entitled to it. After revocation the director of insurance [BOARD] may grant a new certificate to an employer, upon his petition and satisfactory proof of his financial ability as provided in this chapter. The director of insurance shall notify the contracting agency of the state or of a political subdivision of the state when it revokes the self-insurance certificate of an employer holding a contract with the state or a political subdivision of the state. An employer authorized as a self-insurer shall provide claims facilities through its own staffed adjusting facilities located within the state, or independent, licensed, resident adjustors with power to effect settlement within the state.

(2) Sec. 29. AS 23.30.092 is amended to read:

Sec. 23.30.092. VOLUNTEER AMBULANCE ATTENDANTS, POLICEMEN AND FIREMEN INSURANCE. A political subdivision may elect to provide benefits [AND COMPENSATION] to its volunteer ambulance attendants, policemen or firemen by obtaining insurance which would provide its volunteer ambulance attendants, policemen or firemen with benefits [AND COMPENSATION] at least equivalent to those conferred upon volunteer ambulance attendants, policemen or firemen by this chapter, and the election shall be considered compliance with the coverage and insurance provisions of this chapter. The election shall be made by filing copies of the insurance policy or policies with the commissioner.

(1) → Sec 5 P 2+3

* Sec. 30. AS 23.30.095(a) is amended to read:

(a) The employer shall furnish medical, surgical, and other attendance or treatment, nurse and hospital service, medicine, crutches, and apparatus for the period which the nature of the injury or the process of recovery requires [, NOT EXCEEDING TWO YEARS FROM AND AFTER THE DATE OF INJURY TO THE EMPLOYEE. HOWEVER, IF THE CONDITION REQUIRING THE TREATMENT, APPARATUS, OR MEDICINE IS A LATENT ONE, THE TWO-YEAR

PERIOD RUNS FROM THE TIME THE EMPLOYEE HAS KNOWLEDGE OF THE NATURE OF HIS DISABILITY AND ITS RELATIONSHIP TO HIS EMPLOYMENT AND AFTER-DISABLEMENT. IT SHALL BE ADDITIONALLY PROVIDED THAT, IF CONTINUED TREATMENT OR CARE OR BOTH BEYOND THE TWO-YEAR PERIOD IS INDICATED, THE INJURED EMPLOYEE HAS THE RIGHT OF REVIEW BY THE BOARD. THE BOARD MAY AUTHORIZE CONTINUED TREATMENT OR CARE OR BOTH AS THE PROCESS OF RECOVERY MAY REQUIRE]. When medical care is required, the injured employee may designate a licensed physician inside the state to render the care except in cases where, in the judgment of the board, care or treatment or both can best be administered by the selection of another licensed physician. Upon procuring the services of a licensed physician, the injured employee shall give proper notification of his selection to the employer within a reasonable time after first being treated. [IF FOR ANY REASON DURING THE PERIOD WHEN MEDICAL CARE IS REQUIRED THE EMPLOYEE WISHES TO CHANGE TO ANOTHER PHYSICIAN, HE MAY DO SO IN ACCORDANCE WITH RULES PRESCRIBED BY THE BOARD.]

Sec 7 P 3+4

* Sec. 31. AS 23.30.095(c) is amended to read:

(c) No claim for medical or surgical treatment is valid and enforceable as against the employer unless, within 20 [TWENTY] days following each visit for [THE FIRST] treatment, the physician giving the treatment or the employee receiving it furnishes to the employer and the board notice of the injury and treatment, preferably on a form prescribed by the board. The board shall [MAY], however, excuse the failure to furnish notice within 20 days when it finds it to be in the interest of justice to do so, and it may, upon application by a party in interest, make an award for the reasonable value of the medical or surgical treatment so obtained by the employee.

Sec 8 P 4

* Sec. 32. AS 23.30.095(e) is amended to read:

(e) The employee shall, after an injury, at reasonable times

L 20A

during the continuance of his disability if requested by his employer or, when ordered by the board, submit himself to an examination by a physician or surgeon authorized to practice medicine under the laws of the state in which the employee may be found, furnished and paid for by the employer. [THE EMPLOYEE HAS THE RIGHT TO HAVE A PHYSICIAN, PAID FOR BY THE EMPLOYER, PRESENT AT THE EXAMINATION OR EXAMINATIONS.] No fact relative to the injury or claim communicated to or otherwise learned by a physician or surgeon who may have attended or examined the employee, or who may have been present at an examination is privileged, either in the hearings provided for in this chapter or an action to recover damages against an employer who is subject to the benefits [COMPENSATION] provisions of this chapter. If an employee refuses to submit himself to any examination provided for in this section [HEREIN], his rights to compensation shall be suspended until the obstruction or refusal ceases, and his compensation during the period of suspension may, in the discretion of the board or the court determining an action brought for the recovery of damages under this chapter [HEREUNDER], be forfeited. The board in any case of death may require an autopsy at the expense of the party requesting the autopsy. No autopsy may be held without notice first being given to the widow or widower or next of kin if they reside in the state or their whereabouts can be reasonably ascertained, of the time and place of the autopsy and reasonable time and opportunity given the widow or widower or next of kin to have a representative present to witness the autopsy. If no adequate notice is given, the findings from the autopsy may be suppressed on motion made to the board or to the superior court, as the case may be.

(2) Sec. 33. AS 23.30.100(a) is amended to read:

Sec. 23.30.100. NOTICE OF INJURY OR DEATH. (a) Notice of an injury or death in respect to which benefits are [COMPENSATION IS]

payable under this chapter shall be given within 30 days after the date of the [SUCH] injury or death to the board and to the employer.

(2) * Sec. 34. AS 23.30.100(b) is amended to read:

(b) The notice shall be in writing, contain the name and address of the employee and a statement of the time, place, nature, and cause of the injury or death, and be signed by the employee or by a person on his behalf, or in case of death, by a person claiming to be entitled to benefits [COMPENSATION] for the death or by a person on his behalf.

(2) * Sec. 35. AS 23.30.100(d) is amended to read:

(d) Failure to give notice does not bar a claim under this chapter

(1) if the employer (or his agent in charge of the business in the place where the injury occurred) or the carrier had knowledge of the injury or death and the board determines that the employer or carrier has not been prejudiced by failure to give notice;

(2) if the board excuses the failure on the ground that for some satisfactory reason notice could not be given;

(3) unless objection to the failure is raised before the board at the first hearing of a claim for benefits [COMPENSATION] in respect to the injury or death.

Sec 9 pg

(1) * Sec. 36. AS 23.30.105 is amended to read:

Sec. 23.30.105. TIME FOR FILING OF CLAIMS. (1) (a) The right to benefits [COMPENSATION FOR DISABILITY] under this chapter is barred unless a claim for them [IT] is filed within two years after the employee has knowledge of the nature of his disability and its relation to his employment and after disablement. The [HOWEVER, THE MAXIMUM TIME FOR FILING THE CLAIM IN ANY EVENT OTHER THAN ARISING OUT OF AN OCCUPATIONAL DISEASE SHALL BE FOUR YEARS FROM THE DATE OF INJURY, AND THE] right to benefits [COMPENSATION] for death is barred unless a

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claim for benefits [THEREFORE] is filed within one year after the death. If [, EXCEPT THAT IF] payment of benefits [COMPENSATION] has been made without an award on account of the injury or death, a claim may be filed within one year [TWO YEARS] after the date of the last payment. It is additionally provided that, in the case of a latent injury [DEFECTS PERTINENT TO AND CAUSING COMPENSABLE DISABILITY], the injured employee has full right to claim as shall be determined by the board, time limitations notwithstanding.

(2) [redacted] Failure to file a claim within the period prescribed in (a) of this section is not a bar to benefits [COMPENSATION] unless objection to the failure is made at the first hearing of the claim in which all parties in interest are given reasonable notice and opportunity to be heard.

(2) [redacted] If a person who is entitled to benefits [COMPENSATION] under this chapter is mentally incompetent or a minor, the provisions of (a) of this section are not applicable so long as he has no guardian or other authorized representative, but are applicable in the case of a person who is mentally incompetent or a minor from the date of appointment of a guardian or other representative, or in the case of a minor, if no guardian is appointed before he becomes of age, from the date he becomes of age.

(2) [redacted] If recovery is denied to a person, in a suit brought at law or in admiralty to recover damages in respect to injury or death, on the ground that he was an employee and that the defendant is an employer within the meaning of this chapter and that the employer has secured benefits [COMPENSATION] to the employee under this chapter, the limitation of time prescribed in (a) of this section begins to run only from the date of termination of the suit.

(2) * Sec. 37. AS 23.30.106(b) is amended to read:

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(b) The payment or award of benefits under the workers' compensation law of another state, territory, province, or foreign nation to an employee or his dependents otherwise entitled on account of the injury or death to the benefits under this chapter is not a bar to a claim for benefits under this chapter; however, a claim under this chapter must be filed within the time limits set out in this chapter. If benefits are [COMPENSATION IS] paid or awarded under this section:

(1) the medical and related benefits furnished or paid for by the employer under another workers' compensation law on account of the injury or death shall be credited against the medical and related benefits to which the employee would have been entitled under this chapter had claim been made solely under this chapter;

(2) the amount of all income benefits paid or awarded the employee under another workers' compensation law shall be credited against the total amount of income benefits which would have been due the employee under this chapter had claim been made solely under this chapter;

(3) the total amount of death benefits paid or awarded under another workers' compensation law shall be credited against the total amount of death benefits due under this chapter.

(2) * Sec. 38. AS 23.30.106(c) is amended to read:

(c) If an employee is entitled to the benefits of this chapter by reason of an injury sustained in this state in employment by an employer who is domiciled in another state and who has not secured the payment of benefits [COMPENSATION] as required by this chapter, the employer or his carrier may file with the board a certificate, issued by the commission or agency of the other state having jurisdiction over workers' compensation claims, certifying that the employer has secured the payment of benefits [COMPENSATION] under the workers' compensation law

of the other state and that with respect to that injury the employee is entitled to the benefits provided under that law. In that event

(1) the filing of the certificate shall constitute an appointment by the employer or his carrier of the board as his agent for acceptance of the service of process in a proceeding brought by the employee or his dependents to enforce his or their rights under this chapter on account of the injury;

(2) the board shall send to the employer or carrier, by registered or certified mail to the address shown on the certificate, a true copy of any notice of claim or other process served on the director by the employee or his dependents in any proceeding brought to enforce his or their rights under this chapter;

(3) if the employer is a qualified self-insurer under the workers' compensation law of the other state, the employer, upon submission of evidence satisfactory to the board of his ability to meet his liability to the employee under this chapter, shall be considered to be a qualified self-insurer under this chapter;

(4) if the employer's liability under the workers' compensation law of another state is insured, the employer's carrier, as to the employee or his dependents only, shall be considered to be an insurer authorized to write insurance under and be subject to this chapter; however, unless its contract with the employer requires it to pay an amount equivalent to the [COMPENSATION] benefits provided by this chapter, its liability for income benefits or medical and related benefits may not exceed the amounts of the benefits for which the insurer would have been liable under the workers' compensation law of the other state;

(5) if the amount for which the employer's insurance is liable under (3) and (4) of this subsection is less than the total [OF

THE COMPENSATION] benefits to which the employee is entitled under this chapter, the board may, if it considers it necessary, require the employer to file security satisfactory to the board to secure the payment of benefits due the employee or his dependents under this chapter; and

(6) upon compliance with the preceding requirements of (c) of this section, the employer, as to the employee only, shall be considered to have secured the payment of benefits [COMPENSATION] under this chapter.

(2) * Sec. 39. AS 23.30.110(a) is amended to read:

(a) Subject to the provisions of AS 23.30.105, a claim for benefits [COMPENSATION] may be filed with the board in accordance with its regulations at any time after the first seven days of disability following an injury, or at any time after death, and the board may hear and determine all questions in respect to the claim.

Sec 10 P546

(1) * Sec. 40. AS 23.30.110(c) is amended to read:

(c) The board shall make the investigation which it considers necessary in respect of the claim, and upon application of an interested party shall order a hearing on it. If a hearing on a claim is ordered, the board shall give the claimant and other interested parties at least 10 days' notice of the hearing, served personally upon the claimant and other interested parties or sent by registered mail, and shall, within 30 [20] days after the hearing is held [HAD], by order, reject the claim or make an award in respect to it. [IF NO HEARING IS ORDERED WITHIN 20 DAYS AFTER NOTICE IS GIVEN AS PROVIDED IN (b) OF THIS SECTION, THE BOARD SHALL BY ORDER REJECT THE CLAIM OR MAKE AN AWARD IN RESPECT TO IT.]

(2) * Sec. 41. AS 23.30.120 is amended to read:

Sec. 23.30.120. PRESUMPTIONS. In a proceeding for the enforce-

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ment of a claim for benefits [COMPENSATION] under this chapter it is presumed, in the absence of substantial evidence to the contrary, that

(1) the claim comes within the provisions of this chapter;

(2) sufficient notice of the claim has been given;

(3) the injury was not occasioned solely by the intoxication of the injured employee;

(4) the injury was not occasioned by the wilful intention of the injured employee to injure or kill himself or another.

(2) Sec. 42. AS 23.30.130 is amended to read:

Sec. 23.30.130. MODIFICATION OF AWARDS. (a) Upon its own initiative, or upon the application of any party in interest on the ground of a change in conditions, including, for the purposes of AS 23.30.175, a change in residence, or because of a mistake in its determination of a fact, the board may, before one year after the date of the last payment of benefits [COMPENSATION,] whether or not a compensation order has been issued, or before one year after the rejection of a claim, review a compensation case in accordance with the procedure prescribed in respect of claims in AS 23.30.110. In accordance with AS 23.30.110 the board may issue a new compensation order which terminates, continues, reinstates, increases, or decreases the compensation, or award benefits [COMPENSATION].

(b) A new order does not affect benefits [COMPENSATION] previously paid, except that an award increasing the compensation rate may be made effective from the date of the injury, and if part of the compensation due or to become due is unpaid, an award decreasing the compensation rate may be made effective from the date of the injury, and payment made earlier in excess of the decreased rate shall be deducted from the unpaid compensation, in the manner the board determines.

(2) Sec. 43. AS 23.30.140 is amended to read:

Sec. 23.30.140. APPOINTMENT OF GUARDIAN BY COURT. The board may require the appointment of a guardian or other representative by a competent court for any person who is mentally incompetent or a minor to receive benefits [COMPENSATION] payable to the person under this chapter and to exercise the powers granted to or to perform the duties required of the person under this chapter. If the board does not require the appointment of a guardian to receive the compensation of a minor, appointment for this purpose is not necessary.

(2) * Sec. 44. AS 23.30.145 is amended to read:

Sec. 23.30.145. ATTORNEY FEES. (a) Fees for legal services rendered in respect to a claim are not valid unless approved by the board, and the fees may not be less than 25 percent on the first $1,000 of benefits [COMPENSATION] or part of the first $1,000 of benefits [COMPENSATION] and 10 percent of all sums in excess of $1,000 of benefits [COMPENSATION]. When the board advises that a claim has been controverted, in whole or in part, the board may direct that the fees for legal services be paid by the employer or carrier in addition to benefits [COMPENSATION] awarded; the fees may be allowed only on the amount of benefits [COMPENSATION] controverted and awarded. When the board advises that a claim has not been controverted, but further advises that bona fide legal services have been rendered in respect to the claim, then the board shall direct the payment of the fees out of the benefits [COMPENSATION] awarded. In determining the amount of fees the board shall take into consideration the nature, length and complexity of the services performed, transportation charges, and the benefits resulting from the services to the compensation beneficiaries.

(b) If an employer fails to file timely notice of controversy or fails to pay [COMPENSATION OR MEDICAL AND RELATED] benefits within 15 days after it becomes due or otherwise resists the payment of [COMPEN-

SATION OR MEDICAL AND RELATED] benefits and if the claimant has employed an attorney in the successful prosecution of his claim, the board shall make an award to reimburse the claimant for his costs in the proceedings, including a reasonable attorney fee. The award is in addition to the [COMPENSATION OR MEDICAL AND RELATED] benefits ordered.

(c) If proceedings are had for review of an [A COMPENSATION OR MEDICAL AND RELATED BENEFITS] order before a court, the court may allow or increase an attorney's fees. The fees are in addition to [COMPENSATION OR MEDICAL AND RELATED] benefits ordered and shall be paid as the court may direct.

(1) Sec 11 P6

* Sec. 45. AS 23.30.155(j) is amended to read:

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

(2) Sec 12 P6

* Sec. 46. AS 23.30.155 is amended by adding new subsections to read:

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

(o) Whenever the board determines that it is in the interest of an injured employee and that a substantial hardship will not be imposed on the employer, the liability of the employer for all or part of compensation payable under AS 23.30.190 may be discharged by the payment of a lump sum.

(2) * Sec. 47. AS 23.30 is amended by adding new sections to read:

Sec. 23.30.157. AVAILABILITY FOR EMPLOYMENT. (a) An injured employee who receives compensation or medical and related benefits under this chapter and who is not employed shall register with the employment service operated by the state and shall report to job inter-

views and referrals arranged by the employment service.

(b) An employee described in (a) of this section who is unemployed and has received 10 or more job referrals within the preceding three years may not receive further benefits under this chapter unless the employee is determined to be permanently totally disabled in accordance with AS 23.30.180.

(2) Sec. 23.30.159. OTHER EARNINGS. (a) An injured employee who receives compensation or medical and related benefits shall report monthly any wages earned during the preceding month

(1) to the board; or

(2) if the employer elects to pay benefits directly, to the director of insurance.

(b) An employee who fails to report wages as required under (a) of this section may not receive benefits under this chapter until those reports are made.

(2) * Sec. 48. AS 23.30.160 is amended to read:

Sec. 23.30.160. ASSIGNMENT AND EXEMPTION FROM CLAIMS OF CREDITORS. No assignment, release, or commutation of [COMPENSATION OR] benefits due or payable under this chapter, except as provided by this chapter, is valid, and the [COMPENSATION AND] benefits are exempt from all claims of creditors and from levy, execution, and attachment or other remedy for recovery or collection of a debt. This exemption may not be waived.

(2) * Sec. 49. AS 23.30.165 is amended to read:

Sec. 23.30.165. LIEN. (a) Each employee and beneficiary entitled to benefits [COMPENSATION] under the provisions of this chapter has a lien for the full amount of his benefits [COMPENSATION], including costs and disbursements of suit and attorney fees allowed, upon all of the property in connection with the construction, preservation, mainte-

nance or operation of which the work of the employee was being performed at the time of his injury or death. For example: in the case of an employee injured or killed while engaged in mining or in work connected with mining, the lien extends to the entire mine and all property used in connection with it; and in the case of an employee injured or killed while engaged in fishing or in the packing, canning, or salting of fish, or other branch of the fish industry, the lien extends to the entire packing, fishing, salting or canning plant or establishment and all property used in connection with it; and this is the case with other businesses, industries, works, occupations and employments.

(b) The lien is prior and paramount to any other lien on the property, except a lien for wages or materials as provided by law, and is of equal rank with a lien for wages or materials.

(c) The lien extends to all right, title, interest and claim of the employer in the property affected by the lien.

(d) A person claiming a lien under this chapter shall, within one year after the date of the injury from which the claim of benefits [COMPENSATION] arises, file for record in the office of the recorder of the recording district in which the property affected by the lien is located a notice of lien signed and verified by the claimant or someone on his behalf, and stating in substance, the name of the person injured or killed out of which injury or death the claim of benefits [COMPENSATION] arises, the name of the employer of the injured or deceased person at the time of the injury or death, a description of the property affected or covered by the lien and the name of the owner or reputed owner of the property.

(e) The lien for benefits [COMPENSATION] provided for in this section may be enforced by equitable proceedings as in the enforcement

of other liens upon real or personal property, within 10 months after the cause of action arises. Nothing in this section prevents an attachment of property as security for the payment of benefits [COMPENSATION].

(2) * Sec. 50. AS 23.30.170(a) is amended to read:

(a) In case of default by the employer in the payment of benefits [COMPENSATION] due under an award of benefits [COMPENSATION] for a period of 30 days after the benefits are [COMPENSATION IS] due, the person to whom the benefits are [COMPENSATION IS] payable may, within one year after the default, apply to the board making the compensation order for a supplementary order declaring the amount of the default. After investigation, notice, and hearing, as provided in AS 23.30.110, the board shall make a supplementary order declaring the amount of the default. The order shall be filed in the same manner as the compensation order.

(1) Sec 13 P6

* Sec. 51. AS 23.30.175(b) is repealed and reenacted to read:

(b) After June 30 and before December 1 of each year, the commissioner shall adopt and publish the average weekly wage for the preceding calendar year as computed by the United States Secretary of Labor for the purposes of unemployment insurance. In determining the rate of compensation the commissioner shall use the average weekly wage figure for each jurisdiction, including Alaska, for which the Secretary of Labor computes an average weekly wage. These figures are the applicable average weekly wages for those jurisdictions for the following calendar year. The average weekly wage for Alaska is the amount determined by dividing (1) the total wages paid by all employers covered by the Alaska Employment Security Act by (2) the average monthly employment reported by those employers for the same period and dividing the result by 52.

(1) Sec 14 P7

* Sec. 52. AS 23.30.175(c) is repealed and reenacted to read:

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

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

(2) The calculation required by this subsection does not apply if

(A) the average weekly wage of the recipient and the resulting compensation rate is determined under AS 23.30.220(2) by use of wages earned in jurisdictions other than Alaska; or

(B) the absence of the recipient is for medical or rehabilitation services not reasonably available in Alaska.

(3) Application of this subsection may not result in a reduction of the weekly compensation rate to less than $65 a week except as provided in (a) of this section.

(1) Sec 15 P 7

* Sec. 53. AS 23.30.175(d) is repealed and reenacted to read:

(d) In a jurisdiction for which no average weekly wage is computed by the United States Secretary of Labor for the purposes of unemployment insurance, the average weekly wage shall be as determined by the commissioner.

(2) * Sec. 54. AS 23.30.180 is amended to read:

Sec. 23.30.180. PERMANENT TOTAL DISABILITY. In case of total disability adjudged to be permanent 66-2/3 percent of the injured employee's average weekly wages shall be paid to the employee during the continuance of the total disability. Permanent [LOSS OF BOTH

HANDS, OR BOTH ARMS, OR BOTH FEET, OR BOTH LEGS, OR BOTH EYES, OR OF ANY TWO OF THEM, IN THE ABSENCE OF CONCLUSIVE PROOF TO THE CONTRARY, CONSTITUTES PERMANENT TOTAL DISABILITY. IN ALL OTHER CASES PERMANENT] total disability is determined in accordance with the facts.

* Sec. 55. AS 23.30.190 is amended to read:

Sec. 23.30.190. COMPENSATION FOR PERMANENT PARTIAL DISABILITY. (a) In case of disability partial in character but permanent in quality the compensation is 66-2/3 percent of the injured employee's average weekly wages in addition to compensation for temporary total disability or temporary partial disability paid in accordance with AS 23.30.185 or 23.30.200, respectively, and shall be paid to the employee as follows:

(1) arm lost, 156 [280] weeks compensation, not to exceed $43,680;

(2) leg lost, 156 [248] weeks compensation, not to exceed $40,320;

(3) hand lost, 156 [212] weeks compensation, not to exceed $33,600;

(4) foot lost, 156 [173] weeks compensation, not to exceed $28,700;

(5) eye lost, 140 weeks compensation, not to exceed $22,400;

(6) thumb lost, 51 weeks compensation, not to exceed $10,400;

(7) first finger lost, 28 weeks compensation, not to exceed $6,440;

(8) great toe lost, 26 weeks compensation, not to exceed $5,320;

(9) second finger lost, 18 weeks compensation, not to exceed $4,200; third finger lost, 18 weeks compensation, not to exceed $3,500;

(10) toe other than great toe lost, eight weeks compensation, not to exceed $2,240;

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(2) (11) fourth finger lost, seven weeks compensation, not to exceed $2,100;

(2) (12) loss of hearing of one ear, 52 weeks compensation, not exceeding $7,280; loss of hearing of both ears, 156 [200] weeks compensation, not to exceed $28,000;

(2) (13) compensation for loss of more than one phalange of a digit shall be the same as for loss of the entire digit; compensation for loss of the first phalange is one-half of the compensation for loss of the entire digit;

(2) (14) amputation between the elbow and the wrist is considered equivalent to the loss of an arm, and amputation between the knee and ankle is considered equivalent to the loss of a leg;

(2) (15) compensation for loss of binocular vision or for 80 percent or more of the vision of an eye is the same as for loss of the eye;

(2) (16) compensation for loss of two or more digits, or one or more phalanges of two or more digits of a hand or foot may be proportioned to the resulting loss of use of the injured hand or foot, but may not exceed the compensation for loss of a hand or foot;

(2) (17) compensation for permanent total loss of use of a member is the same as for loss of the member;

(2) (18) compensation for permanent partial loss or loss of use of a member may be for proportionate loss or loss of use of the member;

(2) (19) in addition to other allowable compensation, the board shall award proper and equitable compensation up to $10,000 for

(2) (A) serious disfigurement of face, head and, when such disfigurement is likely to handicap the employee in securing or holding employment, for serious disfigurement of neck or limbs normally exposed, or

(B) partial or total loss of or loss of use of a part or function of the body not otherwise provided for under this section;

(20) in all other cases in this class of disability the compensation is 66-2/3 percent of the difference between his average weekly wages and his wage-earning capacity after the injury in the same employment or otherwise, payable during the continuance of the partial disability, but subject to reconsideration of the degree of the impairment by the board on its own motion or upon application of a party in interest; [WHENEVER THE BOARD DETERMINES THAT IT IS IN THE INTEREST OF JUSTICE, THE LIABILITY OF THE EMPLOYER FOR COMPENSATION, OR ANY PART OF IT AS DETERMINED BY THE BOARD, MAY BE DISCHARGED BY THE PAYMENT OF A LUMP SUM;]

(21) in a case in which there is a loss of, or loss of use of more than one member or parts of more than one member set out in (1) - (18) of this subsection [SECTION], not amounting to permanent total disability, the award of compensation is for the loss of, or loss of use of, each member or part of the member, which awards shall run consecutively, except that where the injury affects only two or more digits of the same hand or foot, (16) of this subsection [SECTION] applies.

(b) Total compensation paid under (a)(20) of this section may not continue for more than 156 weeks or exceed $60,000.

Sec 17 P8

* Sec. 56. AS 23.30.191 is repealed and reenacted to read:

Sec. 23.30.191. EXPENSES FOR REHABILITATING INJURED EMPLOYEES. An employee, who, as a result of injury, is or may be expected to be totally or partially incapacitated for his normal occupation and who, under the direction of the board, is being rehabilitated to engage in a remunerative occupation, may receive compensation necessary for his

rehabilitation of 66-2/3 percent of his average weekly wage subject to the maximum payable under AS 23.30.175.

(2) * Sec. 57. AS 23.30.210(b) is amended to read:

(b) At any time after death, or after 30 days subsequent to the date of injury, the employer and the employee or the beneficiary or beneficiaries, as the case may be, have the right to reach an agreement in regard to a claim for injury or death under this chapter [HEREUNDER] in accordance with the applicable schedule [HEREOF], but a memorandum of the agreement in a form prescribed by the board shall be filed with the board. Otherwise, the agreement is void for any purpose. If approved by the board, the agreement is enforceable the same as an order or award of the board and discharges the liability of the employer for the benefits [COMPENSATION] notwithstanding the provisions of [AS 23.30.130,] AS 23.30.160 [,] and AS 23.30.245(b) [AS 23.30.245]. The agreement shall be approved by the board only when the terms conform to the provisions of this chapter and, if it involves or is likely to involve permanent disability, the board may require an impartial medical examination and a hearing in order to determine whether or not to approve the agreement. The board may approve lump-sum settlements when it appears to be to the best interest of the employee or beneficiary or beneficiaries.

(1) Sec 18 p 8

* Sec. 58. AS 23.30.215(a)(1) is amended to read:

(1) reasonable and necessary funeral expenses not exceeding $2,500; the commissioner by regulation shall annually adjust this limit to reflect increased expenses resulting from inflation [$1,000];

(3) Sec 20 p 8 ff

* Sec. 59. AS 23.30.220(2) is amended to read:

(2) the average weekly wage is [THAT MOST FAVORABLE TO THE EMPLOYEE] calculated by dividing 52 into the total wages earned, including self-employment, in [ANY ONE OF] the [THREE] calendar year

[YEARS] immediately preceding the injury;

* Sec. 60. AS 23.30 is amended by adding a new section to read:

Sec. 23.30.227. OTHER BENEFITS. (a) Notwithstanding any other provision of this chapter, an injured employee may not receive compensation for permanent total, permanent partial, temporary total, or temporary partial disability if he receives unemployment benefits (AS 23.20) for the same period of time.

(b) Notwithstanding any other provision of this chapter, an injured employee may not receive compensation for permanent total, permanent partial, temporary total, or temporary partial disability that exceeds 100 percent of his average weekly wage when added to any sick pay to which he is entitled for the same period of time.

(c) Notwithstanding any other provision of this chapter, the amount of compensation received by an injured employee for permanent total, permanent partial, temporary total, or temporary partial disability shall be reduced by the amount of retirement benefits paid to him for the same period of time.

* Sec. 61. AS 23.30.235 is amended to read:

Sec. 23.30.235. CASES IN WHICH NO BENEFITS ARE [COMPENSATION IS] PAYABLE. No benefits [COMPENSATION] may be paid if the injury was occasioned solely by the intoxication of the employee or by the wilful intention of the employee to injure or kill himself or another.

* Sec. 62. AS 23.30.245 is amended to read:

Sec. 23.30.245. INVALID AGREEMENTS. (a) An agreement by an employee to pay a portion of the premium paid by his employer to a carrier or to contribute to a benefit fund or department maintained by the employer for the purpose of providing benefits [COMPENSATION OR MEDICAL SERVICES AND SUPPLIES] as required by this chapter is not valid. An employer who makes a deduction for this purpose from the pay

of an employee entitled to the benefits of this chapter is guilty of a misdemeanor and upon conviction is punishable by a fine of not more than $1,000.

(b) An agreement by an employee to waive his right to benefits [COMPENSATION] under this chapter is not valid.

(1) Sec 20 P 8,9

* Sec. 63. AS 23.30.250 is amended to read:

Sec. 23.30.250. PENALTY FOR MISREPRESENTATION. A person who wilfully makes a false or misleading statement or representation for the purpose of obtaining a benefit or payment under this chapter is guilty of theft as defined in AS 11.46.100(3) and is punishable as provided in AS 11.46.120 - 11.46.150 [A MISDEMEANOR, AND UPON CONVICTION IS PUNISHABLE BY A FINE OF NOT MORE THAN $1,000, OR BY IMPRISONMENT FOR NOT MORE THAN ONE YEAR, OR BY BOTH].

(2)

* Sec. 64. AS 23.30.255 is amended to read:

Sec. 23.30.255. PENALTY FOR FAILURE TO PAY BENEFITS [COMPENSATION]. (a) An employer required to secure the payment of benefits [COMPENSATION] under this chapter who fails to do so is guilty of a misdemeanor and upon conviction is punishable by a fine of not more than $1,000, or by imprisonment for not more than one year, or by both. If the employer is a corporation, its president, secretary, and treasurer are also severally liable to the fine or imprisonment provided in this section for the failure of the corporation to secure the payment of benefits [COMPENSATION]. The president, secretary, and treasurer are severally personally liable, jointly with the corporation, for the benefits [COMPENSATION] or other benefit which accrues under this chapter in respect to an injury which happens to an employee of the corporation while it has failed to secure the payment of benefits [COMPENSATION] as required by AS 23.30.075.

(b) An employer who knowingly transfers, sells, encumbers, as-

signs, or in any manner disposes of, conceals, secretes, or destroys any of his property after one of his employees has been injured within the scope of this chapter, with intent to avoid the payment of benefits [COMPENSATION] under this chapter to the employee or his dependents, is guilty of a misdemeanor, and upon conviction is punishable by a fine of not more than $1,000, or by imprisonment for not more than one year, or by both. If the employer is a corporation, its president, secretary, and treasurer are also severally liable to the penalty of imprisonment as well as jointly liable with the corporation for the fine.

(c) This section does not affect any other liability of the employer under this chapter.

(2)

* Sec. 65. AS 23.30.260 is amended to read:

Sec. 23.30.260. PENALTY FOR RECEIVING UNAPPROVED FEES AND SOLICITING. A person is guilty of a misdemeanor, and upon conviction is punishable for each offense by a fine of not more than $1,000, or by imprisonment for not more than one year, or by both, if he

(1) receives a fee, other consideration, or a gratuity on account of services rendered in respect to a claim, unless the consideration or gratuity is approved by the board or the court; or

(2) makes it a business to solicit employment for a lawyer or for himself in respect to a claim or award for benefits [COMPENSATION].

(3) Sec 3 P 7

* Sec. 66. AS 23.30 is amended by adding a new section to read:

(2)

Sec. 23.30.263. UNLAWFUL EMPLOYMENT PRACTICE. It is unlawful for an employer to discharge or otherwise discriminate against an employee because he has filed a claim for workers' compensation benefits under this chapter.

* Sec. 67. AS 23.30.265(9) is amended to read:

(9) "death" as a basis for a right to benefits [COMPENSA-

TION] means only death resulting from an injury;

* Sec. 68. AS 23.30.265(16) is amended to read:

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

* Sec. 69. AS 23.30.265(19) is amended to read:

(19) "self-insurer" means an employer who, instead of insuring his liability under this chapter as it provides, elects to pay directly the benefits [COMPENSATION] provided for, and who has furnished to the director of insurance [BOARD] satisfactory proof of his financial ability to make the direct payments and has been issued a self-insurance certificate;

* Sec. 70. AS 23.30.265(20) is amended to read:

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

* Sec. 71. AS 23.30.265 is amended by adding new paragraphs to read:

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

(30) "in the course of employment" includes travel to and from a remote job site but does not include activities outside of working hours that are not work-connected or in which an employee ordi-

signs, or in any manner disposes of, conceals, secretes, or destroys any of his property after one of his employees has been injured within the scope of this chapter, with intent to avoid the payment of benefits [COMPENSATION] under this chapter to the employee or his dependents, is guilty of a misdemeanor, and upon conviction is punishable by a fine of not more than $1,000, or by imprisonment for not more than one year, or by both. If the employer is a corporation, its president, secretary, and treasurer are also severally liable to the penalty of imprisonment as well as jointly liable with the corporation for the fine.

(c) This section does not affect any other liability of the employer under this chapter.

(2)

* Sec. 65. AS 23.30.260 is amended to read:

Sec. 23.30.260. PENALTY FOR RECEIVING UNAPPROVED FEES AND SOLICITING. A person is guilty of a misdemeanor, and upon conviction is punishable for each offense by a fine of not more than $1,000, or by imprisonment for not more than one year, or by both, if he

(1) receives a fee, other consideration, or a gratuity on account of services rendered in respect to a claim, unless the consideration or gratuity is approved by the board or the court; or

(2) makes it a business to solicit employment for a lawyer or for himself in respect to a claim or award for benefits [COMPENSATION].

(3)

Sec 1 P 2

* Sec. 66. AS 23.30 is amended by adding a new section to read:

(2)

Sec. 23.30.263. UNLAWFUL EMPLOYMENT PRACTICE. It is unlawful for an employer to discharge or otherwise discriminate against an employee because he has filed a claim for workers' compensation benefits under this chapter.

* Sec. 67. AS 23.30.265(9) is amended to read:

(9) "death" as a basis for a right to benefits [COMPENSA-

TION] means only death resulting from an injury;

* Sec. 68. AS 23.30.265(16) is amended to read:

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

* Sec. 69. AS 23.30.265(19) is amended to read:

(19) "self-insurer" means an employer who, instead of insuring his liability under this chapter as it provides, elects to pay directly the benefits [COMPENSATION] provided for, and who has furnished to the director of insurance [BOARD] satisfactory proof of his financial ability to make the direct payments and has been issued a self-insurance certificate;

* Sec. 70. AS 23.30.265(20) is amended to read:

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

* Sec. 71. AS 23.30.265 is amended by adding new paragraphs to read:

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

(30) "in the course of employment" includes travel to and from a remote job site but does not include activities outside of working hours that are not work-connected or in which an employee ordi-

narily engages while not at a remote job site.

(1)* (2) Sec. 72. AS 23.30.005(k), 23.30.095(g), 23.30.125(b), and 23.30.175(e) and (f) are repealed.

(1)* Sec. 73. This Act takes effect on July 1, 1982.

PLEASE NOTE: THE PRECEDING PAGES WERE TREATED AS A UNIT IN THE ORIGINAL DOCUMENT.

A M E N D M E N T #1

TO: CSHB 159(L&C)

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

Sec. 23.30.157. AVAILABILITY FOR EMPLOYMENT. (a) An injured employee who receives compensation or medical and related benefits under this chapter and who is not employed shall, as provided by the board, register with the employment service operated by the state and shall report to job interviews and referrals arranged by the employment service.

(b) An employee described in (a) of this section who is unemployed and has received 10 or more job referrals within the preceding three years may not receive further benefits under this chapter unless the employee is determined to be permanently totally disabled in accordance with AS 23.30.180.

A M E N D M E N T #2

TO: CSHB 159(L&C)

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

Sec. 23.30.159. OTHER EARNINGS. (a) An injured employee who receives compensation or medical and related benefits shall report monthly any wages earned during the preceding month

(1) to the board; or

(2) if the employer elects to pay benefits directly, to the director of insurance.

(b) An employee who fails to report wages as required under (a) of this section may not receive benefits under this chapter until those reports are made.

Prior to
self-insured employer or carrier.

A M E N D M E N T #3

TO: CSHB 159(L&C) See new schedule in AS 15.

* Sec. . AS 23.30.190 is amended to read:

Sec. 23.30.190. COMPENSATION FOR PERMANENT PARTIAL DISABILITY. (a) In case of disability partial in character but permanent in quality the compensation is 66-2/3 percent of the injured employee's average weekly wages in addition to compensation for temporary total disability or temporary partial disability paid in accordance with AS 23.30.185 or 23.30.200, respectively, and shall be paid to the employee as follows:

(1) arm lost, 156 [280] weeks compensation, not to exceed $43,680;

(2) leg lost, 156 [248] weeks compensation, not to exceed $40,320;

(3) hand lost, 156 [212] weeks compensation, not to exceed $33,600;

(4) foot lost, 156 [173] weeks compensation, not to exceed $28,700;

(5) eye lost, 140 weeks compensation, not to exceed $22,400;

(6) thumb lost, 51 weeks compensation, not to exceed $10,400;

(7) first finger lost, 28 weeks compensation, not to exceed $6,440;

(8) great toe lost, 26 weeks compensation, not to exceed $5,320;

(9) second finger lost, 18 weeks compensation, not to exceed $4,200; third finger lost, 18 weeks compensation, not to exceed $3,500;

(10) toe other than great toe lost, eight weeks compensation, not to exceed $2,240;

(11) fourth finger lost, seven weeks compensation, not to exceed $2,100;

(12) loss of hearing of one ear, 52 weeks compensation, not exceeding $7,280; loss of hearing of both ears, 156 [200] weeks compen-

sation, not to exceed $28,000;

(13) compensation for loss of more than one phalange of a digit shall be the same as for loss of the entire digit; compensation for loss of the first phalange is one-half of the compensation for loss of the entire digit;

(14) amputation between the elbow and the wrist is considered equivalent to the loss of an arm, and amputation between the knee and ankle is considered equivalent to the loss of a leg;

(15) compensation for loss of binocular vision or for 80 percent or more of the vision of an eye is the same as for loss of the eye;

(16) compensation for loss of two or more digits, or one or more phalanges of two or more digits of a hand or foot may be proportioned to the resulting loss of use of the injured hand or foot, but may not exceed the compensation for loss of a hand or foot;

(17) compensation for permanent total loss of use of a member is the same as for loss of the member;

(18) compensation for permanent partial loss or loss of use of a member may be for proportionate loss or loss of use of the member;

(19) in addition to other allowable compensation, the board shall award proper and equitable compensation up to $10,000 for

(A) serious disfigurement of face, head and, when such disfigurement is likely to handicap the employee in securing or holding employment, for serious disfigurement of neck or limbs normally exposed, or

(B) partial or total loss of or loss of use of a part or function of the body not otherwise provided for under this section;

(20) in all other cases in this class of disability the compensation is 66-2/3 percent of the difference between his average weekly wages and his wage-earning capacity after the injury in the same employment or otherwise, payable during the continuance of the partial disability, but subject to reconsideration of the degree of the impair-

ment by the board on its own motion or upon application of a party in interest; [WHENEVER THE BOARD DETERMINES THAT IT IS IN THE INTEREST OF JUSTICE, THE LIABILITY OF THE EMPLOYER FOR COMPENSATION, OR ANY PART OF IT AS DETERMINED BY THE BOARD, MAY BE DISCHARGED BY THE PAYMENT OF A LUMP SUM;]

(21) in a case in which there is a loss of, or loss of use of more than one member or parts of more than one member set out in (1) - (18) of this subsection [SECTION], not amounting to permanent total disability, the award of compensation is for the loss of, or loss of use of, each member or part of the member, which awards shall run consecutively, except that where the injury affects only two or more digits of the same hand or foot, (16) of this subsection [SECTION] applies.

(b) Total compensation paid under (a)(20) of this section may not continue for more than 156 weeks or exceed $60,000.

A M E N D M E N T #4

TO: CSHB 159(L&C)

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

Sec. 23.30.227. OTHER BENEFITS. Notwithstanding any other provision of this chapter, an injured employee who receives compensation for permanent total, permanent partial, temporary total, or temporary partial disability shall have that compensation reduced by an amount equal to unemployment benefits (AS 23.20) received for the same period of time.

A M E N D M E N T #5

TO: CSHB 159(L&C)

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

Sec. 23.30.227. OTHER BENEFITS. (a) Notwithstanding any other provision of this chapter, an injured employee may not receive compensation for permanent total, permanent partial, temporary total, or temporary partial disability that exceeds 100 percent of his average weekly wage when added to any noncompensable sick pay to which he is entitled for the same period of time.

(b) In this section "noncompensable sick pay" is sick pay which is without cash value.

The Report of The Comprehensive Study of Vocational Rehabilitation in The Alaska Workers' Compensation Program

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The Comprehensive Study of Vocational Rehabilitation in The Alaska Workers' Compensation Program

JUNEAU, ALASKA
March 12, 1982

ZEE PAMPLIN JACKSON
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P. O. Box 3130
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March 12, 1982

To the Legislature.

A Preliminary Report was delivered to you on January 26, 1982.

I have the honor to submit to you the Final Report of the Comprehensive Study of Vocational Rehabilitation in the Alaska Workers' Compensation Program in accordance with House Bill 94, effective July 11, 1981. Corrections and minor changes which do not alter the essence of the Preliminary Report have been made.

Findings of the study have led to general conclusions regarding the delivery system of vocational rehabilitation benefits to injured workers. The State Workers' Compensation system has the potential to fulfill its obligations to injured workers and employers through the provision of properly structured and managed rehabilitation services. These services are presently inadequate, however, for a substantial number of injured workers. Recommendations for change and major improvements are offered for consideration in developing an effective delivery system of rehabilitation benefits to injured workers in Alaska.

Sincerely,

Zee Pamplin Jackson
Rehabilitation Consultant

Staff

REHABILITATION CONSULTANT

Zee Pamplin Jackson

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Acknowledgments

On behalf of the members of the staff, I wish to acknowledge the assistance we received in conducting the study and preparing this Report.

The Department of Labor and the Division of Workers' Compensation arranged for office space and telephones. Administrative staff at both levels provided guidance on fiscal policies, procedures and budgetary matters. Their supportive assistance in preparing the Preliminary Report was provided with diligence, good will and best wishes.

The staff was assisted by rehabilitation professionals and administrators of other workers' compensation rehabilitation programs, who contributed ideas and advice. Gary Stivers of the Idaho Industrial Commission and Charles Kilczewski of the Office of Workers' Compensation Programs were among those who provided data and their views on structuring and managing rehabilitation services for industrially injured workers. In addition, we express our appreciation to injured workers, employers, unions, insurance companies, physicians and attorneys who provided valuable ideas and resource data for our review.

The Workers' Compensation Board was critical to the completion of the study. The Board imparted elements of practicality and feasibility through its legal and technical contributions. These elements, and the Board's expressed interest in improving the rehabilitation program, provided a framework for the conclusions and recommendations of the study.

Special gratitude is expressed to Nancy Fisher. Her patience and perseverance in transcribing numerous drafts added clarity and legibility to the Report.

Zee Pamplin Jackson
Rehabilitation Consultant

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Introduction & Summary

Major Conclusions and Recommendations

INTRODUCTION

In 1981 the Legislature of the State of Alaska enacted laws relating to workers' compensation. House Bill 94 became effective on July 11, 1981. Section 7 of the bill provides for the Division of Workers' Compensation within the Department of Labor to conduct a comprehensive study of vocational rehabilitation of injured workers. The Division was directed to report its findings and recommendations for legislative or administrative action by the 30th day of the Second Session of the Twelfth Legislature.

The study began on August 24, 1981. Activities for the past six months have been devoted to querying, collecting, investigating and analyzing concerns registered by all participants in the State's workers' compensation system. Four public hearings, conducted by the House Labor and Commerce Committee on Workers' Compensation, were attended in Anchorage, Fairbanks and Juneau. A survey of over 600 injured workers was conducted. Meetings were held with physicians, rehabilitation professionals, insurance companies, employers and representatives of labor and management. Records of the Division of Workers' Compensation, rehabilitation firms and insurance companies were reviewed. The rehabilitation programs in two other workers' compensation systems were reviewed and discussed in order to show examples of the potential savings and benefits to be derived from a properly structured and managed program. Additionally, published reports and writings of study groups and authorities in workers' compensation were reviewed.

The study found that the delivery system is not providing timely and adequate rehablitation services to a substantial number of those injured workers who could benefit from these services for two primary reasons. First, the system does not afford prompt referral of appropriate cases to

rehabilitation facilities. Second, injured workers are not consistently advised of their potential entitlement to these services, nor are the services being provided monitored. This is due primarily to a lack of resources and trained personnel within the Division of Workers' Compensation, as well as the absence of established procedures and guidelines for delivering and monitoring the system. The State's workers' compensation system has the potential to fulfill its obligations to injured workers and employers through the provision of properly managed rehabilitation services. A detailed discussion of these findings and recommendations are offered in the main body of the report, which is summarized below.

PART I. THE GOALS OF REHABILITATION IN A WORKERS' COMPENSATION PROGRAM

There are five goals of rehabilitation in a workers' compensation program.

Early identification of injured workers who potentially need rehabilitation

Workers who may not be able to return to their regular employment after suffering job-related injuries should be referred to rehabilitation as soon as this determination has been made or can be reasonably predicted.

Use of competent rehabilitation providers

The unusual characteristics of workers' compensation and the different approach required for successful rehabilitation are strong arguments for the use of counselors trained in industrial rehabilitation. While this training does not require an intimate knowledge of the law, it should include the ability to recognize the needs of the industrially injured population and the compensation system alike.

Provide opportunities for return to direct employment

The success of rehabilitation in a workers' compensation program rests on the attainment of one of its most critical goals: the earliest possible return of workers to direct employment.

Maintenance of atmosphere conducive to rehabilitation

Rehabilitation is a process which does not occur in isolation. The conditions and atmosphere surrounding this process are primary determinants of its eventual outcome.

Provide incentives, remove disincentives to rehabilitation

A rehabilitation program may fall short of fully achieving the primary objective of a workers' compensation system unless it maintains sufficient incentives and removes disincentives in the rehabilitation process.

PART II. EVALUATION OF VOCATIONAL REHABILITATION IN THE ALASKA WORKERS' COMPENSATION PROGRAM AND RECOMMENDATIONS

1. Injured Workers Who Potentially Need Rehabilitation Should Be Identified as Early as this Determination Can Reasonably Be Made.

Based on available data, it appears that the average time from the date of injury to referral is 16.8 months for injured workers referred to the state vocational rehabilitation program and 11.8 months for workers referred to the private rehabilitation firm.

Recommendation. Insurers/employers should timely report to the Division of Workers' Compensation all injured workers who potentially need rehabilitation services. The Division of Workers' Compensation should timely screen these reports and contact injured workers regarding their potential entitlement to these services. (See Recommendations 1.1 through 1.4 in the main body of the report for complete details.)

2. Provision of Rehabilitation Services by Competent Counselors.

Counselors presently providing rehabilitation services to injured workers covered by the Act are presumed to have sound backgrounds in basic rehabilitation principles. However, a review of rehabilitation plans, reports and correspondence, as well as views expressed by these counselors, raises questions regarding the presence of critical elements needed to meet the objective of a workers' compensation rehabilitation program. Clearly, the lack of regulations, definitive procedures and guidelines for the provision of vocational rehabilitation has affected the performance of counselors providing services to injured workers covered by the Act.

Recommendation. Regulations on vocational rehabilitation should be adopted. The Division of Workers' Compensation should establish, publish and distribute guidelines for providers of rehabilitation services. (See Recommendations 2.1 through 2.5.)

3. Provide for Early Return to Direct Employment.

The extent to which injured workers are provided opportunities for return to direct employment is a primary determinant of the ultimate success of rehabilitation in a workers' compensation program. There is little evidence in support of Alaska employers providing measurable opportunities for reemployment of injured workers.

Recommendation. Insurers should provide assistance to employers in developing programs for reemployment of injured workers. Arrangements can be made for counselors' services, to include on-site job analyses and assistance in modification of jobs to enhance reemployment opportunities of an employer's injured employees. The Division of Workers' Compensation should encourage the development and implementation of reemployment programs by providing positive monitoring and endorsement of the efforts of all parties. Union agreements can be negotiated between management and labor for reemployment and rehabilitation of injured union members. (See Recommendations 3.1 through 3.4.)

4. Maintenance of Atmosphere Conducive to Rehabilitation.

In general, the extent and timeliness of communication, coordination and commitment seem inadequate for the purpose of supporting a successful rehabilitation program. The lag between date of injury to date of referral of injured workers to rehabilitation supports the conclusion that injured workers are not timely contacted and advised of their entitlement or potential need for rehabilitation services. Rehabilitation reports and other correspondence reflect communication is sporadic and generally inadequate to ensure the rehabilitation effort of a successful and cost-effective outcome. Progress during rehabilitation is not timely monitored or timely reported. Concurrently, coordination of activities necessary to develop realistic return-to-work plans is insufficient, so that inordinate delays and interruptions occur to the detriment of injured workers, the rehabilitation program and the compensation system alike.

Recommendation. Insurers/employers, union representatives and the Division of Workers' Compensation should increase their efforts to effectively and timely communicate with injured workers by contacting them as soon after the injury as possible to explain their entitlement to benefits and the procedure for securing these benefits. The services of rehabilitation professionals can enhance this effort and contribute to the maintenance of an atmosphere conducive to successful rehabilitation. (See Recommendations 4.1 through 4.3.)

5. Provision of Incentives, Removal of Disincentives.

Proper rating of employers, participation in the targeted jobs tax credit program and the proper administration of the Second Injury Fund have all been identified as incentives to employers to rehire their injured workers and support the rehabilitation program. The extent to which experience and retrospective rating methods are used in rating Alaska employers is unknown and is beyond the scope of this report. Changes in the administration of the Second Injury Fund which would enhance the overall rehabilitation program of the state's workers' compensation system appear to be in order. (See discussion in Part Two, under Goal 5 and Recommendations 5.1 through 5.7.)

Applications for settlements are frequently submitted for various reasons, including funding for proposed self-employment ventures in lieu of participation in a supervised rehabilitation program. Recommendations for such plans, without adequate documentation to support the soundness or feasibility of the proposals, are common. All parties seem to lose sight of the end goal of rehabilitation when this occurs.

Recommendation. Each plan must be carefully evaluated for its soundness and potential for successfully returning the worker to productive employment. In cases not involving self-employment plans, claims should be settled only after a determination has been made that to do so is in the best interest of the injured worker. (See Recommendation 5.8.)

Rehabilitation professionals providing services to injured workers in Alaska readily attest to the activities of both the plaintiffs' bar and defense attorneys as interfering in the rehabilitation process. Regulations, guidelines and well-defined procedures regarding rehabilitation will remove much of the need and opportunity to litigate issues surrounding the rehabilitation process. (See Recommendations 2.1 through 2.5.)

Parties who refuse to cooperate or who sabotage the rehabilitation effort through passive-aggressive means should be encouraged to cooperate through the application of remedial penalties acting upon both the insurer/employer and the injured worker similarly. The board has the authority to apply such remedies. A review of the board's more recent decisions and orders reflects an increased effort to make sufficient applications of these remedies in support of the rehabilitation objective.

DELIVERY OF REHABILITATION IN THE ALASKA WORKERS' COMPENSATION SYSTEM

The Alaska workers' compensation program must have an effective rehabilitation delivery system if it is to meet its six obligations as outlined in Part One of this report and achieve the five goals of rehabilitation. Despite the ongoing efforts of the Division of Workers' Compensation to improve its delivery system to the workers' compensation community, it continues to lack the resources and staff necessary to achieve a successful rehabilitation program which will ultimately reduce the cost of the compensation system. Administrative monitoring and positive assistance to injured workers and all other members in the system require the adoption of the recommendations set forth in this report.

The savings experienced in other compensation programs cited in the main body of this report resulted from the delivery of well-managed, cost-effective rehabilitation benefits. These results did not occur independent of the economic wisdom of administrators for those programs, who realized that a relatively small investment of resources would yield tremendous dividends in the reduction of compensation costs to employers, injured workers and society.

Part One

Goals of Rehabilitation

A brief description of the history of rehabilitation provisions
for industrially injured workers

A. HISTORY OF REHABILITATION PROVISIONS FOR INDUSTRIALLY INJURED WORKERS.

Rehabilitation in workers' compensation programs in the United States has been paid increasing attention over the past ten years following publication of the 1972 Report of the National Commission on State Workmen's Compensation Laws. However, the realization that workers' compensation laws should include provisions for rehabilitating industrially injured workers was manifested by the Massachusetts Industrial Accident Board as early as 1914, when a member of that board went to study the German program. Pursuant to that study, and a meeting in 1916 of the International Association of Industrial Accident Boards and Commissions (IAIABC), during which the delegates were advised that a primary goal of workers' compensation programs was the rehabilitation of disabled workers, the first state vocational rehabilitation law was enacted in 1918 in Massachusetts. (Berkowitz, 1963). The law, administered by the Industrial Accident Board, covered only those persons disabled by industrial accidents and occupational diseases. Following Massachusetts' lead, other states enacted laws with similar rehabilitation provisions. Congress, through the passage of Public Law 236 in 1920, created the State/Federal Vocational Rehabilitation Program. Its statement of purpose provided for the promotion of vocational rehabilitation of industrially disabled workers. Thus, persons with occupational disabilities were the prime target for vocational rehabilitation services. Subsequent Congressional mandates, however, shifted the attention to other specific disability groups and resulted in obscuring the focus on industrially injured workers. This shift in focus, coupled with the existence of the common law tort liability in the compensation system with its inherent litigation, resulted in the failure of both systems to adequately provide rehabilitation services to the industrially disabled, a condition which still exists today, according to the report of the National Commission (National Commission on State Workmen's Compensation Laws, 1972) and Larson, who suggests that one-half of 1% of industrially injured workers are rehabilitated under the federal/state programs. Larson further suggests that ten percent of workers currently being injured could benefit from vocational rehabilitation services. (Larson, 1980).

B. REHABILITATION DEFINED.

The increased emphasis on the inclusion of rehabilitation benefits in a modern workers' compensation system has prompted attempts by those in the system to define rehabilitation. A noteworthy observation is made by Sawyer in this regard, wherein he makes a distinction between the philosophical differences in rehabilitation of the workers' compensation system and the state/federal program. Sawyer observes that the objective of workers' compensation rehabilitation is to restore the industrially injured worker to a state of employability equal to, or as near as possible to that of his pre-injury status, through the provision of only those services necessary to achieve this objective. On the other hand, he notes, the state vocational program seeks to rehabilitate disabled persons to their maximum potential through the provision of education and other services deemed necessary by the disabled worker to achieve a chosen vocational objective. (Sawyer, 1978)

A further distinction can be made through examination of the primary funding source of each program. The state vocational rehabilitation program is supported by federal and state funds, while the cost of rehabilitation in a workers' compensation system is borne by private industry through contributions to a special or second injury fund and direct payment to private rehabilitation providers. The employer further contributes to the rehabilitation of industrially injured workers through payment of compensation benefits during the period of rehabilitation.

A third distinction, perhaps more revealing than the first two, is the difference in population served by each system. As we previously discussed, Congressional mandates have directed the focus of the state/federal program to give priority to specific disability groups classified as severely disabled. These include developmental disabilities, congenital, orthopedic and neurological conditions, and catastrophic injuries resulting in paraplegia and quadriplegia. The bulk of individuals in these disability categories are adolescents and young adults, most of whom have never participated in the world of work. Therefore, the process employed in making them work ready is habilitation rather than rehabilitation. Since their backgrounds do not include significant work experience which has imparted marketable skills, their plans usually include long-term pre-vocational and vocational preparation centered around academic training toward a specific career goal chosen by the individual. Contrast this to the industrially injured group, who for the most part, have not been severely disabled by their injuries, according to state/federal guidelines, and whose pre-injury work experiences have imparted skills which can usually be marketed in the workplace. On the whole, their natural orientation is not likely to be toward academic or classroom training, as they did not choose this method to enter the world of work to begin with, and they have not usually chosen to engage in academic pursuits at any point in their work life prior to the injury and subsequent visits to the

state vocational rehabilitation office. It is reasonable to conclude that the approach taken in assisting them to return to the work place will differ considerably from that taken for the first group.

The socially underlying concept of rehabilitation embraced by rehabilitation professionals is the intrinsic dignity of man, his feeling of self-worth and his right to life, liberty and the pursuit of happiness. This concept cannot realistically exist independent of economic wisdom in a workers' compensation program. The timely return of an industrially injured worker to a safe employment status, commensurate with that held at the time of injury, through the investment of necessary resources, is a logical goal in a workers' compensation program. The end result is an economic as well as a social asset to the injured worker, the compensation system and society. Properly managed, cost-effective rehabilitation will enable many disabled workers to return to productive jobs and thus reduce compensation costs.

C. THE APPROPRIATENESS OF REHABILITATION IN A WORKERS' COMPENSATION SYSTEM.

In 1976, the Rehabilitation Committee of the International Association of Industrial Accident Boards and Commissions conducted research on rehabilitation services in all state workers' compensation programs and went on to submit a model program of medical care and rehabilitation which was adopted by the IAIABC in 1977. The stated purpose of the model program was the assurance and coordination of efficient and timely delivery of services necessary to restore the industrially disabled employee to optimum physical and vocational well-being. (Ross, 1976).

The need for rehabilitating injured workers was stressed in the 1977 report of the President's Interdepartmental Workers' Compensation Task Force. The report, which stressed reemployment, advocated increased private rehabilitation efforts by employers and insurance companies. (Interdepartmental Workers' Compensation Task Force, 1977).

The Insurance Rehabilitation Study Group is an organization whose purpose is to provide a forum for members of the insurance industry to explore and develop concepts and programs of rehabilitation and medical administration applicable to all phases of insurance. The group undertook a project to develop guidelines and language dealing with rehabilitation and subsequently published a report which in part stated:

> While insurance losses and benefits are usually stated in monetary terms, the full consequences of human disability cannot be measured by money alone. Earnings lost due to accident or sickness can be replaced and medical expenses can be reimbursed, but there is no meaningful way to financially translate the value of an arm or a leg, or the personal dignity of being able to contribute to society as a useful member rather than merely existing disabled and dependent.

The study group went on to state that:

> If insurance is to protect against these human losses, it must do more than provide financial compensation alone. It must also strive to restore such losses. Insurance should provide the means for disabled workers to return to gainful employment whenever possible, and to regain as much functional independence as they can, even if they cannot return to work. Compensation cannot accomplish these goals without rehabilitation. (Insurance Rehabilitation Study Group, 1975).

The Study Group's report included its model rehabilitation program.

Based on the cited research and studies conducted by recognized authorities in workers' compensation, it is clear the consensus supports the premise that rehabilitation is an effective tool which should be included in workers' compensation if the system is to fulfill its total responsibility to the industrially injured worker and to society within the economy.

D. WHO SHOULD FUND REHABILITATION IN WORKERS'COMPENSATION

Leading insurance companies, employers and other members of the workers' compensation community support the belief that all costs of the system should be borne by the employer and not by the general public. Sawyer suggests:

> While some individual insurers and self-insured employers still approach the subject of rehabilitation with varying degrees of acceptance, the matter of involvement is no longer an option. Through a combination of either basic legislative changes or administrative regulations, the responsibilities of carriers and employers to provide rehabilitation services specifically directed toward returning injured workers to suitable gainful employment are spreading to all jurisdictions. (Sawyer, 1981).

It is reasonable to conclude that the legal requirement to provide rehabilitation benefits for injured workers has as its basis a collective mandate by society, for industry to provide benefits which most effectively achieve the basic remedial and restorative purpose for which the workers' compensation laws were intended.

E. THE ROLE OF THE STATE WORKERS' COMPENSATION AGENCY IN REHABILITATION.

The National Commission on State Workers Compensation Laws suggest that a state agency has six primary obligations in a workers' compensation program. Those obligations are applicable to rehabilitation and will be used for the purpose of this discussion.

First, the agency must ensure that the basic objective of rehabilitation is met by taking the initiative to administer the laws relative to rehabilitation.

Second, the agency must continually review the performance of the rehabilitation program and make procedural changes to improve the program when change is indicated.

Third, the workers' compensation agency is obliged to advise workers of their rights and obligations under the law and to assure that they receive the rehabilitation benefits to which they are entitled.

Fourth, the agency should apprise employers and carriers of their responsibilities and rights under the law. Physicians and attorneys must also be informed of their obligations in the rehabilitation process.

Fifth, the agency should assist in voluntary and informal resolution of rehabilitation issues and assure that such resolutions are consistent with the law.

Sixth, in the absence of voluntary resolutions, the Workers' Compensation Board must make adjudicatory decisions to resolve issues affecting rehabilitation.

The compensation agency must have sufficient authority and adequate staff to fulfill these six obligations. Moreover, the skills and background of the staff must be consistent with the functions to be served and the tasks to be performed.

F. FIVE SPECIFIC GOALS OF REHABILITATION IN A WORKERS' COMPENSATION PROGRAM

One of the four basic objectives of a modern workers' compensation program, as presented in the report by the National Commission, is the provision of sufficient medical care and rehabilitation services. The Commission suggests that these services are equally as important as the cash benefits of the program. However, it can be reasoned from a long-range perspective, these services are even more important than cash benefits, given the nature of their permanent and long-term value. Indeed, the provision of temporary compensation payments to replace a substantial portion of the worker's lost earnings, during the period of total disability, is a critical factor if the worker and his family are to be spared the disastrous hardships resulting from lack of income. However, the temporary characteristic of compensation payments suggests that a remedy with a far more long-range quality must be provided if the compensation system is to achieve its more fundamental objective of restoring the worker's ability to earn wages by returning him to the work place. Rehabilitation is an effective tool to be used in achieving this basic objective.

Five goals must be achieved in a workers' compensation rehabilitation program if the system is to serve its primary purpose. The basic goals are:

1. *early identification of injured workers potentially needing rehabilitation;*

2. *provision of effective rehabilitation services through the use of competent professionals;*

3. *provision of early return to direct employment;*

4. *maintenance of atmosphere conducive to rehabilitation;*

5. *provision of incentives, removal of disincentives in rehabilitation.*

(1) EARLY IDENTIFICATION OF INJURED WORKERS POTENTIALLY NEEDING REHABILITATION

One of the central themes repeated by rehabilitation professionals as well as noted authorities in workers' compensation is the need for early involvement in the rehabilitation process of workers whose injuries prevent them from timely returning to their regular job. Indeed, the idea as Sawyer suggests may well have originated with a limited number of leading

insurers who embraced the notion of rehabilitation as a part of a sound workers' compensation system. Whatever the original source, this premise, which has been endorsed by previously cited authorities, has gained increasing acceptance in workers' compensation over the past recent years.

Those proponents of the early involvement theory share the common realization that time can be a deadly enemy to successful rehabilitation. Benign neglect of what originally is a minor disability can result in protracting that disability to the point where an unwholesome attitude regarding return to work becomes permanent and fixed, and the psychological hurdle required to overcome this is extremely difficult, if not impossible to achieve. The notion of a timely return to work should be one of the first imparted to an injured worker.

The responsibility of the employer to provide rehabilitation benefits to injured workers has been sufficiently discussed. The extent to which this responsibility is met by the employer or insurer depends on the extent to which top management is committed to rehabilitation. This decision cannot be left to the discretion of individual claims adjusters. Early intervention in appropriate cases requires an unequivocal commitment to rehabilitation and precludes the adversary approach. In Sawyer's words:

> The role of the claims administrator moves from that of a "dollar doler" to an advocate of good care directed toward the earliest possible return to safe employment. In this context the disability, not the claimant, is the adversary to be overcome. (Sawyer, 1981).

The vice-president of a local insurance company, recognized in the workers' compensation community for her commitment to rehabilitation, reports that it is a standard company requirement of claims adjusters to make initial arrangements for rehabilitation in all cases where the injured worker remains off work 60 days or longer after the injury. In jurisdictions where the workers' compensation agency monitors rehabilitation, the adjuster files a report with the agency to advise that rehabilitation services are being initiated, or to request assistance from the agency in arranging for services. The company's philosophy and commitment to rehabilitation, which top administration holds as a non-negotiable policy with its staff, are included in the initial and ongoing training of all claims adjusters. While the company does not afford statistical data on its total rehabilitation program, the vice-president emphatically holds that the company indeed saves money for its insureds through its non-adversary, early intervention approach to rehabilitation.

The state workers' compensation agency, in fulfilling its obligation to support the goal of early identification of injured workers needing rehabilitation services and to ensure their receipt of these services, must maintain a systematic reporting and screening mechanism. Insurance companies and self-insured employers should file reports in all lost-time cases where injured workers continue to remain off work after a specified period of time. (A recommended time period is discussed in Part Two.) The report should indicate the carrier's immediate or future plans with explanation for the provision of rehabilitation services. Simultaneously, the workers' compensation agency must continually screen all lost-time injury reports and arrange for rehabilitation services in appropriate cases where the carrier has failed to do so.

The early intervention approach clearly militates against the obsolete concept that the injured worker's medical condition must be fixed and stationary before a successful rehabilitation effort can begin. A recently completed study by the California Workers' Compensation Institute Rehabilitation Committee appears to refute this outmoded concept. The study sample was randomly selected from files closed by the Rehabilitation Bureau of the State Division of Industrial Accidents during June and July of 1980. Findings are based on a detailed analysis of 611 cases. The results of the study show a direct correlation between early implementation of rehabilitation and completion rate. (See Table 1.) Clearly, the dangerous wait-and-see practice has no real validity and can be a deterrent to successful rehabilitation. If allowed to prevail, it will most surely undermine achieving the goals of successful rehabilitation.

(2) IDENTIFICATION AND USE OF COMPETENT REHABILITATION PROVIDERS WHO UNDERSTAND THE PURPOSE AND PHILOSOPHY OF WORKERS' COMPENSATION.

The differences in philosophical approaches to rehabilitation in workers' compensation systems and state/federal programs have been adequately discussed. Little or no purpose is served in arguing the merits of these differences in a vacuum. It is important to understand, however, the need to provide rehabilitation services in a workers' compensation program in a manner which supports the basic objective of the system. Therefore, it is important to engage the services of

those rehabilitation providers who not only understand this objective, but who are willing to provide services to injured workers consistent with achieving this objective. The counselor must have a sufficient understanding of medical issues and the function of the workers' compensation system, along with the ability to employ sound rehabilitation practices within the total context of the system.

Beyond meeting the requirement of understanding and working to achieve the objective of a workers' compensation program, the rehabilitation counselor must be competent and skilled in working with multiple parties in the system. The counselor must possess the ability to establish rapport with the injured worker to create the level of trust and cooperation necessary to achieve a successful outcome of the rehabilitation effort. The injured worker must be involved. It is not only his right but also his responsibility, as his complete involvement is a major key to any successful result. This means approaching the worker from an objective, yet restorative and supportive posture. This posture precludes counselor attempts to adjudicate and negotiate settlement and other claims issues more appropriately left to the adjudicatory body in the system.

The counselor must be able to effectively work with and gain the support of the treating physician in the rehabilitation effort. Contacting the physician prior to contacting the injured worker, to explain what is being attempted, is imperative if the counselor expects to gain the support of the physician, who can pave the way for a successful rehabilitation outcome. Work restrictions and remaining physical capabilities, which will serve as a basis for vocational planning, can be obtained at this time. Simultaneously, the counselor's presence provides assistance to the physician in his efforts to counsel the patient in working toward recovery and an eventual return to productive employment, with emphasis on what he can do, as opposed to what he cannot do.

Since the earliest possible return to work is the goal of industrial rehabilitation, inordinate delay on the part of the counselor in conducting extensive vocational evaluations and testing, before attempting to develop a direct return-to-work plan, is inappropriate in the workers' compensation system. An attempt to return the injured worker to his modified job held at the time of injury, or a different job with the same employer is the appropriate initial direction to take. If this is not possible, selective placement with a new employer in a job using established skills compatible with remaining physical capabilities is the next logical course to pursue. If either course is likely to result in returning the injured worker to safe, gainful employment, the counselor must not only be competent and willing to pursue this course, but must be required to pursue it by the workers' compensation system. In the face of existing opportunities for direct return to work, it is a disservice to an injured worker and his family if the counselor attempts to develop an unnecessary training plan which may result in prolonging the disability and increasing the cost of workers' compensation to industry and ultimately to society.

When efforts to return the injured worker to direct employment are not likely to succeed because of insufficient marketable skills, the counselor must recognize the need to timely establish a plan of vocational training, the scope and duration of which must not exceed that which is absolutely necessary to return the injured worker to an employment status commensurate with his pre-injury status. It is reasonable to place parameters on the training benefits of injured workers which will coincidentally place limitations on the employers' liability for such benefits. (Suggested parameters are offered in the recommendations in Part Two of this report.) There must be a plan with a realistic goal. This requires skillful, specific actions on the part of the counselor, as plans do not emerge from the waters. The goal of the plan should be clearly described and fully understood by those who are to participate in it. A time table with specific target dates, and a delineation of roles and responsibilities, specifying who, what, when, where and how, must be spelled out.

TABLE 1. Results of early implementation.

	% Plans Implemented	
	Before P & S	After P & S
Rehab plans completed	82	74
Employees working	75	65
Plan suspended/terminated	18	26
Average cost	$4,238	$7,671

Remarks: P & S refers to the injured worker's medical condition as being permanent and stationary.

Claims management by the insurer, and administrative oversight by the state workers' compensation agency, cannot occur in a void. Therefore, the system requires the counselor to maintain effective communication with all interested parties. The counselor must provide initial written and oral communication regarding the original plan, and make ongoing reports sufficient in content and scope to keep all appropriate parties fully advised of the progress being made toward achieving the goal of the plan and the primary objective of workers' compensation. This requires consistent, ongoing monitoring by the counselor. The workers' compensation system must provide additional monitoring to ensure the counselor is meeting this requirement.

Cooperative Agreements. During the formative years of no-fault workers' compensation, many systems provided for cooperative agreements between the workers' compensation agency and the state/federal division of vocational rehabilitation. This practice was primarily due to the fact that the state/federal program was the sole source of rehabilitation services for disabled workers. The National Commission's report, however, detailed the past failure of many state programs to fulfill the expectancy of the compensation systems, as well as the failure of state compensation agencies to resolve this matter. In view of this failure, coupled with the emergence of private rehabilitation providers, whose services appear to be more specifically geared toward working with industrially injured workers, cooperative agreements between the two agencies may well be obsolete. As noted earlier, the purpose of the workers' compensation system can best be served by identifying and utilizing those providers whose services support the primary objective of the compensation system.

(3) PROVISION FOR EARLY RETURN TO DIRECT EMPLOYMENT.

The success of rehabilitation in a workers' compensation program rests on attaining one of its most critical goals: the earliest possible return of workers to direct employment. Members of the workers' compensation community share the widely held belief that the fewer changes made in the life of an injured worker during the rehabilitation process, the more successful that process is likely to be. Conversely, a more complex rehabilitation plan requiring numerous changes in the life of the injured worker, and requiring a proportionate period of time to implement, diminishes the chance of a successful outcome. This too, appears to be borne out by the study of the California Workers' Compensation Rehabilitation Committee. The results show that modification of the worker's pre-injury job and direct placement of workers with transferable skills were more successful than formal training programs in terms of return to work. (See Table 2.) The results also revealed the costs and outcome of plans were inversely proportionate, with the least expensive program offering the greatest opportunity to return the injured worker to the work force. (See Tables 2 and 3.)

Key Players Necessary

Employer Participation. The employer's responsibility to his injured employee must transcend the traditional role of merely paying premiums and forwarding accident reports to the insurance company. The employer has the first and foremost obligation to do everything within reason to assure his employee's return to safe work. It is accepted that this will not always be possible. However, the employer must make more than a cursory attempt in the return to work

TABLE 2. RTW by plan type completed.

	% RTW
Modified Work	84.6
OJT + schooling	72.2
Direct placement	71.1
On-the-job training	69.7
Formal Schooling	52.1

effort. His actions may include arrangements for an on-site job analysis by a qualified rehabilitation professional, to identify a job compatible with the remaining physical capacities of the recovered employee, or the union representative may be called upon to run interference in overcoming obstacles in union agreements which may prevent the injured worker from successfully returning to work. At any rate, the employer will not know what can be done until he initiates an active and aggressive return-to-work effort. In the absence of this effort, complaints regarding spiraling workers' compensation costs are hardly justifiable.

Employee Responsibility. The employee must clearly understand his rights do not exist independent of his responsibilities under the workers' compensation law. He must therefore act responsibly in the face of a valid reemployment offer made by his employer. His total cooperation as well as participation in a return-to-work effort is a requirement, not an option, if he expects to receive the benefits which the system provides. Pursuit of training or a more elaborate rehabilitation plan is not justified if the opportunity exists for his return to a safe employment status compatible with his pre-injury employment status. After all, the basic purpose of workers' compensation is to ensure his opportunity for restoration to work when he is medically able to do so. This is not synonymous with guaranteeing an unconditional right to training.

Union Support. Union representatives can play a significant role in supporting reemployment programs for their members. Contracts can be negotiated to permit the existence of light-duty and rehabilitation positions to which an injured worker may be assigned, once released by his physician for light duty. Information obtained from the Idaho Industrial Commission Rehabilitation Division confirms the benefits to be reaped from union involvement and support of direct reemployment opportunities for its members.

During the 1981 fiscal year, 18% of injured workers experiencing lost time in Idaho received rehabilitation services. Twenty-four percent of those who received services were successfully rehabilitated. Of the total number successfully rehabilitated, 38% returned to work with their previous employer. (See Table 4.) The administrator of the industrial rehabilitation unit, as well as labor and industry representatives, attributes this high rate of return to direct employment to the cooperative efforts of labor and management. Such efforts include contractual provisions for rehabilitation and light-duty assignments of industrially injured union members.

Significan Others

Rehabiiitation Counselor. The role of the counselor in the rehabilitation process, as previously discussed, is worthy of mention here. Early and consistent contact with the injured worker and other family members, consultation with the treating physician regarding remaining physical capacities and performance of on-site job analysis are all activities which can be effectively and timely performed by the competent rehabilitation counselor, who serves as a key link in the communication process with all appropriate parties. The timely release of a sufficiently recovered worker to light-duty employment is significantly enhanced if the treating physician is aware of existing opportunities for such work, and the availability of counselor services to assist the patient in making a safe return to work.

TABLE 3. Average cost by plan type.

	1978	1980
Modified work	$ 2,754	$ 3,346
Direct placement	1,495	4,966
On-the-job training	3,487	5,058
OJT + schooling	4,603	8,372
Formal schooling	5,707	9,886
Average	$ 4,218	$ 6,927

TABLE 4. Data for Idaho Industrial Commission rehabilitation program FY 81.

Fiscal Year	# of Time Injuries	Workers Provided Services			Injured Workers Successfully Rehabilitated		
		#	% Lost Time Cases	% Rec'd Training	#	% of Wkrs. Served	% of Lost Time Cases
81	7,800	1,431	18	2	344	24	4.4

Remarks: *Lost time injuries based on 20% of total injuries (39,026) provided by Administrator of Idaho Industrial Commission, Division of Rehabilitation.

Attorney Obligation. In most cases, attorney involvement in the rehabilitation process should be appropriately limited to encouraging respective clients to participate in the rehabilitation effort. There may be a few instances where issues in the claim may have a bearing on rehabilitation or vice versa, and thus litigation may ensue. However, direct, ongoing attorney involvement in the rehabilitation process is unnecessary and inappropriate in the workers' compensation system. The remaining physical capabilities of an injured worker as related to his ability to return to productive work are determined by his physician. The counselor is the key person who works with the injured worker, his physician, the employer and all other appropriate parties in the rehabilitation effort. The worker's compensation agency provides monitoring and administrative oversight to ensure all parties will act in good faith in meeting their respective responsibilities and obligations. Clearly, this well-designed procedural mechanism makes it possible to address issues and concerns in the appropriate context and removes the opportunity, as well as the necessity for excessive attorney involvement in the rehabilitation process.

(4) MAINTENANCE OF AN ATMOSPHERE CONDUCIVE TO SUCCESSFUL REHABILITATION

Sawyer, in a written discourse on private insurance company rehabilitation programming, makes several noteworthy statements regarding rehabilitation and claims disposition:

> Rehabilitation, in the broadest sense, represents one of several concepts currently being advocated as socially desirable and economically feasible for inclusion in a modern benefit system. It has reached the point of respectability primarily as a result of the voluntary experimentation by those leading insurance companies that have recognized the need for workers' compensation to mean something more than "a check in the mail" and filing forms for industrial commission review.

Sawyer goes on to note:

> Rehabilitation is important in claims disposition... An adversary approach to claims handling is obsolete. Modern claims practices recognize the essential function of the claims person in identifying and meeting the needs of his employer and claimant alike. (Sawyer, 1978).

Rehabilitation is a process which does not occur in isolation. The condition and atmosphere in which rehabilitation takes place are primary determinants of the eventual outcome of that process. The screening and early identification of injured workers who potentially need rehabilitation services and the timely provision of these services will not necessarily result in a successful outcome if the process is fraught with hostilities, mistrust and excessive litigation. Certain positive elements which may be termed the "four C's" must be present to ensure successful rehabilitation.

Concern

An accident resulting in a traumatic injury to a worker is a sudden, potentially devastating experience with far-reaching implications for the injured worker, his future and that of his family. This is no time to present him with vague ambiguities and benign neglect. The adjuster must recognize and demonstrate an understanding of the worker, his reaction and that of his family to the injury and its potential effect on their future. An early demonstration of concern and a sincere effort to assist the worker in receiving all the benefits to which he is entitled, including rehabilitation, will often eliminate disputes over issues arising from the injury.

Communication

Perhaps one of the main barriers to successful rehabilitation and claims disposition is poor communication, or the absence of communication. Whether this barrier is present at the onset of the injury, or develops at a later stage in the claim, it can result in exacting a heavy toll on the injured worker and his family, the employer and

the compensation system alike. A dearth of information to the injured worker regarding his rights, extent of benefits and how to secure them and his responsibility for meeting certain requirements can lead to the worker acting on erroneous information sought from inappropriate sources. This may result in the claims adjuster taking action which adversely affects the worker and sets the tone for the course and eventual disposition of the claim.

A simple and most desirable way of providing the injured worker with information on his benefits, rights and responsibilities is through the employer at the time of injury. This of course requires the employer to be sufficiently knowledgeable of the state compensation laws and attendant matters. This requirement is entirely reasonable, as the employer is the responsible party for damages sustained by a worker in the performance of his job. It is a matter of historical reality, however, that the claims adjuster, as a representative of the employer is the likely party with whom the injured worker will have the most contact throughout the duration of his claim. The extent to which the adjuster is available to communicate with the injured worker and advise him of what the provisions are for rehabilitation and other services, can have a significant bearing on his orientation to litigate or cooperate in the rehabilitation process.

Some insurance companies take a rather progressive approach in this regard. Instead of waiting to be contacted by the severely injured worker, as a matter of standard company policy, the adjuster pays a personal visit to the worker and his family in the home or hospital to determine what their needs and concerns are as a result of the injury, and to explain as nearly as possible procedural matters and the series of events most likely to occur in the course of the claim. Going a step beyond this, the adjuster assigns a rehabilitation counselor who works with everyone involved through the collection of information pertinent to the rehabilitation and ultimate disposition of the case, and who serves as the major communication link between the worker and his family and all other parties in the compensation system.

Coordination

Successful rehabilitation requires considerable coordination. The early assignment of a competent rehabilitation counselor is an appropriate step toward achieving this. The counselor is able to direct the initial emphasis on the worker and the problems presented by the injury, and to subsequently expand the focus to include all other factors within the context of the compensation system pertinent to the eventual outcome of his return to the work force and resumption of a productive life. Medical treatment and course of recovery, remaining physical capacities and abilities and opportunities for return to direct employment can be used by the counselor and the injured worker to develop a realistic plan. Now is the time for the who, what, where, when and how to be glued together and set in motion for the achievement of a return-to-work goal.

Cooperation/Commitment

A rehabilitation plan will not realize its purpose unless the parties involved bring to it a sufficient level of commitment to ensure its success. Good faith, cooperation and understanding of respective roles, rights and responsibilities are ingredients necessary to ensure commitment to the rehabilitation effort.

The employer at the time of injury must make a sincere effort to provide the recovered employee appropriate, safe work commensurate with remaining physical abilities and skills. The employee must be realistic and understand his responsibility to cooperate with the employer in a reemployment plan. The counselor must meet the responsibility of counseling the worker toward exploring existing opportunities for direct return to work. The claims adjuster, after agreeing to the plan, must act in good faith by providing timely compensation payments and other services necessary to support the plan. The attorneys must act responsibly by counseling their clients to fully cooperate in the rehabilitation effort. All parties must be realistic and flexible to allow for amendment of the plan if change is needed to ensure achievement of the ultimate return-to-work goal. The workers' compensation agency must provide sufficient administrative oversight and monitoring to ensure that all parties clearly understand and meet their responsibilities.

(5) PROVISION OF INCENTIVES, REMOVAL OF DISINCENTIVES TO REHABILITATION.

A rehabilitation program which makes early identification of workers needing rehabilitation, provides for early return to direct employment, uses competent rehabilitation providers and maintains an atmosphere conducive to rehabilitation, may fall short of fully achieving the primary objective of a workers' compensation system unless it maintains sufficient incentives and removes disincentives in the rehabilitation of injured workers. Caution must be exercised so that expectations regarding rehabilitation are not based on the premise that good faith efforts on the part of all parties in the system will spontaneously

occur. There must be a realization that basic human nature usually requires the existence or application of stimuli necessary to create sufficient incentives before actions are taken to achieve a desired goal.

Incentives

Proper Rating of Employers. Authorities in workers' compensation have suggested internalizing the costs of work-related accidents and diseases by properly rating employers will support the safety objective of a workers' compensation system. The Interdepartmental Workers' Compensation Task Force's recommendation that experience rating should be extended to small as well as large employers in an incentive to reemploy injured workers. (Interdepartmental Workers' Compensation Task Force, 1977). Experience rating permits a "before-the-fact" look at an employer's safety and reemployment record over a specified period of time. If the record is good, the employer is given a credit toward future premiums.

A similar incentive exists in retrospective rating where the employer pays a fixed advance premium based on his classification rate and estimated payroll. His loss experience is assessed after the policy has been in force for a predetermined period of months. Depending on his experience, he may be reimbursed for a portion of the advance premium.

A detailed discussion of the intricate features of rating methods is not intended. They are offered in light of their suggested use by authorities in workers' compensation as incentives to employers in rehiring their injured employees. The insurance industry should provide assistance and information on rating to employers as a part of loss-control services to them.

Targeted Jobs Tax Credits. As part of the Revenue Act of 1978, Congress created the Targeted Jobs Tax Credit (TJTC), which gives private-sector employers an incentive in the form of tax credits to hire certain targeted groups including vocational rehabilitation clients. New legislation was passed in August 1981 which allows employers to claim a full two-year credit on all certified employees. The TJTC credit is based on 50% of the first $6,000.00 in wages paid to a qualified employee during the first year of employment, and 25% of the first $6,000 in wages paid during the second year. The potential "in-pocket" two-year savings can amount to as much as $3,870 per eligible employee, depending on the amount of wages paid and the employer's tax bracket. The program requires minimal paperwork on the part of the employer. The knowledgeable rehabilitation counselor is aware of this incentive and should readily make prospective employers aware of its features when assisting the injured worker in returning to employment.

Second Injury Fund. Placement of the partially disabled worker is difficult at best, depending on the extent of the disability, age, education background, skill level of the disabled person and the prevailing job market. The task is made more difficult by employer reluctance to hire the handicapped. While a cure-all to eliminate this reluctance is not likely to exist, the workers' compensation system can provide a remedy to at least reduce the fears of employers surrounding hiring a worker with an impairment, through establishing a second injury fund. The National Commission has suggested that second injury funds serve two intents: to encourage employment of the handicapped and to spread the risk associated with pre-existing impairments among employers equitably. Both intents are applicable for purposes of this discussion.

A second injury fund within the workers' compensation system presents a remedy to deal equitably with a situation where the second injury would not have occurred had the prior impairment not existed, or where the degree of impairment resulting from the combination of the prior and subsequent injuries is more serious than the total effect of the two injuries considered separately. The fund provides full compensation for the worker who suffers a second injury, and simultaneously allows the employer to be responsible only for the benefits resulting from the second injury.

The second injury fund can help a handicapped worker get a job if employers are aware of the existence and nature of the fund. As suggested by the National Commission, the workers' compensation agency can encourage rehabilitation and employment of industrially handicapped workers through wide publication and interpretation of eligibility requirements.

Substantial Maintenance. That the basic needs of injured workers and their families continue during rehabilitation is too obvious for argument. It is worth emphasizing, however, the importance of keeping this in mind when discussing incentives which will enhance the rehabilitation effort. Total compensation should of course continue during the period of rehabilitation. Additionally, maintenance payments to offset extra expenses such as transportation costs incurred by the worker while undergoing rehabilitation should be provided. This realization is prevalent in the compensation community as most systems provide such incentives.

Removal of Disincentives

Premature Settlements. Perhaps one of the greatest deterrents to rehabilitation in workers' compensation is the settlement of a claim before an injured worker undertakes or completes rehabilitation. Larson notes:

> One of the worst enemies of the rehabilitation program is the reckless, lump-summing of permanent disability awards, since this usually means that the claimant loses all benefit of continued surveillance of his case, and often finds himself in a few years with neither money nor competitive earning ability. (Larson, 1980).

Attempts by any party in the system to settle a workers' claim prior to the worker undertaking a rehabilitation effort should not be allowed by the workers' compensation agency, unless it has been determined after careful consideration that settlement is in the best interest of the injured worker. Factors and conditions to be considered are too varied and numerous in each individual case to allow a complete discussion in this report. The primary aim is to motivate an injured worker to undertake a supervised rehabilitation program designed to restore his ability to earn a living as a productive worker, rather than to allow him to persist in "foot-dragging" based on the expectation of receiving the "pot of gold" at the end of the rainbow. The workers' compensation agency should ensure that all parties in the system understand the policy regarding settlement and rehabilitation.

Excessive Litigation. As previously discussed, excessive litigation serves no useful purpose in the rehabilitation process. It is likely to be a primary obstacle to successful rehabilitation of industrially injured workers. Excessive litigation serves to obscure the goal of rehabilitation in achieving the primary objective of workers' compensation. It causes the focus to shift from restoring the injured worker's competitive earning ability to highlighting his disability. In the ensuing process, rehabilitation is not used as an effective tool for the long-range benefit of the injured worker. It becomes a bargaining stick employed by the worker's attorney in the quest to obtain his pot of gold. It is simultaneously used as a trade-off carrot by the insurer's attorney to limit future liability. The workers' compensation agency can provide an effective remedy to this unacceptable paradox by reducing the need and opportunity to litigate, through maintenance of an effective delivery system of rehabilitation services. As suggested by the National Commission, litigation may occur less frequently if state agencies provide enough positive assistance to workers who are unable by themselves to deal with the complexities of the law. Regulations, along with definitive procedures and guidelines for rehabilitation services, aggressively administered, would remove much of the opportunity to litigate.

Other Stimuli

There are likely to be a few cases in which some workers may hesitate to restore their earning capabilities because of a possible reduction in benefits. Although these instances may be rare, they are to be expected and must be dealt with if the compensation system is to have an effective rehabilitation program. Workers who refuse rehabilitation services, or who sabotage rehabilitation efforts by passive-aggressive means, should be encouraged to cooperate by having their benefits temporarily suspended during the total period of noncooperation. A similar provision acting upon the employer should also exist. This provision is contained in many compensation systems and can be an effective stimulus to ensure cooperation in the rehabilitation process.

Part Two

Evaluation & Recommendations

Evaluation of rehabilitation in the Alaska workers' compensation program, with recommendations for changes

INTRODUCTION

The first workers' compensation act was passed in Alaska in 1915. The law, which limited coverage to miners, permitted employers and employees to elect coverage under the act. Provisions for a schedule of lump-sum benefits were included. The act did not include provisions for medical and rehabilitation care or a second injury fund.

The current act provides for expenses for vocational rehabilitation to be paid out of that portion of the Second Injury Fund exceeding $10,000. Persons undergoing rehabilitation are entitled to receive extra compensation for maintenance during the period of rehabilitation. The total expenditures for maintenance, training, necessary transportation and other rehabilitation services may not exceed $10,000 for one person. (See Appendix B for chronological changes in the law from 1915 to 1981.)

The 1972 Report of the National Commission significantly influenced states' workers' compensation legislation over recent years. Many states have amended their laws to permit adoption of most, if not all, of the 19 essential recommendations made by the Commission. The Alaska Workers' Compensation Act is in compliance with 14 of these essential recommendations. (U.S. Department of Labor, 1981). Three of these hold positive implications for vocational rehabilitation.

Two of the essential recommendations call for the removal of statutory limits on dollar amount and passage of time for medical care and physical rehabilitation. Students of industrial rehabilitation have long recognized quality medical and physical rehabilitation treatments as necessary precursors to successful vocational rehabilitation. This long-standing belief is supported by the Commission's recommendation for inclusion of these benefits in a workers' compensation program.

The third essential recommendation which affects vocational rehabilitation, and with which the Alaska workers' compensation program complies, provides for the replacement of a substantial portion of the worker's lost wages during the period of disability. As previously discussed, the basic needs of the injured worker and his family continue in spite of the injury. Anxieties regarding the family's ability to meet these needs are legitimate and must be sufficiently abated if the worker is to make a satisfactory recovery and return to gainful work. Unresolved anxieties produced by an inadequate source of income to meet basic needs will interfere with the rehabilitation process. As noted by the Commission: "A worker may be in such dire circumstances that he may be forced to return to work before he has properly recovered or he may become so demoralized as to be indefinitely disabled." Substantial protection against interruption of income during rehabilitation prevents this and enhances the prospects for successful rehabilitation.

Efforts of the Division of Workers' Compensation to improve its service delivery system are worthy of discussion here. The Division has recently implemented an automated system which provides an effective tool for capturing and managing complex interdependent sets of data and for releasing staff resources to resolve client problems promptly. It also addresses program quality in a legal sense by providing access to precedence information, thereby reducing the ad-hoc nature of Workers' Compensation Board decisions. Access to claims filed in the field offices will enable compensation officers to resolve disputes in the early stages and thus will reduce the number of board hearings. This will consequently reduce litigation and its costs for all parties. Additionally, the Division has recently implemented a comprehensive compensation report which will enhance its automated system. Training sessions have been provided to insurers on the proper use and completion of the new compensation report.

The board has submitted proposed changes in regulations in Title 8 of the Alaska Administrative Code dealing with workers' compensation and vocational rehabilitation, to clarify the Alaska Workers' Compensation Act. Hearings are currently being held on these proposed changes. (See Appendix C.)

A brochure, explaining benefits to injured workers covered by the Workers' Compensation Act, was published approximately eight months ago and has been widely distributed. Similarly, a handbook for employers is presently being prepared for distribution in the near future. Both publications should enhance the delivery system of the Alaska Workers' Compensation Act.

The board's increasing efforts to address the rights and responsibilities of all parties in the rehabilitation process are reflected by its more recent decisions. Applications for compromise and release settlements, which preclude the worker from engaging in or exploring rehabilitation alternatives prior to settlement, are being disallowed or at the very least, discouraged. The board is taking an active role in ordering vocational evaluations to establish the feasibility of return-to-work plans prior to approving them.

The administrative officer for the Second Injury Fund has been provided additional staff, in

the relentless effort to more efficiently administer the fund and oversee rehabilitation plans requiring Second Injury Fund expenditure. Workers' Compensation officers have been shifted to allow more direct contact with injured workers and other parties to provide individual assistance in rehabilitation and other benefit matters. This shift permits more field visits by the officer as the Division continues in its efforts to improve the delivery system to all parties.

Discussion of Data

Although the Alaska workers' compensation program has many strengths, recording and maintaining baseline data pertinent to rehabilitation is not among them. Gathering quantifiable data from all sources in the system was difficult, due to the incomplete nature of available records.

The primary providers of vocational rehabilitation services to injured workers in Alaska are the state vocational rehabilitation agency and two private rehabilitation firms. The state agency and one of the private firms supplied data retrieved from their automated data systems. Collection of data from the other private firm was precluded due to incomplete records which lacked essential information pertinent to the study. Limitations exist for the purpose of comparing data collected from the two sources.

First, data for the state rehabilitation program reflects a three-year period for fiscal year 1978 through fiscal year 1980. Data supplied by the private rehabilitation firm is for the period of July 1, 1980 through July 31, 1981.

Second, terms common to rehabilitation of disabled persons have several definitions for the purposes of statistics, depending on who collects and records the data. For example, a workers' compensation rehabilitation program, for purposes of closure statistics, defines a successfully rehabilitated worker as one who has 1) maintained paid employment for at least 60 days; 2) in a job consistent with restrictions imposed by the disabling condition. The state rehabilitation program considers a successfully rehabilitated person as one who has completed a rehabilitation program and has 1) maintained paid employment for at least 60 days in a job which may or may not be consistent with restrictions imposed by the disabling condition; or 2) has not returned to work, but has been restored to an optimum level of function such as an unpaid homemaker. The private rehabilitation firm describes a successful case as one in which the injured worker 1) returned to paid employment in a job which may or may not be consistent with restrictions imposed by the disabling condition; or 2) whose claim was closed or denied as a result of involvement of the rehabilitation firm. It is important to keep these limitations in mind when making comparisons between data presented for the two sources. Tables 5 and 6 present data received from the state vocational rehabilitation program. Tables 7 and 8 present data received from the private rehabilitation firm.

Although data limitations do not allow unequivocal conclusions to be drawn concerning workers' compensation rehabilitation in Alaska, several widely accepted ideas are supported by the figures presented in the tables. For both the state rehabilitation program and the private rehabilitation firm, the earliest referrals become, on average, the least expensive cases. While there is an anomaly in the trend at 19-24 months where both providers experienced an unexplainable dip in costs, the general direction is one of increased costs as the time between date of injury and the date of referral to rehabilitation increases. There appear to be differences between the state rehabilitation program and the private firm in terms of average cost. The private rehabilitation firm shows 75% of the cases with costs for services below $2,500 as reflected in Table 8a. A comparable figure for the state program can be seen in Table 6a, which shows 64% of the cases with costs for services below $2,500. This difference may be explained in several ways. First, as noted in Table 5, the average time from the date of injury to the date of referral to rehabilitation is 16.8 months for the state program and 11.8 months for the private rehabilitation firm as noted in Table 7. Given the relationships expressed in Tables 6b and 8b, it is reasonable to expect the state program's average costs per case to be higher than the private firm's cost per case. A second factor affecting costs is the average time spent in the rehabilitation process. The average number of months spent in the rehabilitation process for the injured worker served by the state program is 27 months for fiscal year 1980, as can be seen in Table 5. A comparable figure for the private firm is 7.4 months, as shown in Table 7. A third explanation for cost differences between the two programs may be reflected in Table 5 which shows 21% of the cases closed by the state program in fiscal year 1980 involved training, as compared to 3% of the cases for the private firm, which can be seen in Table 7. Training costs for tuition, books and supplies clearly add to the overall costs of services.

Table 5 shows that as the percent of workers receiving college training has decreased since fiscal year 1978, the percent of workers successfully rehabilitated has increased. This inverse correlation is consistent with reported results of the

TABLE 5. Data supplied by the Alaska Division of Vocational Rehabilitation (DVR).

Period	Total Cases Closed	Avg. Mos. in Rehab. Process	% College Training	# of Workers Successfully Rehabilitated	Avg. Cost/ Case	Avg. Cost/ Successful Case
FY80	61	27	21	33 (54%)	$2,280	$3,505
FY79	50	23	36	22 (44%)	1,615	2,821
FY78	48	32	38	20 (42%)	1,468	3,021

Remarks: The average time from date of injury to date of referral to rehabilitation was 16.8 months (derived from DVR data and injury dates reflected in the Division of Workers' Compensation records).

TABLE 6. Cost analysis and referral period — (DVR)

For 72 randomly selected closed cases during fiscal year 78 thjrough fiscal year 80.

a. Cost	#		b. Referral period	#	Avg. Cost/Case
0- 500	18		0- 6 mos. after injury	14	$2,168
500-1,000	9		7-12	26	2,391
1,000-1,500	9	64% below	13-18	10	2,494
1,500-2,000	7	$2,500	19-24	7	975
2,000-2,500	3		25-30	10	2,332
2,500-3,000	3		30-36	4	2,492
3,000-3,500	2				
3,500-4,000	7		36 and over	1	8,258
4,000-4,500	1				
4,500-5,000	3				
5,000 and over	10				

Remarks: Figures for 72 randomly selected cases closed for fiscal years 1978, 1979, and 1980. Thus, an average time from date of injury to date of referral to rehabilitation derived from Table 6b, will not correlate with the figure of 16.8 months noted in Table 5.

TABLE 7. Data supplied by private rehabilitation firm.

Period	# of Surveyed Cases Closed	Avg. Mos. in Rehab. Process	% Rec'd. Training	# of Workers Successfully Rehabilitated	Avg. Cost/ Case	Avg. Cost/ Successful Case
July 1, 1980 through July 31, 1981	188	7.4	3	91 (48%)	$1,685	$1,847

Remarks. The average time from date of injury to date of referral to rehabilitation was 11.8 months as reported by the firm.

TABLE 8. Cost analysis and referral period — private firm. For 188 case files closed between 7/1/80 and 7/31/81.

a. Cost	#		b. Referral period	#	Avg. Cost/Case
0- 500	49		0- 6 mos. after injury	44	$1,414
500-1,000	36		7-12	18	1,670
1,000-1,500	28	75% below	13-18	9	2,003
1,500-2,000	25	$2,500	19-24	7	1,875
2,000-2,500	13		25-30	7	1,926
2,500-3,000	12		over 30	6	2,198
3,000-3,500	11				
3,500-4,000	10				
4,000-4,500	4				
4,500-5,000	2				
5,000 and over	7				

study conducted by the California Workers' Compensation Institute, as well as beliefs embraced by members of the workers' compensation community regarding a higher success rate of shorter and less expensive programs over longer and more expensive programs.

While many inferences can be made from the data presented in Tables 5 through 8, it must be kept in mind that the percentage of injured workers involved in rehabilitation with respect to the total number of workers experiencing lost-time injuries is small. The Division of Workers' Compensation processed an average of 6,838 lost-time injuries for fiscal years 1978, 1979 and 1980. The administrator of the Second Injury Fund estimated 200 to 250 injured workers were determined eligible for fund expenditures in fiscal year 1980. This does not include those workers provided direct placement and other services, however, where expenditures from the fund were not required. It cannot be determined that a certain percentage of workers suffering lost-time injuries in a given fiscal year will receive rehabilitation services within that same fiscal year. Based on the estimate of the Second Injury Fund administrator, however, 3 to 4% of these workers eventually become eligible for such services. Table 9 presents comparable data for the state rehabilitation program and the private rehabilitation firm of such factors as the percent of workers with lost-time injuries who were provided services and the percent of workers with lost-time injuries who were successfully rehabilitated.

Survey of Injured Workers

A survey was conducted to measure the post-injury economic status of injured workers and to examine their reactions to the delivery system of rehabilitation in the Alaska worker's compensation program.

Injured workers surveyed fell into two main groups. The first group included workers who had signed compromise and release agreements which did not include provisions for rehabilitation benefits. Out of approximately 1,000 of such workers, 468 were randomly selected to be included in the survey. The second group included 142 injured workers who were certified as eligible for and referred to rehabilitation. A total of 610 injured workers were surveyed from the two groups.

Due to time constraints, problems experienced in obtaining correct addresses and incomplete answers to all questions, response to the survey was limited to the point that no definite conclusions can be drawn.

The survey called for subjective evaluation by injured workers of the rehabilitation services they received. The overriding concerns expressed by injured workers were the inordinate delays they experienced before referral to rehabilitation occurred, the lack of information available to them regarding their entitlement to rehabilitation benefits and the complexity of the system which necessitates obtaining attorney services. These concerns support the argument for positive administration and assistance by the Division of Workers' Compensation.

1. EARLY IDENTIFICATION OF INJURED WORKERS

A basic goal of rehabilitation in workers' compensation is the early identification of injured workers who may not be able to return to the job held at the time of injury, or who may eventually return to their regular work with comprehensive vocational rehabilitation services. In either case, the workers' compensation program must maintain systematic procedures for the reporting of these injuries by the insurance company and the screening of these reports by the workers' compensation agency. The Alaska workers' compensation system does not maintain such a procedure. The insurance companies are not required to file reports, timely or otherwise, indicating a worker's need for rehabilitation services or identifying the workers who are eventually provided these services. Based on available data, it appears that injured workers are not timely identified or referred for rehabilitation services in the Alaska

TABLE 9. Comparable rehabilitation data for Alaska workers' compensation program.

Provider of Services	# of Lost Time Cases	Closed Cases Received Services			Injured Workers Successfully Rehabilitated			Avg. Mos. in RHB	Avg. Cost per Case
		#	% Lost Time Cases	% Received Training	#	% Closed Cases	% Lost Time Cases		
1/ Private Firm	7,784	188	2.4	3	91	48	1.1	7.4	$1,685
2/ DVR	6,356	61	1.9	21	33	54	0.5	27	3,505

Remarks: 1/ Data provided covered period of July 1, 1980 through July 31, 1981.
2/ Data provided by Division of Vocational Rehabilitation for FY 80.

workers' compensation system. There is no universally accepted, hard and fast rule regarding the point at which an injured worker should be referred to rehabilitation. Average recovery time for the bulk of industrial injuries, back strains and sprains, and the acuteness of other more serious injuries serve as guidelines for most workers' compensation agencies in deciding when to initiate vocational rehabilitation services. While specific time frames vary among workers' compensation agencies, the general rule of thumb applied is, services should be initiated as soon as it appears the worker is unlikely to be able to return to his pre-injury employment. Using this rule of thumb, several study groups suggest 120 days of continuous lost-time as the time when reports regarding the worker's need for services should be filed. Administrative rules of the Oregon workers' compensation program range from within 96 hours of the insurer's knowledge of seriously injured workers who are hospitalized, to 90 consecutive days of lost-time for less seriously injured workers. Additionally, workers who have suffered intermittent lost-time of 190 days from the date of injury must also be reported to the Oregon Workers' Compensation Division. The Idaho Industrial Commission has no specific reporting requirements of insurers or employe
When vocational rehabilitation services
needed as determined by the adjuster, a requ
made for the assistance of the Industrial Commission's rehabilitation staff in initiating rehabilitation services. Still, the Office of Workers' Compensation Programs, in administering the Longshoremen's and Harbor Workers' Compensation Act, requires the insurer to report injured workers who continue to receive compensation payments 60 days from the date of injury. Immediate reporting is encouraged of workers who suffer catastrophic or acute injuries.

The workers' compensation agency, in attempting to meet the early identification goal, must balance the reporting requirements of the insurer with its capability to timely screen these reports. This capability is determined of course by the staff and resources of the workers' compensation agency. The purpose of timely reporting will be undermined if the agency is not sufficiently staffed to screen the reports and monitor provision of rehabilitation services to workers who need them.

Recommendation 1.1

That insurers employers report to the Division of Workers' Compensation:

a. all injured workers who experience continuous lost-time of 90 to 120 days from the date of injury, depending on the staffing level of the division, and

b. all acutely injured workers where an immediate determination can be made that the worker will not likely be able to return to the job held at the time of injury.

Recommendation 1.2

That the Division of Workers' Compensation screen reports no later than five working days from the date each report is received.

Recommendation 1.3

That subsequent to, or during the screening process, the Division of Workers' Compensation contact each reported worker. The purpose for contact is to explain the benefits to which the worker may be entitled and to set the tone for a positive rehabilitation outcome, by explaining the objective of rehabilitation, and the worker's rights and responsibilities in the rehabilitation effort.

Recommendation 1.4

That the Division of Workers' Compensation establish and publish the procedural mechanism to support the reporting, screening and contacting activities.

2. PROVISION OF REHABILITATION SERVICES BY COMPETENT COUNSELORS

The unusual characteristics of workers' compensation and the different approach required for successful rehabilitation, as this report has previously elaborated, are strong arguments for the use of counselors trained in industrial rehabilitation. While this training does not require an intimate knowledge of the law, it should include the ability to recognize the needs of the industrially injured population and the compensation community alike. The backgrounds of most rehabilitation professionals include formal training in rehabilitation or a behavioral science. However, institutions have traditionally failed to include substantial courses on workers' compensation in their schools of rehabilitation. Thus, the degree of competence required to achieve success in a workers' compensation rehabilitation program has generally been acquired through well-designed, in-service programs and practical hands-on experience.

Counselors presently providing rehabilitation services to injured workers covered by the Alaska Workers' Compensation Act are presumed to have sound backgrounds in basic rehabilitation principles. However, a review of rehabilitation plans, reports and correspondence, as well as views expressed by these counselors, raises questions regarding whether remaining critical elements are sufficiently present to meet the objectives of a workers' compensation rehabilitation program.

First, some counselors appear not to understand their roles as they attempt to interpret laws to the board regarding a worker's entitlement to rehabilitation benefits, and they inappropriately make recommendations to the board regarding settlement of workers' claims.

Second, it appears that some counselors are unable/unwilling to deliver services in a manner consistent with supporting the objectives of the workers' compensation system. Services are not timely delivered (six months to complete a vocational evaluation and make recommendations). Training plans are developed prior to pursuing opportunities for direct return to employment. Some plans do not clearly define the vocational objective of the worker, or provide information regarding the type, scope and time frames within which services are to be provided. In cases where the vocational goal is defined, subsequent reports do not reflect specifically what has been accomplished toward achieving the goal.

Third, some counselors believe the system should afford a "pure" environment within which rehabilitation services can be provided to workers. They should not be required to interact with insurance adjusters, attorneys or the board, as this interferes with their ability to effectively deliver services.

Finally, it appears that a number of counselors are unprepared/unwilling to accept the board's authority to make decisions regarding the rehabilitation of injured workers covered by the Act. Board requests for information in support of recommended plans are questioned or ignored. In some instances, attempts to coerce board approval of Second Injury Fund expenditures are made simultaneously to the counselor's overt resistance to the board's requests for information needed to support a plan recommended by the counselor.

Clearly, the lack of regulations, definitive procedures and guidelines for provision of vocational rehabilitation has affected the performance of counselors providing services to injured workers covered by the Act.

Recommendation 2.1

That pursuant to the adoption of regulations on vocational rehabilitation, the Division of Workers' Compensation establish, publish and distribute guidelines for providers of rehabilitation services in accordance with Recommendation 2.2 through 2.5 and the following time frames:

- Completion of vocational evaluation and plan recommendation—six weeks
- Complete development of plan—six weeks
- Direct placement program—three months
- On-the-job training—three to six months, depending on the skills to be acquired coupled with the skill level of the injured worker
- Vocational training—52 weeks (extensions subject to prior approval by the board)

Recommendation 2.2

That rehabilitation providers issue a report within 30 days of initial contact with an injured worker. Background information regarding the worker's age, education, work history and general medical condition, as well as a summary of activities conducted during the 30-day period, should be included in the report. Information regarding the next immediate plan of action should also be included.

Recommendation 2.3

That plans submitted for approval contain pertinent information as outlined in proposed regulations on Vocational Rehabilitation 8 AAC 47.040(b)(1) through (9).

Recommendation 2.4

That subsequent to implementing plans, rehabilitation providers issue monthly progress reports sufficient in content and scope to inform all interested parties of the progress being made toward achieving the vocational goal of the plan.

Recommendation 2.5

That approval by the board must be obtained prior to amendment, suspension or termination of an approved rehabilitation plan.

Members of the rehabilitation community in Alaska have expressed concern regarding the provision of rehabilitation services by persons with proper credentials. The Alaska Rehabilitation Association, an affiliate of the National Rehabilitation Association, reports it is currently taking steps to address this concern. The priority of the Association as reflected in its constitution and bylaws is the certification of rehabilitation professionals practicing in Alaska. In general, setting standards and ethics for rehabilitation practitioners is best left to the

professional associations. However, the basic objective of rehabilitation in a workers' compensation system must be kept uppermost in mind in establishing guidelines and standards for professionals providing services to industrially injured workers. The performance of rehabilitation providers must be measured against these standards, which the system must determine it needs in order to achieve the purpose for which the workers' compensation system was established. The timely return of injured workers to safe employment commensurate with that held at the time of the injury, the cost-effectiveness of services, and the understanding as well as the responsiveness of providers to the needs of injured workers and the compensation system alike are the ultimate credentials which will determine the suitability of rehabilitation professionals providing services in the compensation system.

3. PROVIDE FOR EARLY RETURN TO DIRECT EMPLOYMENT

The extent to which injured workers are provided opportunities for return to direct employment is a primary determinant of the ultimate success of rehabilitation in a workers' compensation program. Administrators of rehabilitation programs for the Idaho Industrial Commission and the Office of Workers' Compensation Programs (OWCP), as well as others in the industrial rehabilitation community, support this premise. The Idaho program states as its primary goal: "The earliest possible return of the injured worker to meaningful safe work." The OWCP, in an effort to improve its rehabilitation program, has developed/endorsed return-to-work programs for injured workers covered by the Longshoremen's and Harbor Workers' (LHCA) and the Federal Employees' Compensation Act (FECA). According to information received from the OWCP, 763 injured workers were successfully rehabilitated under the FECA for fiscal year 1981. Sixty-eight percent of these workers were reemployed by their previous employers. (See Table 10 for data on the rehabilitation programs of the federal acts).

Insurance companies can be instrumental in helping employers develop reemployment programs. A carrier for a large employer covered under the LHCA reports services provided the employer in establishing a reemployment program approved by the OWCP resulted in the employer rehiring 18 injured workers over a nine-month period during fiscal year 1981. A $1.25 million savings in projected compensation payments resulted from this effort. Additionally, the employer reported higher morale and a reduction in suspected fraudulent claims as additional payoffs. The benefits to be derived from reemployment of injured workers by their previous employers is obvious.

There is little evidence in support of Alaska employers providing measurable opportunities for reemployment of injured workers. One self-insured reported having an organized return-to-work program. Figures to substantiate this effort were not afforded. The risk manager of a major employer in Alaska indicated an extensive feasibility study has been conducted over the past year in preparation for developing a comprehensive reemployment program. A precious few employers reported limited efforts of temporarily assigning injured employees to light duty. On the whole, emloyers readily proclaim the nature of their business precludes rehiring their injured employees: their operations simply cannot accommodate workers with less than full body integrity. Insurers' comments contributed little to modify or change the complexion of this proclamation. Neither party admitted to having particular knowledge of how to improve this present state of affairs, although the suggestion of some insurers regarding performance of on-site job analysis, in cases of reemployment dispelled the notion of complete unawareness in this matter.

OFFICE OF WORKERS' COMPENSATION PROGRAMS

TABLE 10. Vocational Rehabilitation Performance Report FY 81.

Program	# of Compensated Lost-Time Cases	Cases Screened for Services		Cases Opened for Services			Injured Workers Successfully Rehabilitated				Avg. Mos. in RHB	Avg. Cost Succ. Case
		#	% of Lost-Time Cases	#	% of Compensated Cases	% Rec'd Training	#	% of Cases Opened	% RTW w/Prev. Emp.	% of Compensated Cases		
1/LHCA	19,082	4,947	26	947	5	28	386	41	23	2.0	23	$1,500
2/FECA	47,982	7,608	16	2,214	5	11	763	34	68	1.6	18	2,000

Remarks: 1/ Longshoremen's and Harbor Workers' Compensation Act
2/ Federal Employees' Compensation Act

Recommendation 3.1

That insurers provide assistance to employers in developing programs for reemployment of injured workers.

Recommendation 3.2

That insurers/employers arrange for counselor services to include on-site job analyses and assistance in modification of jobs to enhance reemployment opportunities for injured employees.

Recommendation 3.3

That the Division of Workers' Compensation encourage the development and implementation of reemployment programs by providing positive monitoring/endorsement of the efforts of all parties.

Recommendation 3.4

That contractual agreements be negotiated between management and labor for reemployment/rehabilitation of injured union members.

4. MAINTENANCE OF ATMOSPHERE CONDUCIVE TO REHABILITATION

Rehabilitation is a process which does not occur in isolation. The conditions and atmosphere surrounding this process are primary determinants of its eventual outcome.

The element of concern is sufficiently intangible to render itself unmeasurable in a quantifiable way. It is therefore difficult to present an elaborate discussion on the extent to which insurers/employers in Alaska are concerned about their injured employees during the course of their claims. This would require a detailed examination of randomly selected files maintained by carriers, with particular notations made of such items as timeliness of first and subsequent compensation payments, timely and adequate provision of medical and rehabilitation services, the extent to which workers are advised of their entitlement to benefits, etc. Moreover, the quality of contacts between the injured worker and the insurer/employer would be difficult if not impossible to capture. The elements of communication, coordination and commitment lend themselves to more discussion, particularly in regard to rehabilitation.

In general, the extent and timeliness of communication with injured workers seem inadequate for the purpose of supporting a successful rehabilitation program. First, the lag between date of injury to date of referral, as previously noted, supports the conclusion that injured workers are not timely contacted and advised of their entitlement or potential need for rehabilitation services. Second, rehabilitation reports and other correspondence reflect communication is sporadic and generally inadequate to ensure the rehabilitation effort of a successful and cost-effective outcome. Progress in rehabilitation plans is not timely monitored or timely reported. Concurrently, coordination of activities necessary to develop realistic return to work plans is insufficient, so that inordinate delays and interruptions occur to the detriment of injured workers, the rehabilitation program and the compensation system alike.

As to the extent of commitment to rehabilitation in the Alaska system, the time lag from date of injury to referral for services, and the percent of lost-time workers provided services, coupled with the percent of lost-time workers successfully rehabilitated, indicate this element too, is inadequate to support a rehabilitation program.

Recommendation 4.1

That insurers/employers increase their efforts to effectively and timely communicate with injured workers by contacting them as soon after the injury as possible to explain their entitlement to benefits and the procedure for securing these benefits.

Recommendation 4.2

That in the case of workers experiencing lost-time, who may need rehabilitation services, insurers/employers assign a counselor to contact the worker as soon as this determination can reasonably be made.

There is a developing trend among leading insurance companies to hire rehabilitation personnel who serve as a communication link between the injured worker and insurance company, as well as other appropriate parties in the system. These personnel assist in creating an atmosphere conducive to an early return to work and facilitate coordination and development of rehabilitation plans for those workers who may not be able to return to employment without training.

Recommendation 4.3

That insurers/employers consider hiring a rehabilitation professional to enhance their ability to effectively communicate with, and timely provide services for injured workers.

5. PROVISION OF INCENTIVES, REMOVAL OF DISINCENTIVES

Incentives

Experience and retrospective rating. The extent to which these methods are used in rating Alaska employers is unknown and is beyond the scope of this report. Their suggested uses by authorities in workers' compensation has been sufficient to present them as incentives for employers to reemploy their injured workers.

Recommendation 5.1

That insurers assist employers by providing loss-control services to assure appropriate rating consistent with their safety record and reemployment practices.

Recommendation 5.2

That to supplement the loss-control services provided by insurers, employers seek the assistance of the state Division of Insurance in rating matters and methods.

Targeted Jobs Tax Credits. According to the Division of Employment Security, Alaska employers rarely take advantage of this tax credit when employing the industrially injured worker. Several factors, such as eligibility criteria and employer awareness, may be influencing this. The extent to which counselors adequately advise employers of this incentive when attempting to place injured workers in unknown.

Recommendation 5.3

That counselors enhance their efforts to place injured workers by informing employers of targeted jobs tax credit provisions and by providing assistance necessary to facilitate employer participation in this program.

Additional Maintenance. Injured workers undertaking a rehabilitation program can receive up to $200 in additional maintenance to defray extra expenses incurred during their rehabilitation program. This provision appears to be adequately serving the purpose for which it was established in the Alaska workers' compensation program.

Second Injury Fund. The Alaska Workers' Compensation Act has provisions for a Second Injury Fund to be administered in accordance with orders and awards of the board. (AS 23.30.040(a)). Subsection (e) authorizes expenditures for rehabilitation expenses and maintenance during the period of rehabilitation which may not exceed $10,000 for one person.

When it comes to placing limitations on rehabilitation benefits in a workers' compensation system, there is an inherent problem in stating these limitations in monetary terms. More than likely, expectations and rehabilitation plans are designed around the upper limits of the dollar amount, rather than around what services are actually needed to make the injured worker employable. The injured worker believes his is an undeniable right to a program which costs $10,000, even though a less expensive program may be more appropriate to restore his employability. The counselor views the $10,000 as the worker's personal account which he has a right to exhaust by charging the costs of items and services superfluous to his rehabilitation program. In settlement negotiations, the attorney seeks to include $10,000 for rehabilitation benefits in the total settlement, which he argues is his client's right. All parties appear to have forgotten the basic tenet in a workers' compensation rehabilitation program: The injured worker's right to rehabilitation services coexists with the need of the worker for such services. The type, scope and duration of a rehabilitation program will vary with each injured worker, depending on such factors as skill level, education, age and extent of disability. It is therefore a reasonable assumption that the cost of services will vary for individual programs. Provisions for rehabilitation should be made with this in mind, which is the current practice in most compensation systems.

Recommendation 5.4

That language in AS 23.30.040(e) be changed from dollar amount to provide for necessary costs of rehabilitation services subject to board approval.

This provision would enhance continual efforts of the board to provide necessary expenditures for workers seeking to rehabilitate themselves back to the work place and at the same time, protect the investment of insurers/employers who support the fund.

There appears to be a lack of employer awareness regarding the existence or purpose of the Second Injury Fund and its provision for preexisting conditions, under AS 23.30.205. This incentive will not realize its basic purpose if employers are not aware of its nature or not encouraged to use the fund appropriately.

Recommendation 5.5

That the Division of Workers' Compensation increase employer awareness and encourage employer use of the Second Injury Fund in employment of industrially injured workers.

Increased publicity and eligibility interpretation will enhance this effort.

Provisions also exist for the board to make cooperative arrangements with insurance companies, private organizations and institutions, and state or federal agencies to provide rehabilitation services to injured workers covered by the Act. Through the end of fiscal year 1981, the board maintained a cooperative agreement with the Alaska Division of Vocational Rehabilitation. The agreement permitted transfer of lump-sum funds from the Second Injury Fund on a fiscal year basis, to the Division of Vocational Rehabilitation, for the provision of rehabilitation services to injured workers in the compensation system. Currently, a cooperative agreement does not exist between the two agencies. This is due to unresolved differences surrounding the board's authority to approve rehabilitation plans submitted by counselors of the Division of Vocational Rehabilitation, requiring Second Injury Fund expenditure. The wisdom of transferring lump-sum Second Injury Fund monies to the agency, and attempting to renew a cooperative agreement between the two agencies is questionable for at least three reasons. First, the obsolete practice of forming cooperative agreements between a compensation and state rehabilitation agency has been sufficiently discussed in Part One of this report. Second, removal of Second Injury Fund monies from the administration of the Commissioner of Labor, by transferring them to another agency which has no administrative oversight in the workers' compensation system, undermines the Commissioner's ability to effectively administer the fund in accordance with the orders and awards of the board. The last reason has legal implications. As the law clearly assigns the administrative responsibility of the fund to the Commissioner, and transfer of monies from the fund undermines the Commissioner's ability to discharge that responsibility, it would appear that meeting the requirement of the law is precluded by a cooperative agreement. This issue is of particular importance in view of the reluctance of the Division of Vocational Rehabilitation to respect the board's authority to approve rehabilitation plans requiring expenditure of Second Injury Fund monies.

Recommendation 5.6

That cooperative agreements involving transfer of Second Injury Fund monies to the Division of Vocational Rehabilitation be discontinued.

Recommendation 5.7

That criteria for development, recommendation and implementation of rehabilitation plans, in accordance with Recommendations 2.1 through 2.5, be applied to all providers of vocational rehabilitation services to persons covered by the state compensation laws.

Disincentives

Premature Compromise and Release Settlements. Authorities on workers' compensation are strong opponents of settlements which prematurely preclude an injured worker's participation in a supervised rehabilitation program. There is a real concern for the worker who settles his claim and releases his rehabilitation benefits. He may quickly exhaust his settlement funds and find himself with inadequate skills to earn a living.

That workers submit applications for settlements to fund proposed self-employment ventures, in lieu of participation in a supervised rehabilitation program, is common knowledge in the Alaska workers' compensation community. Almost equally as common, and particularly disturbing, are the recommendations for such plans without adequate documentation to support their soundness or feasibility. Motivations vary among the parties making unfounded recommendations for such plans.

> The injured worker views it as an opportunity to do what he has always wanted to do. Besides, he will not have to work as hard if he can work at his own pace.
>
> The insurer/employer suggests it as a mutual agreement which affords an equitable solution toward the disposition of the claim. It will also relieve the insurer/employer of any future liability related to compensation and rehabilitation benefits.
>
> The injured worker's attorney argues it will allow his client to get on with resuming a normal life. It will also afford the attorney an immediate appreciable fee.
>
> The rehabilitation counselor opines: "Given the worker's vocational evaluation results, his interests and motivation to succeed, the proposed venture will afford him a realistic vocational goal." It will also provide the counselor with much-needed relief from the task of developing a sound rehabilitation

plan, which has been difficult if not impossible to achieve in light of the worker's resistance to any plan other than the self-employment venture.

In instances such as these, all parties seem to lose sight of the goal of rehabilitation: the return of the injured worker to gainful employment by restoring the ability to earn a living. An injured worker's desire to start his own business is inappropriately equated with the goal of rehabilitation. A self-employment plan may restore the worker to gainful employment which will afford him a livable wage, and thus is a means to an end. An unsound plan, however, may not afford him a sufficient income and will thereby fail to achieve the ultimate goal of rehabilitation. This is not to suggest that all self-employment plans are unsound and thus should not be considered, or that all workers must participate in an approved rehabilitation plan before a claim can be settled. It is suggested, however, that each plan must be carefully evaluated for its soundness and potential for successfully returning the worker to gainful employment. In cases not involving self-employment plans or supervised rehabilitation programs, claims should be settled only after a determination has been made that to do so is in the best interest of the injured worker.

Recommendation 5.8

That as a general policy, the board deny settlement of claims prior to an injured worker's completion of a supervised rehabilitation program.

Excessive Litigation. Rehabilitation professionals providing services to injured workers in Alaska readily attest to the activities of both the plaintiffs' bar and defense attorneys as interfering in the rehabilitation process. Indeed, this seems to be borne out by testimony offered during the public hearings on workers' compensation, and in the claims files of injured workers. Excessive litigation serves little if any purpose in the rehabilitation process, and if allowed to exist, will undermine the primary objectives of rehabilitation. As suggested earlier, regulations, guidelines and well-defined procedures regarding rehabilitation will remove much of the need and opportunity to litigate. (See Recommendations 2.1 through 2.5.)

Other Stimuli. Parties who refuse to cooperate or who sabotage the rehabilitation effort by passive-aggressive means, should be encouraged to cooperate through the application of remedial penalties acting upon both the insurer/employer and the injured worker similarly. The board has authority to apply such remedies in the Alaska workers' compensation system. A review of the board's more recent decisions and orders reflects increased efforts to make sufficient application of these remedies in support of the rehabilitation objectives.

Administrative Organization. The key to an effective delivery system of rehabilitation benefits is the workers' compensation agency's active pursuit of its administrative obligations which this report has previously elaborated. The delivery system can perform well if the Division of Workers' Compensation has authority commensurate with its responsibility and is given the staff and resources sufficient to fulfill its obligations.

Recommendation 5.9

That the Division of Workers' Compensation acquire sufficient staff to develop and implement a rehabilitation program designed to administer and monitor the rehabilitation of industrially injured workers covered by the Alaska Workers' Compensation Act.

Recommendation 5.10

That the Division of Workers' Compensation establish procedures for collecting and analyzing data pertinent to determine the effectiveness of its rehabilitation program.

Members of the Alaska workers' compensation community must agree on the overriding objective of rehabilitation in workers' compensation. It is not an education benefit, a guaranteed training program or a money system, as is the view of some participants. It is not a legalistic system as some attorneys seek to make it. Neither is it a system solely designed to control claims and costs, which may be the view of loss-control technicians or claims adjusters. Instead, the resources and services are provided to restore the injured employee to work. The system must recognize and maintain this return-to-work objective if it is to achieve its basic purpose.

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Appendix A

Glossary

adequate: sufficient for what is needed or required; delivering sufficient benefits and services to meet the objectives of the program.

catastrophic injury: damage to a body part caused by an acute, traumatic episode resulting in a severe anatomical or function loss (see injury).

experience rating: a method of rating based on the individual employer's previous loss experience relative to the average employer in his class and the statistical reliability of that experience.

developmental disability: a condition resulting from a physical or intellectual impairment as a consequence of abnormal neurological or cerebral development.

disability: a condition resulting in loss of earnings or earning capacity caused by an impairment.

gainful employment: paid employment which restores the injured worker to maximum self-support.

habilitate: to educate or train (the physically or mentally handicapped) to maximize their ability to function in society.

impairment: an anatomic or functional abnormality or loss.

industrial rehabilitation: restoration of earning capacity of a person whose disability is a consequence of a job-related injury or disease (see vocational rehabilitation).

injury: damage to the body resulting from an acute traumatic episode.

plan: a proposal of services to be performed by a rehabilitation provider with a goal of returning the injured worker to gainful employment.

regulations: rules applied by the board to govern the delivery system of worker's compenstion benefits.

rehabilitate: to restore to a normal or optimum state of constructive activity.

rehabilitation provider: any federal, state or local government agency, or any public or private entity performing services designed to return the injured worker to gainful employment.

retrospective rating: a form of experience rating under which an employer pays a premium which varies with his own loss experience during the policy period.

safe work: gainful employment consistent with a worker's physical and mental capacity and vocational skills.

second injury fund: a special fund which assumes all or part of the liability for benefits provided to a worker because of the combined effect of a work-related impairment with a pre-existing condition.

severe disability: a serious or grave condition caused by an anatomic or functional abnormality or loss, resulting in a loss of earning capacity.

vocational rehabilitation: a program of services, not limited to medical services, designed to restore an injured or disabled worker to gainful employment.

Appendix B

Chronological Development of Workers' Compensation in Alaska, 1915 - 1981

Year	Brief Summary of Laws and Changes
1915	First Alaska Workmen's Compensation Act passed. Covered miners only. Employers and employees permitted to elect not to come within the provisions of the Act. Schedule of lump sum benefit payments established. No provision for medical, surgical, hospital treatment, rehabilitation, and second injury fund. (Ch. 71 SLA 1915).
1923	Repeal of 1915 Act and passage of new law. Language and format of old Act for the most part contained in new law. Coverage extended to all employments except domestic service, agriculture, dairying and the operation of railroads as common carriers. Schedule of benefits increased in all classifications. (Ch. 98 SLA 1923).
1925	Amendment to place responsibility for providing medical, surgical and hospital treatment for injured employees on the employer. (Ch. 63 SLA 1925).
1927	Repeal of prior compensation laws and enactment of new law. Payments allowed under schedule of benefits increased. Temporary partial and total disability compensation increased from 50% of weekly wages to 65%. Interest at 8% per year permitted as a charge against employers on overdue payments to employees. Right to lien on property of employer for full amount of compensation owing. (Ch. 13 SLA 1927).
1929	Repeal and substantial reenactment of existing law. Definition of "child," "widower," and "married" added. (Ch. 25 SLA 1929).
1935	Amendment to change provisions relating to payments to beneficiaries. Employers no longer required to pay transportation costs of injured employees in connection with medical, surgical, or hospital treatment. (Ch. 84 SLA 1935).
1937	Amendment to make insurers parties defendant in actions or proceedings brought under the Act. (Ch. 63 SLA 1937). Amendment to change waiting period after an injury from one week to one day in addition to the day on which the injury occurred. (Ch. 74 SLA 1937).
1941	Amendment to fix time for payment for any temporary disability compensation, defining "wage earning capacity" of an employee. (Ch. 44 SLA 1941).
1946	Existing law repealed with enactment of new "compulsory" type law eliminating right of employees and employers to "elect" whether or not to come within the provisions of the law. Self-insurance by employers permitted. Schedule of benefits substantially the same as provided in the 1929 law. Second Injury Fund established. (Ch. 9 ESLA 1946).
1949	Section pertaining to liens to secure compensation modified. (Ch. 104 SLA 1949).
1951	Alaska Industrial Board reconstituted to include the Auditor in place of the Insurance Commissioner to serve with the Attorney General and the Commissioner of Labor. (Ch. 133 SLA 1951).
1953	Alaska Industrial Board again reconstituted and the Auditor replaced by the Insurance Commissioner. Other members remained unchanged. (Ch. 24 SLA 1953). Coverage extended from employers employing three or more persons to those employing one or more persons. Death and partial permanent disability benefits roughly doubled. Length of time employers required to provide medical and related treatment increased from one year to two years following injury. Period employees required to wait following an injury before compensation begins increased from two days to three days. Limited temporary disability payments to twenty-four months and provided a ceiling of $75 per week to any claimant. (Ch. 60 SLA 1953).
1955	Maximum weekly compensation to be paid during any temporary disability increased from $75 to $100. Employer liability for providing medical and related services increased from two to four years following the injury (Ch. 141 SLA 1955).

1959 A new and comprehensive workers' compensation law was passed for Alaska. Detailed provision on aspects of administration and insurance were included. The new law called for the appointment of an Alaska Workers' Compensation Board consisting of the Commissioner of Labor, one labor representative and one industry representative.

1960 Second Injury Fund contributions increased. In cases of fatally injured workers with no dependents, employers (carriers) must pay a flat $1,500 into the Fund. In-training maintenance allotments for injured workers increased from $50 to $100 per month.

1961 Public hearings held on the possibility of establishing a nonprofit exclusive state fund and the workers' compensation then in effect. Two legislative proposals for establishing a state fund did not pass.

1962 Insurers must provide claims adjustment facilities. Funeral expense allotment increased from $500 to $1,000. Executive officers permitted to waive coverage under the Workers' Compensation Act. Exclusiveness of liability clarified (fellow employees cannot be liable). Two year period for employer liability on medical treatment established, with the Board authorizing all treatment after that. Four-year limit for filing in case of occupational disease established.

1963 Rehabilitation benefits extended to compensate in situations where temporary total or temporary partial benefits have been exhausted. Penalty of misdemeanor established for anyone interfering with the selection of an authorized physician, or for improperly influencing the work of an authorized physician.

1964 Penalties added for failure to insure. Definition of injury broadened. Benefits increased for temporary total and permanent partial disability.

1965 $3,500 maximum allowed for all serious disfigurement of face, head, etc. Two panels established to assist the board in hearing claims.

1966 Second Injury Fund contribution rate increased to 5% of permanent partial losses. Spending limit for rehabilitation increased to $5,000 per case. Death benefits for survivors increased. Maximum weekly compensation increased from $81 to $100 per week.

1968 Board empowered to approve lump-sum payments in cases of unscheduled permanent partial injuries. Eligibility for Second Injury Fund money clarified. Maximum weekly compensation increased from $100 to $113.

1970 Permanent partial disability benefits increased. Contribution rate to Second Injury Fund increased to 8% of permanent partial disability losses. Maximum weekly compensation increased from $113 to $127.

1972 Benefits increased to scheduled permanent partial disability. Maximum weekly compensation increased from $127 to $175. Minimum increased from $25 to $65 per week. Employer liabiality, when the state, a home rule or other political subdivision of the state awards a contract, clarified. If the contractor fails to maintain a valid insurance policy, the state may either terminate the contract or continue the premium payments on the contractor's behalf.

1974 Section on benefit adjustment added to the statute. Benefits for temporary and permanent disabilities shall be calculated according to currently existing benefit rates, and not the rates at time of injury, except in cases where the new rate would cause a decrease in benefits. Death benefits increased for surviving spouse or children. Maximum weekly compensation for permanent total disability increased to $175.

1975 Five-step increase in maximum weekly benefit level passed. Maximum levels go from 80% of state average weekly wage on July 1, 1975 to 200% of state average weekly wage on January 1, 1981. Legislation doubles the maximum compensation allowed for scheduled permanent partial disabilities. Compensation rate for death benefits in case of surviving spouse only or children only, raised to 67% of deceased's average weekly wage. In cases of surviving spouse only, benefits to be paid until remarriage. $75,000 maximum total benefits for surviving spouse removed, as was $30,000 maximum for temporary

partial and permanent partial disability. Determination of state average weekly wage now based on three consecutive quarters of state wage data ending June 30th of the year in question.

1976 Out-of-state claimants receive adjusted benefit based on the ratio of a given state's average weekly wage, to Alaska's average weekly wage. National Council on Compensation Insurance designated the statistical agency for the Division of Insurance with respect to underwriting experience in workers' compensation insurance.

1977 Unscheduled permanent partial disability maximum compensation established at $60,000. Death benefits reduced for widows or widowers under age 52, except in cases where the widow or widower is permanently and totally disabled, at the time of the deceased worker's death. A Social Security offset established. Basis for calculating benefits changed. Average weekly wage in any one of the three calendar years immediately preceding the injury used in order to compute benefit levels.

1979 Workers' compensation coverage may be extended by a political subdivision to volunteer ambulance attendants and policemen. Workers' Compensation Board increased from five to seven members.

1981 Second Injury Fund solvency strengthened as the contribution base expands and the contribution rate becomes flexible according to the fund's reserves at year end. Expense limits for rehabilitation are increased. The Alaska Workers' Compensation Board increased to nine members. Reporting requirements for carriers strengthened to facilitate more accurate cost and injury data collection by the Division of Workers' Compensation. The Legislature funded a study of vocational rehabilitation of injured workers to be completed early in the Second Session of the Twelfth Legislature. Limit for rehabilitation expenditure increased to $10,000.

Appendix C

Proposed Alaska Workers' Compensation Board Regulations

CHAPTER 47

VOCATIONAL REHABILITATION

8 AAC 47.010. Goal of Vocational Rehabilitation. The board shall direct and provide for the vocational rehabilitation of employees entitled under the Act. Vocational plans formulated under the Act and this chapter must be designed to restore the injured employee to gainful employment. (Eff. / / , Register).

Authority: AS 23.30.005
AS 23.30.040

8 AAC 47.020 Duties of the Parties. (a) The employer, the self-insurer, the insurance carrier, and the employee shall promptly recognize the need for the evaluation of vocational rehabilitation and shall initiate necessary action to restore the injured employee to gainful employment as expeditiously as possible.

(b) The employee shall cooperate in all phases of vocational rehabilitation. The employee shall promptly and responsibly participate in a board-approved vocational plan when ordered to do so by the board. If the employee does not choose to enroll in a vocational plan, nothing in this chapter is to be interpreted so as to require the employee to do so. However, in cases where the employee chooses not to enroll in a vocational plan, or unreasonably refuses to complete a vocational plan, the degree of permanent partial disability will be determined as though the employee had enrolled in, and successfully completed, the vocational plan. The employee shall notify the board and the employer within 14 days of the first consultation with a vocational rehabilitation representative.

(c) The vocational rehabilitation representative shall notify the board and all interested parties within 14 days of the first consultation with an employee. Thereafter, the vocational rehabilitation representative shall file regular monthly reports with the board during the consultation period. Within 14 days of the final consultation, the vocational rehabilitation representative shall file a report of consultation which must contain findings, conclusions and recommendations regarding vocational rehabilitation. (Eff. / / , Register).

Authority: AS 23.30.005
AS 23.30.040

8 AAC 47.030. Evaluation Analysis. (a) No vocational plan may be initiated until board approval has been secured. Board approval may be secured by any party by filing a petition for initiation of a vocational plan, accompanied by a written evaluation analysis. Copies of the petition and the evaluation analysis must be served upon all parties and the administrator of the Alaska Second Injury Fund, in accordance with 8 AAC 45.060.

(b) A written evaluation analysis must be accompanied by copies of all medical reports referred to in the analysis and must, in addition, include

(1) an assessment of the employee's employable skills, including a synopsis of his work history and educational background;

(2) a summary of the disabilities limiting the employee's employment opportunities; and

(3) a specific accounting of the employee's pre-injury wage and an assessment of his post-injury wage-earning capacity.

(c) After the complete, written evaluation analysis has been filed the boar will review the factors discussed in the analysis and will determine whether the employee is able to return to his previous employment or to modified employment or whether, instead, direct job placement, on-the-job training or formal retraining is necessary in order to return the employee to gainful employment.

(d) If the board determines that formal retraining is necessary, it shall direct the employer or the employee, or both, to initiate a vocational plan in accordance with 8 AAC 47.040. The board will give preference to direct job placement and on-the-job training over a formal retraining program. (Eff. / / , Register).

Authority: AS 23.30.005

8 AAC 47.040. Vocational Plans. (a) Following evaluation in accordance with 8 AAC 47.030, a vocational plan may be initiated by direction of the board or by any person. Vocational plans must be developed by a qualified rehabilitation representative designated by either the employer, the carrier, the self-insurer, the employee, or the board.

(b) Proposed vocational plans must be submitted to the board in the form of a petition by the person responsible for initiating the vocational plan. The petition must be in writing and must include

(1) the gainful employment objectives of the vocational plan, including estimated earnings and reasonable availability of gainful employment;

(2) the name and location of the educational institution, public or private vocational training agency, or company or business involved in the vocational plan;

(3) the nature, extent, and duration of services to be provided during the period of rehabilitation;

(4) the dates of commencement and expected completion of the vocational plan;

(5) a statement regarding the general financial condition of the employee;

(6) the amount of weekly income maintenance benefits, tuition, fees, and transportation costs, if any, and the time and manner of such payments to the employee during the period of rehabilitation;

(7) the employee's written acceptance of the plan, plus any comments the employee desires to make a matter of record concerning why the plan is in his best interests;

(8) the name of the rehabilitation representative who prepared the plan, a complete description of his or her qualifications, and the name and address of the representative's institution, agency, or company; and

(9) all medical, psychological, and vocational evaluation reports related to the case.

(c) Objections to a vocational plan must be filed in writing with the board within 10 days of the date of service of the plan upon the board.

(d) Upon receipt of written objections, or where it appears obvious that the employee and the employer are unable to reach agreement on the terms of the vocational plan, a prehearing conference will be scheduled. If agreement is reached at the conference, the board may approve the plan. If the differences cannot be resolved at the prehearing conference, the matter shall be set for a hearing. Hearings shall be held in accordance with the provisions of this chapter.

(e) Upon receipt of a proposed vocational plan acceptable to all parties concerned, or following a hearing, and after review, the board shall approve, disapprove, or modify the plan.

(f) Implementation of the plan must begin as soon as the employee is capable of participating in the program and medical opinion indicates the employee's recovery will not be impeded by participation in the plan. The plan shall begin upon the date of board approval or the date specified in the plan, whichever occurs last.

(g) In the event

(1) a vocational plan is not offered by the employer; or

(2) an employer-offered plan or a rehabilitation agency-offered plan is not accepted by the employee; or

(3) the board finds that the employee is eligible for a plan but the proposed plans are not effective,

the board, on its own motion or upon the petition of any party, shall make a determination by means of a hearing or hearings of the services necessary to restore the employee to gainful employment. (Eff. / / , Register).

Authority: AS 23.30.005
AS 23.30.040

8 AAC 47.050. Modification, Suspension, or Termination of Vocational Plans. Any party may petition the board for modification, suspension, or termination of a plan. The petition shall be treated as any other petition under § 050 of this chapter. The board shall order the modification, suspension, or termination if it finds

(1) satisfactory progress is not being made in the approved plan; or

(2) the plan is not likely to prepare the employee for gainful employment due to unexpected contingencies; or

(3) the employee refuses to complete the vocational plan approved by the board; or

(4) a more suitable plan becomes available. (Eff. / / , Register).

Authority: AS 23.30.005

8 AAC 47.060. Vocational Rehabilitation Definitions. As used in this chapter

(1) "Gainful employment" means employment which is reasonably attainable and which offers an opportunity to restore the employee as soon as possible to maximum self-support, due consideration being given to the employee's qualifications, physical and mental condition, interests, motivation and incentives, pre-injury earnings and future earning capacity, and the present and future labor market.

(2) "Implementation of a plan" means commencement by the employee of an actual return-to-work plan of direct job placement, on-the-job training or vocational training in accordance with an approved vocational rehabilitation plan.

(3) "Initiation of a plan" means the creation and drafting of a written vocational rehabilitation plan.

(4) "Vocational rehabilitation" means a program of services, not limited to medical services, designed to restore an injured or disabled employee to gainful employment.

(5) "Vocational rehabilitation representative" means a person who possesses the special skills, knowledge, education, training, and experience necessary to develop and implement vocational rehabilitation plans.

(6) "Vocational rehabilitation plan" means the planning and providing of services, not limited to medical services, reasonably necessary to restore an employee to gainful employment. Such services include, but are not limited to, vocational evaluation, counseling, retraining, on-the-job training, and job placement assistance. (Eff. / / , Register).

Authority AS 23.30.005
AS 23.30.040

Rep Randolph

RECOMMENDED CHANGES TO THE ALASKAN WORKERS' COMPENSATION ACT

PREPARED FOR

THE ALASKA CONFERENCE OF EMPLOYERS, INC.

% Jack Thompson

Air Van Lines

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REPRODUCED BY THE

WORKERS' COMPENSATION COMMITTEE OF ALASKA, INC.

WITH THE PERMISSION OF THE

ALASKA CONFERENCE OF EMPLOYERS, INC.

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The Alaska Conference of Employer's, (ACE) a non-profit research co-operation, has commissioned this study which is designed to spell out in specific detail exactly what changes to the workers' compensation law are necessary to accomplish three objectives:

1. Reduce the waste of the compensation dollar on non-disabling injuries.

2. Reduce the waste of administrative, medical, legal and judical time and resource.

3. Maximize benefits and minimize costs.

This is the second study sponsored by ACE. The first, published in 1980, was commissioned to identify the problems associated with the workers' compensation program. It accomplished its objective by demonstrating the effects of misdirected incentives, subjectivity in benefit determination, and the unfairness of benefit structures. Another very important result materialized in that it put the legislature on notice that the business community was starting to cry for help.

There are only so many dollars available for compensation as the source of funds is not infinite. Employers who paid attention to claims could not only monitor the status of injured employees they could read their insurance company loss runs and form an impression of the effectiveness of their premium dollar. Their impression was negative, as they saw a waste of time, human resources, and productivity, all of which translate into premium dollars. Those premium dollars, insignificant in the past, were now a very major expense item which easily could determine the difference between a profit or loss for the business.

On the other side of the coin, the burdens endured by employees are often overwhelming when you consider the contortious an employee must go through to obtain what he considers a fair benefit. When a benefit structure is designed for the average person, everyone considers it unfair. When a social program pays the electrical lineman and the executive $33,600 for the loss of a hand resulting from an occupational injury, what is fair. The executive is probably back to work in a week, while the lineman is out of work for months.

These problems can be corrected, and this study was commissioned to define those problems involved and to create positive solutions designed to reduce the cost burden on employers while increasing or making the benefit structure more fair.

In order to convince readers that there is an incredible waste in the compensation premium dollar we needed data to support our theories. We found a total lack of statistical data of the type needed to draw factual conclusions. Therefore, as the result of a meeting in Seattle with industry leaders we decided to accomplish our task in two steps. First, using the data we did have, draw the best conclusions we could and complete the study. Second, was to simultaneously research a large group of recent claims to validate our conclusions. This method puts the credibility of this study in jepordy of being invalidated by the claim study, but the supporting opinions of everyone concerned made it mandatory that we accept the risk, as the probability of error was considered mimimum.

Alaska is not the first state to have its claims studied in this respect, as Florida, Louisiana, and Washington have already conducted the study. The Alaskan Workers' Compensation Act is structured the same as all the other laws in the United States and we have no reason to believe the results obtained in Alaska will differ from those obtained in other states. What was found in other states is that 70 percent of the injured workers who receive cash awards under the permanent partial disability section of the law suffered no economic loss subsequent to the payment of the award. This is a significant indicator of waste if an exceptionally large portion of the benefit dollars are paid in the permanent partial disability section of the law.

The best comparative data obtainable was gathered in Florida during 1977-1978, before their historic change to a wage-loss program. That data was selected for comparative purposes because there is also data gathered after the change to wage-loss which would enable us to predict the effects of our changes if they were similar. The data utilized from Florida is contained in a report prepared by the Bureau of Economic Analysis, Division of Economic Development, Florida Department of Commerce, published in October, 1981, page 7. The content of that report is so pertinent to our study it is added as Exhibit I.

Tables I and II on page 7, compare the percentage distribution of resolved

workmen's compensation cases by injury type, and the percentage distribution of benefits paid in resolved workmen's compensation cases by injury type, between Florida, Alabama, and Wisconsin.

The pertinent data displayed is the difference in percent distribution of permanent partial disability claims between states. As previously stated, 70 percent of the persons who receive cash awards under the permanent partial disability section of the law, incurred no economic loss subsequent to being paid the award. If a disproportionate amount of money is allocated to the permanent partial disability cases, it therefore follows that a significant amount of money is scattered among many claimants who had no economic loss.

In Florida, 30 percent of the claims fell into the permanent partial disability classification, and Florida allocated 67.2 percent of all claim dollars to those claims. In Alabama, only 7 percent were permanent partial cases and they consumed 37.5 percent of the claim dollars. In Wisconsin, 9 percent were permanent partial disability cases that accounted for 40.8 percent of the dollars. Florida had three to four times the number of permanent partial disability cases as Wisconsin and Alabama. Florida also allocated almost twice the percentage of dollars to those claims as did the other states.

The available data in Alaska indicates that our situation is very similar to that in Florida. The source of our data is the National Council on Compensation Insurance (NCCI) and is presented as Exhibit II. Utilizing the state average weekly wage we converted those statistics into comparative data. The results indicate that in Alaska, 24.15 percent of the claims are classified as permanent partial disability cases and we allocated 66.21 percent of all claim dollars to those claims. The claims study in progress at this time will add credibility to those statistics and most importantly, be current. The claim study has been commissioned by the State of Alaska and results will be made available in early 1982.

	Distribution of Claims		Distribution of Claim Dollars	
	Permanent Partial	Other	Permanent Partial	Other
Florida	30%	70%	67.2%	32.8%
Alaska	24%	76%	66.2%	33.8%
Alabama	7%	93%	37.5%	62.5%
Wisconsin	9%	91%	40.8%	59.2%

Note: A later Florida study placed the percentage of claims in the permanent partial category at 24 percent. See Exhibit I, page 22.

As in Florida, Alaska's workers' compensation law has a hole in the dyke containing the claim dollars. Alaska, like Florida, has an inordinate number of permanent partial disability claims and allocates 2/3rds of all claim dollars to those claims.

What is there about the typical permanent partial disability claim which accounts for its popularity and uncommon distribution of money? It is this section of the law which compensates the injured worker who incurs an injury which results in a permanent impairment of one of the body functions. The most predominate type of case is the common back injury. During the healing period, the employee is paid compensation to replace his average weekly wage, and this is the point where the claim gets very costly. Approximately 70 percent of these worker's return to their same job, same pay, same or other employer, and incur no further economic loss. However, that worker is entitled to an additional cash award for the future decrease in wages he may incur throughout his lifetime, as measured by a disability rating subjectively computed by his physician. The higher the rating, the higher the cash award, resulting in employees canvasing the medical community for a physician who will give a higher disability rating (at the employer's expense, called, doctor shopping). For the approximately 30 percent who do incur subsequent economic loss, they are often entitled to be retrained for a new occupation. A number of employees utilize attorneys in this case as the costs of retraining can also be paid in a lump sum along with the award for loss of future wage earning capacity. Many cases are settled on a compromise and release at this point, with the insurance company issuing a check. For those resourceful enough to obtain employment in their old occupation, they pocket the cash; others find new lines of related work. Few are actually trained. Adding to the cost, is the claimant's attorney's fee which is a percentage of the award paid to the worker. The employer must also hire an attorney to represent himself before the board. It is not difficult to visualize the dollar cost involved in these cases and thereafter wonder if the existing act is accomplishing its intended purpose. If the purpose of the original law was to distribute money by the buckets-full to people without economic loss, the intent of the law is being served.

This is Alaska's problem: This was Florida's problem until they changed their law to one based upon wage-loss. Gone are the cash awards for hypothetical loss of future wage earning capacity. Instead, the wage-loss program replaces future wages lost only when wages are actually lost and an employee's wage history can be monitored for as long as 10 years subsequent to reaching the date of maximum medical improvement. Also gone is the doctor shopping as an objective rating system replaces the subjective system. The change to wage-loss redistributed the dollars. For the 70 percent who had no economic loss it took dollars away and gave the 30 percent who actually had economic loss far more dollars. The balance was used for premium reduction.

As a result, Florida employers are enjoying workers' compensation rates 36.4 percent lower than the 1979 pre-wage-loss rates. Employee's who actually incur economic loss are enjoying a higher level of benefits without the hassel which accompanies the compensation systems as it exist in Alaska.

Our recommendation encompasses the wage-loss theory of compensation, and also changes numerous other sections to correct injustices to both the employer and employee, all directed towards making the system fair as perceived by all.

It is the author's opinion, that if the Alaska Workers' Compensation Act should ever be changed as suggested in this study, premium rates will decrease by 25 percent initially, and further decreases determined by company experience will result in a total reduction equal to 35-40 percent.

Before proceeding into our recommendations we wish to identify our major sources for the revisions.

For wage-loss related sections the Florida Workers' Compensation Act was heavily relied upon by modifying its provisions to meet the requirements of Alaska.

The second major source was a "model workers' compensation law" drafted in the 1960's and revised in 1974, by The Council on State Governments, entitled the Workmen's Compensation and Rehabilitation Law, Revised. Many of the existing provisions in the Alaska Act were taken from that "model law" as were many sections found in compensation acts throughout the nation. Portions of that document are attached for your information as Exhibit III.

The third source was "Larson, Workers' Compensation Law, by Dr. Authur Larson, wherein almost every facit of workers' compensation is discussed in

detail. Larson is a renouned authority on workers' compensation and his passages are liberally quoted by courts throughout the land. The Larson volumes were indispensable to this study.

In the following pages on a section by section bases we will enumerate the problems we found, describe our solutions, and indicate the source of the recommendation. Each section is reproduced in its entirety to enable the reader to comprehend the entire content of the section, even if the changes are minor.

New wording is underlined, and wording being deleted is capitalized in brackets.

AS 23.30.040
SECOND INJURY FUND

Problem and Solution:

1. Existing section utilizes the words "Permanent Partial Disability" in subsection (b) which is inconsistent with a wage-loss program. Change "Permanent Partial Disability" to "Permanent Impairment, Wage-Loss".

2. Subsection (e) authorizes vocational retraining and vocational rehabilitation and authorizes the payment of a maintence expense. This and other references should be combined in one section. Transfer content of subsection (e) to a new section, proposed AS 23.30.094, Rehabilitation

Justification:

1. Required in order to conform with overall recommendation in section 190, wage-loss.

2. See proposed section 094, Rehabilitation.

Recommendation:

AS 23.30.040 SECOND INJURY FUND

(a) There is created a second injury fund, administered by the commissioner of labor. Money in the second injury fund may only be paid for the benefit of those persons entitled to payment of benefits from the second injury fund under this chapter. Payments from the second injury fund must be made by the commissioner of labor in accordance with the orders and awards of the board.

(b) If an employee suffers a compensable injury which results in temporary total disability, temporary partial disability, permanent impairment, wage-loss [PARTIAL DISABILITY], or permanent total disability, the employer or insurance carrier shall contribute to the second injury fund. The contribution shall be made by one year from the date of the injury or on termination of the employee's claim, whichever is sooner. If the claim is not terminated within one year, subsequent contributions shall be made yearly until the termination of the employee's claim. The amount of the contribution is the product of the compensation to which the employee is entitled for temporary total disability, temporary partial disability,

permanent impairment, wage-loss [PARTIAL DISABILITY], or permanent total disability, [OR FOR REHABILITATION UNDER AS 23.30.191] and the applicable contribution rate set out in Column A of the subsection. By December 15 of each year the commissioner shall determine and make available to the public the applicable contribution rate for the following calendar year according to the reserve rate of the second injury fund in Column B of this subsection:

Column A	Column B	
Second Injury Fund	Reserve Rate	
Contribution Rate	At Least	But Less Than
(Percent)	(Percent)	(Percent)
6	0	50
5	50	75
4	75	100
3	100	125
2	125	150
1	150	175
0	175	-

(c) If an employee suffers a compensable injury which results in death and the employee is not survived by a widow, widower, child, or dependent relative eligible to receive death benefits under AS 23.30.215, the employer or insurance carrier shall pay $10,000 to the second injury fund.

(d) The board shall refund a payment made into the second injury fund if the employer or insurance carrier shows that it made the payment by mistake or inadvertence, or if it shows there existed at the time of the death of the employee a beneficiary entitled to benefits under AS 23.30.215.

[(e) THE BOARD MAY DIRECT AND PROVIDE THE VOCATIONAL RETRAINING AND VOCATIONAL REHABILITATION OF A PERMANENTLY DISABLED PERSON WHOSE CONDITION IS A RESULT OF AN INJURY COMPENSABLE UNDER THIS CHAPTER BY MAKING COOPERATIVE ARRANGEMENTS WITH INSURANCE CARRIERS, PRIVATE ORGANIZATIONS AND INSTITUTIONS, OR STATE OR FEDERAL AGENCIES. THE PERSON BEING RETRAINED OR REHABILITATED IS ENTITLED TO RECEIVE ADDITIONAL COMPENSATION FROM THE SECOND INJURY FUND FOR MAINTENANCE DURING THE PERIOD OF RETRAINING AND REHABILITATION IN THE SUM THE BOARD CONSIDERS NECESSARY, NOT TO EXCEED $200 A MONTH. THE TOTAL EXPENDITURES FOR MAINTENANCE, RETRAINING, REHABILITATION, AND NECESSARY TRANSPORTATION MAY NOT EXCEED $10,000 FOR ONE PERSON.]

(f) All amounts collected as civil penalties under AS 23.30.155 (c) shall be paid into the second injury fund.

(g) The attorney general may investigate claims and hire expert witnesses necessary to prevent fraudulent or excessive claims for money in the second injury fund.

(h) Administration expenses of the state under this section and AS 23.30.205 shall be paid from the general fund.

AS 23.30.045
EMPLOYER'S LIABILITY FOR COMPENSATION

Problem and Solutions:

1. Subsection (a) does not list the proposed new section, 094, Rehabilitation. Insert AS 23.30.094 in subsection (a).

2. Subsection (e) allows the Division of Vocational Rehabilitation (DVR) to place an injured worker on job training, work readiness, work therapy experience, or in work sampling programs without liability to accommodating employer. The Workers' Compensation Division of the Department of Labor desires the same advantage. Include the Department of Labor as it would facilitate the placement of these people in vital programs.

3. Subsection (c) places the liability on the State of Alaska for injuries incurred by employees placed in job training, work readiness, work therapy experience, or in work sampling programs, rather than on the employer responsible for the original claim. The State of Alaska assumes liability for subsequent accidents when an injured employee is placed in job training programs with accommodating employers. Is it necessary or desirable for the State to lift the liability burden off the previcus employer when the previous employer has the option of providing the same program voluntarily? No. Therefore, change "state" to "employer paying compensation".

4. Subsection (d) (e) and (f) require government entities contracting with "persons" to provide a certificate of workers' compensation insurance. Single proprietors, "persons", do not carry workers' compensation as they have no employees. The utilization of the word "employer" is more appropriate than "person" as the former contemplates someone who has employees and therefore is required to purchase workers' compensation insurance. Therefore, change "persons" to "employers".

Justification:

1. Rehabilitation, like medical and related benefits is an employer provided program and is appropriately inserted in Article 2, Duties of Employer.

2. Recommended by Division of Workers' Compensation, Department of Labor in H.B. 159.

3. The liability of the employer should appropriately extend until the employee is returned to work and all compensation liability is terminated.

4. Recommended by the Division of Workers' Compensation, Department of Labor in H.B. 159.

Recommendation:

Sec. 23.30.045 EMPLOYER'S LIABILITY FOR COMPENSATION

(a) An employer is liable for and shall secure the payment to his employees of the compensation payable under AS 23.30.50, AS 23.30.094, AS 23.30.095, AS 23.30.145, and AS 23.30.180 - AS 23.30.215 of this chapter. If the employer is a subcontractor, the contractor is liable for and shall secure the payment of the compensation to employees of the subcontractor unless the subcontractor secures the payment.

(b) Compensation is payable irrespective of fault as a cause for the injury.

(c) For a person eligible for vocational rehabilitation service under AS 23.15.180 [AND] who is placed with an employer for service [WITHOUT WAGES] at the request of the office of vocational rehabilitation or the Department of Labor to give him on the job training, work readiness, [OR] work therapy experience, or work sampling, notwithstanding AS 23.30.196(c) and (d), the liability set out in (a) of this section applies to the [STATE RATHER THAN TO THE] employer paying compensation.

(d) No contract may be awarded by the state or a home rule or other political subdivision of the state to an employer unless the employer [PERSON] to whom the contract is to be awarded has submitted to the contracting agency proof, furnished by the insurance carrier, of current coverage by workers' compensation insurance from an insurance company or association authorized to transact the business of workers' compensation insurance in this state or proof, furnished by the board, of a current certificate of self-insurance from the board. The employer [PERSON] to whom

the contract is awarded shall keep his workers' compensation insurance policy in effect during the life of the contract with the state or political subdivision. If the state or the political subdivision of the state fails to obtain proof of coverage or self-insurance or to protect itself under (e) of this section, and an employee of the contractor is injured during the term of the contract, the state or the political subdivsion is liable for workers' compensation to the employee if the employee is unable to recover from the employer because of the employer's lack of financial assets. The state or the political subdivision is not liable, however, to the employee for workers' compensation if the employee can recover from the employer under (a) and (b) of this section.

(e) When a contracting agency of the state or a political subdivision receives notice that the workers' compensation insurance policy of an employer to whom the agency has awarded a contract has been cancelled due to nonpayment of a premium, without being replaced by a comparable policy, the agency may either terminate the contract with the employer or continue the premium payments on his behalf in order to keep the policy in force during the life of the agency's contract. If the agency chooses to keep the policy in force, it may deduct its payments from the contract price or bring an action against the employer to recover the amount of the payments. When the contracting agency receives notice that the board has revoked a certificate of self-insurance held by an employer [A PERSON] to whom a contract has been awarded, the agency may terminate the contract. This subsection does not limit the causes of action or remedies which the state or political subdivision may have against the employer.

(f) As used in this section "contractor" means an employer [A PERSON] who undertakes by contract performance of certain work for another and "subcontractor" means an employer [A PERSON] to whom a contractor sublets all or part of his initial undertaking.

AS 23.30.070
REPORT OF INJURY TO BOARD

Problems and Solutions:

1. Subsection (a) requires employers to submit the notice of injury

(form ADL 210) to the board within 10 days of acquiring knowledge of the claim. It is not a reasonable requirement as viewed by most employers. It is reasonable to expect an employer to submit the notice of injury to the board within 10 days after receiving the notice of injury form (ADL 210) in the business office of the employer. This relieves the employer from possible penalties for the reporting while maintaining the important requirement to make the first payment within 14 days of acquiring knowledge as required in AS 23.30.155.

2. Employees when injured have little or no knowledge of the workers' compensation act and obtaining a copy of the law will not help the average employee understand the benefits. Employees should be informed of compensation benefits with an easy to read booklet that offers correct advice. We have option to make the employer or the Division of Workers' Compensation responsible for notifying employees of the benefits. Time is of the essence as the injury has occurred and the employer has knowledge before the board, therefore, the employer should be responsible. It is also hoped that this communication responsibility will relieve some of the existing friction which develops between employees and employers when a claim occurs.

Justification:

1. By request of ACE.
2. Adopted from Florida Workers' Compensation Law, Section 440.185 (4).

Recommendation:

Sec. 23.30.070 REPORT OF INJURY TO BOARD

(a) Within 10 days from the date the employer has received in his business office written notice of an injury, death, disease, or infection as prescribed by AS 23.30.100(b), [KNOWLEDGE OF AN INJURY OR DEATH OR FROM THE DATE THE EMPLOYER HAS KNOWLEDGE OF A DISEASE OR INFECTION], alleged by the employee or on his behalf to have arisen out of and in the course of the employment, the employer shall send to the board a report setting out

(1) the name, address, and business of the employer;

(2) the name, address, and occupation of the employee;

(3) the cause and nature of the alleged injury or death;

(4) the year, month, day, and hour when and the particular locality

where the alleged injury or death occurred; and

(5) the otner information the board may require.

(b) Additional reports in respect to the injury and to the condition of the employee shall be sent by the employer to the board at the times and in the manner which the board prescribes.

(c) A report made under (a) or (b) of this section is not evidence of a fact stated in the report in a proceeding in respect to the injury or death on account of which the report is made.

(d) Mailing of the report and copy to the board in a stamped envelope, within the time prescribed in (a) or (b) of this section, is compliance with this section.

(e) If the employer or the carrier has been given notice, or the employer (or his agent in charge of the business in the place where the injury occurred) or the carrier has knowledge of an injury or death of an employee and fails, neglects, or refuses to file a report of it as required by the provisions of (a) of this section, the limitations in AS 23.30.105 do not begin to run against the claim of the injured employee or his dependents entitled to compensation, or in favor of either the employer or the carrier, until the report has been furnished as required by the provisions of (a) of the section.

(f) Upon receipt of written notice of injury from the employee, the employer shall, within 14 days, deliver or mail to the injured worker at his last known address, a summary statement which sets forth in clear and understandable language, the rights, benefits, and obligations of injured workers under the Workers' Compensation Act, together with an explanation of its operation.

(g) An employer who fails or refuses to send a report required of him by this section or who fails or refuses to send the report required by (a) of this section within the time required shall, if so required by the board, pay the employee or his legal representative or other person entitled to compensation by reason of the the employee's injury or death an additional award equal to 20 per cent of the amounts which were unpaid when due. The award shall be against either the employer or his insurance carrier, or both.

PROPOSED AS 23.30.094

REHABILITATION OF INJURED EMPLOYEES

Problem:

No legislative guidance exists on rehabilitation.

Solution:

- Utilize the most effective rehabilitation methods and create cost incentives to encourage their use.
- Continue to study the rehabilitation problem to make better use of funds spent.
- Define the goal of a vocational rehabilitation program.
- Give employer first opportunity to provide retraining.
- Structure proposed statute to give all possible latitude to the Division of Workers' Compensation to utilize the results of a current study in progress to formulate regulations.
- Provide for necessary expenses.
- Coordinate with the Division of Employment Security for job placements.
- Provide employee incentive to utilize program.
- If employer does not offer re-employment, place rehabilitation under the control and direction of Board.

A great many state laws were reviewed to find other approaches to solving the problem. Many states had wording similar to our proposal in their statute and reports concerning the effectiveness of their law varied from poor to mediocre at the best. It became quite apparent that the effectiveness of the rehabilitation program depended not upon the statute wording but the implementation of the regulations which add concrete substance to the statute.

The State is studying the rehabilitation problem and have hired a very competent consultant who's recommendations will result in regulations guiding the operation of the plan. ACE therefore decided the best approach would be to recommend statutory language which spoke only to those areas which require statutory authorization and which allow the legislature to establish limits or bounds which ought not be exceeded.

Justification:

The "Workmen's Compensation and Rehabilitation Law, Revised," drafted by The Council on State Government, a model workers' compensation act, provided the format for our recommendation and is reproduced with minor changes. This model wording has also been adopted by Kansas, Idaho, New Mexico, Connecticut, West Virginia, and possibly others. The original is reproduced in Exhibit III.

Recommendation:

Sec. 23.30.094 REHABILITATION OF INJURED EMPLOYEES

(a) One of the primary purposes of this act shall be the restoration of the injured employee to suitable gainful employment. To that end it is obvious from the testimony given to the Labor and Commerce Committee that the most effective rehabilitation programs are those which involve re-employment by the employer, therefore, the board will give responsible employers who provide re-employment opportunities sufficient latitude to manage the rehabilitation of their injured employees.

(b) The division shall continuously study the problems of rehabilitation, both physical and vocational, and shall investigate and maintain a directory of all rehabilitation facilities, both private and public. The division shall approve as qualified such facilities, institutions, and physicians as are capable of rendering compentent rehabilitation services to seriously injured employees. No facility or institution shall be considered as qualified unless it is specifically equipped to provide rehabilitation services for persons suffering either from some specialized type of disability or general type of disability within the field of occupational injury and is staffed with trained and qualified personnel.

(c) An employee who has incurred an injury covered by this act shall be entitled to prompt medical rehabilitation services. When as a result of injury he is unable to perform the primary duties of his occupation or any other occupation for which he is qualified by education, training, and experience, he shall be entitled to such vocational rehabilitation services, including retraining, as may be reasonably necessary to restore him for suitable gainful employment. In all instances the board shall inquire if such services have been voluntarily offered and accepted. The board, on its own motion, or upon application of any party after affording the parties

an opportunity to be heard by the board, may refer the employee to a qualified physician or facility for evaluation of the practicability of, need for, and kind of service, treatment or training necessary and appropriate to render him fit for a remunerative occupation. Upon receipt of such report, and after affording the parties an opportunity to be heard by the board, the board may order that the services and treatment recommended in the report, or such other rehabilitation treatment or service as the board may deem necessary, be provided at the expense of the employer. Vocational rehabilitation training, treatment or service shall not extend for a period of more than 26 weeks except in unusual cases when by special order of the board, after hearing, and upon a finding, determined by sound medical evidence which indicates such further rehabilitation is feasible, practical, and justifiable the period may be extended for an additional period. However, no carrier or employer shall be precluded from continuing such rehabilitation beyond such period on a voluntary basis.

(d) Where rehabilitation requires residence at or near the facility or institution, away from the employee's customary residence, reasonable cost of his board, lodging or travel shall be paid for by the employer.

(e) Refusal to accept rehabilitation pursuant to an order of the board shall result in a 50 per cent loss of compensation for each week of the period of refusal.

(f) The division shall cooperate on a reciprocal basis with the vocational rehabilitation section of the Department of Education and the employment service of the Division of Employment Security, and may make cooperative arrangements with insurance carriers, private organizations and institutions or state or federal agencies, to restore the employee to suitable gainful employment.

(g) Temporary disability benefits paid pursuant to AS 23.30.185 or AS 23.30.200 shall include such period as may be reasonably required for training in the use of artifical members and appliances, and shall include such period as the employee may be receiving training or education under a rehabilitation program pursuant to paragraph (c). Notwithstanding AS 23.30.265 (9), the date of maximum medical improvement, for purposes of AS 23.30.190 (b), shall be no earlier than the last day for which such temporary disability benefits are paid.

AS 23.30.095
MEDICAL EXAMINATIONS

Problems and Solutions:

1. Doctor shopping. Doctor shopping occurs at two times during the life of a claim. First, when the employee's physician infers that it is time to return to work because of a lack of objective medical findings, and second, when an employee who has received a permanent impairment and the amount of money received is depended upon a disability rating computed, often times subjectively, by a physician. ACE analyzed the problem as one which is the result of the system and preferred to change the system rather than restrict the free choice of the employee to pick his own physician.

2. Statute limits medical treatment to two years, yet the board regularily orders extended treatments. That portion of subsection (a) which limits medical treatment to two years is deleted and results in medical treatment being given "for the period which the nature of the injury or the process of recovery requires".

3. Independent medical examinations are often times impossible to obtain. The medical examinations are given by a "physician or surgeon authorized to practice medicine" only, as per AS 23.30.095 (e), and the professional friction between the medical profession and chiropractors is aggravated when a medical doctor performs an examination of a chiropractor's patient. The situation is caused because the statute allows an employee to have his physician (or chiropractor) present at the examination, and medical doctors usually will not allow a chiropractor to observe a medical examination. The Workers' Compensation Board and ACE agree that the solution is to delete that portion of AS 23.30.095(e) which states, "the employee has the right to have a physician, paid for by the employer, present at the examination or examinations".

4. It is alleged that employees are deliberately missing medical examination appointments to extend the payment of compensation. The cost to employers resulting from employees missing medical examinations is exceptionally heavy as the weekly indemnity payments continue during the delay. The laws of other states, and the Workmen's Compensation and

Rehabilitation Law, Revised, all incorporate stringent requirements and penalties for missing examination appointments. It is from these laws, used as a model, that ACE recommends requirements for meeting appointments. If an appointment for examination is missed, compensation should be suspended during the delay.

5. Medical reports from physicians are often subjective rather than objective. Independent medical examinations should be based upon objective findings, and if controversy arises as to the facts, the evidence should be weighed by the board at a hearing.

6. In adversary proceedings before the Workers' Compensation Board, the party with the greatest number of supporting medical opinions regularily wins. Obtaining multiple medical opinions to support continued disability or in non-support of disability, is very costly to the employer, yet it is currently necessary to present a preponderance of medical evidence before the Workers' Compensation Board. No one opinion carries more weight than the others in the existing law. Therefore, subsection (e) is amended to allow the formation of an advisory committee to aid the Workers' Compensation Board to select physician's qualified to render independent medical examinations. The examinations given by those physicians will be given greater weight than others in a hearing before the board.

Justification:

1. Request of ACE.

2. Recommended by the Workers' Compensation Board and requested in H.B. 159, and supported and recommended by ACE.

3. An amalgamation of provisions from the Workmen's Compensation and Rehabilitation Law, Revised, and the Delaware Model Workers' Compensation Act, Section 26, pages 63-67.

4. Recommended by the Workers' Compensation Board and ACE.

5. Workmen's Compensation and Rehabilitation Law, Revised, paragraph (C)(2), page 15, and almost all other states.

6. Delaware Model Workers' Compensation Act, Section [illegible], paragraph (b)(3), page 64.

Recommendation:

Sec 23.30.095 MEDICAL EXAMINATIONS

(a) The employer shall furnish medical, surgical, and other attendance or treatment, nurse and hospital service, medicine, crutches, and apparatus for the period which the nature of the injury or the process of recovery requires. [NOT EXCEEDING TWO YEARS FROM AND AFTER THE DATE OF INJURY TO THE EMPLOYEE. HOWEVER, IF THE CONDITION REQUIRING THE TREATMENT, APPARATUS, OR MEDICINE IS A LATENT ONE, THE TWO-YEAR PERIOD RUNS FROM THE TIME THE EMPLOYEE HAS KNOWLEDGE OF THE NATUR OF HIS DISABILITY AND ITS RELATIONSHIP TO HIS EMPLOYMENT AND AFTER DISABLEMENT. IT SHALL BE ADDITIONALLY PROVIDED THAT, IF CONTINUED TREATMENT OR CARE OR BOTH BEYOND THE TWO-YEAR PERIOD IS INDICATED, THE INJURED EMPLOYEE HAS THE RIGHT OF REVIEW BY THE BOARD. THE BOARD MAY AUTHORIZE CONTINUED TREATMENT OR CARE OR BOTH AS THE PROCESS OF RECOVERY MAY REQUIRE.] When medical care is required, the injured employee may designate a licensed physician inside the state to render the care except in cases where, in the judgment of the board, care or treatment or both can best be administered by the selection of another physician. Upon procuring the services of a physician, the injured employee shall give proper notification of his selection to the employer within a reasonable time after first being treated.

(b) If the employee is unable to designate a physician and the emergency nature of the injury requires immediate medical care, or if he does not desire to designate a physician and so advises the employer, the employer shall designate the physician. Designation under this subsection, however, does not prevent the employee from subsequently designating a physician for continuance of required medical care.

(c) No claim for medical or surgical treatment is valid and enforceable as against the employer unless, within 20 days following the first treatment, the physician giving the treatment or the employee receiving it furnishes to the employer and the board notice of the injury and treatment, preferably on a form prescribed by the board. The board shall, however, excuse the failure to furnish notice within 20 days when it finds it to be in the interest of justice to do so, and it may, upon application by a party in interest, make an award for the reasonable value of the medical or surgical treatment so obtained by the employee.

(d) If at any time during the period the employee unreasonably refuses to

submit to medical or surgical treatment, the board may by order suspend the payment of further compensation while the refusal continues, and no compensation may be paid at any time during the period of suspension, unless the circumstances justified the refusal.

(e) The employee shall, after an injury, at reasonable times during the continuance of his disability if requested by his employer or, when ordered by the board, submit himself to an independent medical examination by a physician or surgeon authorized to practice medicine under the laws of the state in which the employee may be found, furnished and paid for by the employer. [THE EMPLOYEE HAS THE RIGHT TO HAVE A PHYSICIAN, PAID FOR BY THE EMPLOYER, PRESENT AT THE EXAMINATION OR EXAMINATIONS.] No fact relative to the injury or claim communicated to or otherwise learned by a physician or surgeon who may have attended or examined the employee, or who may have been present at an examination is privileged, either in the hearings provided for in this chapter or an action to recover damages against and employer who is subject to the compensation provisions of the chapter. If an employee refuses to submit himself to, or in any way obstructs, any independent medical examination by a physician or surgeon designated by the board, carrier, or employer [PROVIDED FOR IN THIS SECTION] his rights to compensation and right to take or prosecute any proceedings under this chapter shall be suspended until the obstruction or refusal ceases, and his compensation during the period of refusal or obstruction shall be suspended until the refusal or obstruction ceases [SUSPENSION MAY, IN THE DISCRETION OF THE BOARD OR THE COURT IN DETERMINING AN ACTION BROUGHT FOR THE RECOVERY OF DAMAGES UNDER THIS CHAPTER, BE FORFEITED]. The physician or surgeon selected by the board, employer, or carrier shall render an impartial medical opinion, based upon his own objective examination after discussion, if possible, with the treating physician, as to the nature and extent of the injury. The physician may, if appropriate, consult with other physicians outside of his specialty to assist him in forming his medical opinion, which shall be rendered within 2 weeks of the date of the examination. The board shall compile and keep current for each region of the state, a separate list of physicians engaged for not less than 3 years in the active licensed practice of surgery or medicine who are willing to render impartial medical opinions pursuant to this subsection. The board may appoint an Advisory Committee to aid and assist the board in compiling and keeping current such

list of physicians, where members shall be appointed by and serve at the pleasure of the board. The Advisory Committee shall consist of 10 members, including, and be apportioned amongst, members of the medical soceity, carriers, self insurers, hospitals, and the general public. The board shall appoint one member of the Advisory Committee as chairman. Medical opinions provided by physicians authorized by the board to render independent medical examinations shall be given greater weight by all parties in a hearing before the board.

(f) The board in any case of death may require an autopsy at the expense of the party requesting the autopsy. No autopsy may be held without notice first being given to the widow or widower or next of kin if they reside in the state or their whereabouts can be reasonably ascertained, of the time and place of the autopsy and reasonable time and opportunity given the widow or widower or next of kin to have a representative present to witness the autopsy. If no adequate notice is given, the findings from the autopsy may be suppressed on motion made to the board or to the superior court, as the case may be.

(g) [(f)] All fees and other charges for medical treatment or service are limited to the charges that prevail in the same community for similar treatment of injured persons of like standard of living and shall be subject to regulation by the board.

(h) [(g)] Nothing in this section limits the right of the employee to provide in any case at his own expense a consulting physician, surgeon, chiropractor or osteopath or any attending physician, surgeon, chiropractor or osteopath whom he desires.

(i) [(h)] Upon the filing with the board by a party in interest of an application or other pleading, all parties to the proceeding must immediately, or in any event within 5 days after service of the pleadings, send to the board the original signed reports of all physicians relating to the proceedings which they may have in their possession or under their control, and copies of the reports shall be served by the party immediately on the adverse party. There is a continuing duty on the parties to so file and serve all the reports during the pendency of the proceeding.

(j) [(i)] Interference by a person with the selection by an injured employee of an authorized physician to treat him, or the improper influencing or attempt by a person to influence a medical opinion of a physician who has treated or examined an injured employee is a misdemeanor.

AS 23.30.100
NOTICE OF INJURY OR DEATH

Problems and Solutions:

1. The existing statute provides that a claim must be submitted to the employer and board within 30 days. Claims submitted after the 30 day period are routinely allowed to be filed. "Limitation periods pertaining to notice of injury possess a dual purpose of enabling the employer to provide immediate medical diagnosis and treatment with a view to minimizing the seriousness of the injury; and second, to facilitate the earliest possible investigation of the facts surrounding the injury." (Alaska State Housing Authority vs. Sullivan, Sup. Ct. Op. No. 994 (File No. 1989), 518 P.2d 759 (1974).

If claims filed subsequently to the limitation period are routinely accepted by the board, the purpose of the limitation is obscured and the 2 year statutory time limit for filing claims becomes subsequently prominent. If an employer is denied the right to immediate investigation, the employee should be required to provide minimum substantiation of the facts surrounding the claim. The existing statute is defective in this regard as claims filed up to two (2) years after the accident have to be accepted in accordance with §105 and §120. There presently exists three statutory conditions (see subsection (d)(1)-(3) below) and one judical condition sufficient to overcome the existing 30 day notice provision to support the liberal interpretation given to this statute by the board. It is to one of these conditions that we recommend the following: "however, when the delay in giving notice is so excused .... the burden of proof as to the validity of the claim shall shift to the employee who shall be required to show evidence of independent substantiation of the facts pertaining to the occurrence". The membership of ACE unanimously agreed that the employee would not be prejudiced by being required to relate "facts pertaining to the occurrence" and to obtain the facts from an independent source as the employer would have done if notification was timely.

2. Employees can be paid incorrect benefits in error under a new program such as recommended, resulting in possible financial injury to an innocent employee. Paid benefits should be monitored by a neutral party to assure

the correct benefit is being paid. Adopting wording from Florida, who has had a wage-loss system in effect for 2 1/2 years, will provide the necessary control.

3. Controversies headed for board hearing can sometimes be adverted by the intervention of the division. The Workers' Compensation Division has laid the groundwork for such action but statutory support is needed to enforce and make intervention mandatory. Adopting wording from another state successfully utilizing this system is appropriate to add authority to this requirement. (See also AS 23.30.110(h) proposed)

4. Utilizing a wage-loss program requires that the employee report wages in order to compute the actual wage loss. A statutory wage reporting provision is necessary to support proposed AS 23.30.190(b), Compensation for Wage-Loss.

Justification:

1. Recommendation of ACE.
2. Florida Workers' Compensation Act 440.185(4).
3. Florida Workers' Compensation Act 440.185(4).
4. Florida Workers' Compensation Act 440.185(10).

Recommendation:

Sec. 23.30.100 NOTICE OF INJURY OR DEATH

(a) Notice of an injury or death in respect to which compensation is payable under this chapter shall be given to the board and to the employer within 15 days after the date of such injury or within 30 days after a death [WITHIN 30 DAYS AFTER THE DATE OF SUCH INJURY OR DEATH TO THE BOARD AND TO THE EMPLOYER.]

(b) The notice shall be in writing, on the form prescribed by the board or on any form which contains the name and address of the employee, and a statement of the time, place, nature, and cause of the injury or death, and be signed by the employee or by a person on his behalf, or in the case of death, by a person claiming to be entitled to compensation for the death or by a person on his behalf.

(c) Notice shall be given to the board by delivering it or sending it by mail addressed to the board's office, and to the employer by delivering it to him or by sending it by mail addressed to him at his last known place of

business. If the employer is a partnership, the notice may be given to a partner, or if a corporation, the notice may be given to an agent or officer upon whom legal process may be served or who is in charge of the business in the place where the injury occurred.

(d) Failure to give notice does not bar a claim under this chapter

1. if the employer (or his agent in charge of the business in the place where the injury occurred) or the carrier had knowledge of the injury or death and the board determines that the employer or carrier has not been prejudiced by the failure to give notice;

2. if the board excuses the failure on the ground that for some satisfactory reason notice could not be given. However, when the delay in giving notice is so excused, notwithstanding the provisions of AS 23.30.120, the burden of proof as to the validity of the claim shall shift to the employee who shall be required to show evidence of independent substantiation of the facts pertaining to the occurrence;

3. unless objection to the failure is raised before the board at its first hearing of a claim for benefits in respect to injury or death.

(e) The division shall monitor the furnishing of compensation by the employer or carrier to ascertain that correct benefits are being furnished in cases accepted as compensable injuries. In the event of controversion or a dispute and the filing of a claim, the division shall attempt to resolve the dispute promptly in accordance with AS 23.30.110.

(f) When a claimant has the right or is required to mail a notice within the times prescribed in subsection (a), such mailing will be completed and in compliance with this section if it is postmarked and mailed prepaid to the appropriate recipient prior to the expiration of the timeframes in this section.

(g) Any compensable wage loss shall be reported by the employee to the carrier or self-insured employer within 30 days after the termination of the month for which such loss is claimed. The division shall provide by regulation for the reporting of wage loss by the injured worker, and for the reporting of wage loss and payment of wage loss benefits by the employer, to the division, and may prescribe forms for such reporting. The division, upon request by the employer or carrier, shall provide verification through unemployment compensation records of any claimed wage loss and shall obtain such verification from other states, if applicable. The division shall

require by regulation that the employer inform a worker who suffers a permanent impairment of his possible entitlement to wage-loss and other benefits and of the worker's obligation to report a claimed wage loss.

AS 23.30.105
TIME FOR FILING OF CLAIMS

Problems and Solutions:

1. This section allows claims for benefits to be filed for virtually an unlimited period of time after the original injury causing rates for compensation to be excessive. A review of workers' compensation statutes from other jurisdictions reveals many states support a one-year period (No. Dakota, Tennessee, Washington, Connecticut, Wyoming) but the majority have adopted a two year statute. The two (2) year time limit is also consistent with Alaska tort law. The Workmen's Compensation and Rehabilitation Law, Revised, utilizes a three (3) year period and its wording has been adopted by many states with a revision reducing the time to 2 years.

Whether the time period should run from the date of injury or after the employee has knowledge of the nature of his disability and its relation to his employment and after disablement is also in question. A survey of state statutes indicates overwhelming support for the date of injury as starting the period of time limitation. In addition, the Workmen's Compensation and Rehabilitation Law, Revised utilizes the date of injury.

ACE supports a two (2) year period starting with the date of injury but advocates an unlimited time period for occupational diseases. Additionally, we support a two (2) year period after the last payment of compensation or medical and related benefits.

2. A claim for medical and related benefits (not included in the definition of compensation) has no limit. Insert "medical and related benefits" and apply a two year limitation.

Justification:

Workmen's Compensation and Rehabilitation Law, Revised, Section 27, page 34.

Recommendation:

Sec 23.30.105 TIME FOR FILING OF CLAIMS

(a) The right to compensation for disability, wage-loss, impairment, or medical and related benefits under this chapter is barred unless a claim for it is filed within two years after the [EMPLOYEE HAS KNOWLEDGE OF THE NATURE OF HIS DISABILITY AND ITS RELATION TO HIS EMPLOYMENT AND AFTER DISABLEMENT. HOWEVER, THE MAXIMUM TIME FOR FILING THE CLAIM IN ANY EVENT OTHER THAN ARISING OUT OF AN OCCUPATIONAL DISEASE SHALL BE FOUR YEARS FROM THE] date of injury, and the right to compensation for death is barred unless a claim therefore is filed within one year after death. Except that if payment of compensation or medical and related benefits has been made without an award on account of the injury or death, a claim may be filed within two years from the date of the last payment. It is additionally provided that, in the case of a latent injury [DEFECTS PERTINENT TO AND CAUSING COMPENSABLE DISABILITY], the injured employee has full right to claim as shall be determined by the board, time limitations notwithstanding.

(b) Failure to file a claim within the period prescribed in (a) of this section is not a bar to compensation unless objection to the failure is made at the first hearing of the claim in which all parties in interest are given reasonable notice and opportunity to be heard.

(c) If a person who is entitled to compensation under this chapter is mentally incompetent or a minor, the provisions of (a) of this section are not applicable so long as he has no guardian or other authorized representative, but are applicable in the case of a person who is mentally incompetent or a minor from the date of appointment of a guardian or other representative, or in the case of a minor, if no guardian is appointed before he becomes of age, from the date he becomes of age.

(d) If recovery is denied to a person, in a suit brought at law or in admiralty to recover damages in respect to injury or death, on the ground that he was an employee and that the defendant is an employer within the meaning of this chapter and that the employer as secured compensation to the employee under this chapter, the limitations of time prescribed in (a) of this section begins to run only from the date of termination of the suit.

AS 23.30.110
PROCEDURE ON CLAIMS

Problems and Solutions:

1. It is possible to request a board hearing without having requested the benefit from the employer. Rehabilitation programs are often brought to the board for approval without confirming with the employer. Some aspects of compensation are arbitrary, and requesting the benefit from the employer first, before filing for a board hearing would encourage negotiations and compromise. Board hearings are expensive. Compensation is paid during the request period, attorney fee's are incurred by both sides, and the desired benefit is delayed. ACE's desire is to reduce the cost of compensation, in part, by reducing the number of board hearings. The solution is to require that a request for a board hearing be attached to a request for a benefit and a formal denial of the benefit requested.

2. Board hearings are ordered when negotiating differences might result in immediate delivery of benefits and the resulting cost savings realized by all employers. The solution is to require the Workers' Compensation Division to staff with employees familiar with workers' compensation benefit entitlements. When a controversy develops, have both sides discuss the controversy and attempt to settle differences. The negotiation sessions have to be approved by both the employer and employee, as their right to a hearing before the board should be preserved. The negotiations should be confidential and not be passed to any member of the board. Statutorily creating this section on negotiating will inform employees of this benefit. It will not create claims, as a benefit has to be requested from the employee, and the employer has to deny the benefit. Only then can a request for a board hearing be submitted which initiates the negotiation process.

3. Allegations that board decisions are inordinately delayed by the board or attorneys are not documented, but cases often take excessive periods of time. Benefits are based upon time, therefore time is very expensive, especially at $942 per week in 1982. The actual reasons for delays are not documented. The solution is to require the Worker's Compensation Board to report to key individuals the facts pertaining to hearings not settled within the time period required to obtain sufficient facts to determine and treat the causes of overdue decisions.

Justifications:

1. Adopted from Florida Workers' Compensation Act, 440.25(1).
2. Adopted from Florida Workers' Compensation Act, 440.19(1).
3. Recommended by ACE and adopted from wording in Florida Worker's Compensation Act, 440.25(d).

Recommendation:

AS 23.30.110 PROCEDURE ON CLAIMS

(a) Subject to the provisions of AS 23.30.105, a claim for compensation may be filed with the board at any time after a notice to controvert is filed by the employer or carrier or at any time after a specific benefit becomes due and is not provided. The board shall have full power and authority to hear and determine all questions presented in respect to such claims. [IN ACCORDANCE WITH ITS REGULATIONS AT ANY TIME AFTER THE FIRST SEVEN DAYS OF DISABILITY FOLLOWING AN INJURY, OR AT ANY TIME AFTER DEATH, AND THE BOARD MAY HEAR AND DETERMINE ALL QUESTIONS IN RESPECT TO THE CLAIM.]

(b) Within 10 days after a claim is filed the board, in accordance with its regulations, shall notify the employer and any other person (other than the claimant) whom the board considers an interested party that a claim has been filed. The notice may be served personally upon the employer or other person, or sent by registered mail.

(c) The board shall make the investigation which it considers necessary in respect of the claim, and upon application of an interested party shall order a hearing on it within 90 days from the receipt of the request. If a hearing on a claim is ordered the board shall give the claimant and other interested parties at least 20 [10] days' notice of the hearing, served personally upon the claimant and other interested parties or sent by registered mail, and shall, within 30 [20] days after the hearing is held [had], by order, reject the claim or make an award in respect to it. If a hearing is continued by the board, additional notice is not required under this subsection. [IF NO HEARING IS ORDERED WITHIN 20 DAYS AFTER NOTICE IS GIVEN AS PROVIDED IN (b) OF THIS SECTION, THE BOARD SHALL BY ORDER REJECT THE CLAIM OR MAKE AN AWARD IN RESPECT TO IT.]

(d) At the hearing the claimant and the employer may each present evidence in respect to the claim and may be represented by any person authorized in writing for that purpose.

(e) The order rejecting the claim or making the award (referred to in this chapter as a compensation order) shall be filed in the office of the board, and a copy of it shall be sent by registered mail to the claimant and to the employer at the last known address of each.

(f) An award of compensation for disability may be made after the death of an injured employee.

(g) An injured employee claiming or entitled to compensation shall submit to the physical examination by a duly qualified physician which the board may require. The place or places shall be reasonably convenient for the employee. [THE PHYSICIAN OR PHYSICIANS AS THE EMPLOYEE, EMPLOYER, OR CARRIER MAY SELECT AND PAY FOR MAY PARTICIPATE IN AN EXAMINATION IF THE EMPLOYEE, EMPLOYER, OR CARRIER SO REQUESTS.] Proceedings shall be suspended and no compensation may be payable for a period during which the employee refuses to submit to examination.

(h) Upon receipt by the board, every claim for compensation and medical and related benefits filed under this chapter shall be evaluated by the division to ascertain, within 20 days after the filing of a claim, whether the claim can be resolved without a hearing by contacting the employer and employee and inviting both to a confidential meeting in an attempt to resolve the issues. No member of the board may be present nor will any part of the negotiation be made known to any other person not in attendence. Both parties must consent in writing to the meeting and neither party may utilize the services of counsel in the meeting. If an agreement is reached between the parties each party will agree in writing to a dismisal of the claim. If no agreement is reached the division will inform the board that the parties met to negotiate the dispute without resolving the issues.

(i) Each panel chairman is required to submit a special report to the division in each contested workers' compensation case in which the case is not determined within 30 days of final hearing. Said form shall be provided by the division and shall contain the names of the panel chairman and the attorneys involved, and a brief explanation by the panel chairman as to the reason for such a delay in issuing a final order. The division will compile these special reports into an annual public report to the Governor, the Commissioner, and the Legislature.

AS 23.30.120
PRESUMPTIONS

Problem and Solution:

Although workers' compensation is a no-fault law, it is not a prerequisite that the employee be protected by a presumption of compensibility on every claim submitted. Modern no-fault auto insurance does not have a blanket presumption of coverage clause. The facts of an injury should substantiate the payment of disability compensation, and if the facts surrounding an injury are in dispute, it is the duty of the board to interpret the facts. When fraudulent claims are submitted under the cover of the presumption, the employer must show substantial evidence of non-compensibility; almost an impossible task as required by the board and courts. In applying a liberal construction to the Workers' Compensation Act, the liberal attitude should be applied to the law, not to the evidence offered to support a claim by virtue of the law. Many jurisdictions hold that awards of compensation cannot be based on speculation or conjecture evidence, but must be based upon sufficient evidence showing that the disability was the result of an accident arising out of and in the course of employment.

The existing statute appears to have been copied from the Workmen's Compensation and Rehabilitation Law, and edited. ACE restored the deleted wording in its recommendation which creates a presumption only for those who are unable to testify as to the facts surrounding the occurrence of a claim.

The State of Idaho utilizes this wording in their section on presumptions without ill effects. The National Council on Compensation Insurance (NCCI) continually compares Idaho, Washington, Oregon, California and Montana with Alaska. Alaskan employees submit 65 percent more claims than Idaho employees and these variations between statistics could in part be the result of the wording in the presumption clause. Denying claims which cannot be substantiated by the facts will not leave an employee destitute as non-occupational benefits also fully protect employees.

Justification:

1. Copied verbatim from Workmen's Compensation and Rehabilitation Law, Revised, Section 9, page 8.

Recommendation:

Sec. 23.30.120 PRESUMPTIONS

In any claim for compensation, where the employee has been killed, or is physically or mentally unable to testify, and there is unrebutted prima facie evidence that indicates that the injury arose in the course of employment, [IN A PROCEEDING FOR THE ENFORCEMENT OF A CLAIM FOR COMPENSATION UNDER THIS CHAPTER] it shall be [IS] presumed in the absence of substantial evidence to the contrary, that

(1) the injury arose out of the employment [CLAIM COMES WITHIN THE PROVISIONS OF THIS CHAPTER];

(2) sufficient notice of the injury [CLAIM] has been given;

(3) the injury or death was not occasioned while the employee was under the influence of alcohol or a controlled substance [SOLELY BY THE INTOXICATION OF THE INJURY EMPLOYEE]; and

(4) the injury was not occasioned by the willful intention of the injured employee to injure or kill himself or another.

AS 23.30.145
ATTORNEY FEES

Problems and Solutions:

1. Employers strenuously object to paying attorney fees based upon the full award of the board when a portion of the award pertains to non-contested benefits. It is their belief that the fees should be awarded only upon the actual benefit gained in the hearing that wasn't offered prior to the hearing. A number of states, including Florida, have adopted provisions concerning the payment of attorney fees which parallel the Workmen's Compensation and Rehabilitation Law, Revised, which awards fees based upon the whole award if compensation was controverted, or that part of the award which was not previously offered by the employer. ACE recommends the adoption of the essence of the provisions of the Workmen's Compensation and Rehabilitation Law, Revised.

2. Attorney fees should be paid in a lump sum, not periodically. ACE supports the payment of attorney fees in a lump sum as allowed by Florida and many other states and recommended by the Workmen's Compensation and Rehabilitation Law, Revised.

Justification:

1. Workmen's Compensation and Rehabilitation Law, Revised, Section 42, page 42.

2. Florida Workers' Compensation Act, 440.34.

Recommendation:

Sec. 23.30.145 ATTORNEY FEES

(a) Fees for legal services rendered in respect to a claim are not valid unless approved by the board, and the fees may not be less that 25 per cent on the first $1,000 of compensation or part of the first $1,000 of compensation, and 10 per cent of all sums in excess of $1,000 of compensation. [WHEN THE BOARD ADVISES THAT A CLAIM HAS BEEN CONTROVERTED, IN WHOLE OR IN PART, THE BOARD MAY DIRECT THAT THE FEES FOR LEGAL SERVICES BE PAID BY THE EMPLOYER OR CARRIER IN ADDITION TO COMPENSATION AWARDED: THE FEES MAY BE ALLOWED ONLY ON THE AMOUNT OF COMPENSATION CONTROVERTED AND AWARDED. WHEN THE BOARD ADVISES THAT A CLAIM HAS NOT BEEN CONTROVERTED, BUT FURTHER ADVISES THAT A BONA FIDE LEGAL SERVICES HAVE BEEN RENDERED IN RESPECT TO THE CLAIM, THEN THE BOARD SHALL DIRECT THE PAYMENT OF THE FEES OUT OF THE COMPENSATION AWARDED.]

(b) Except as provided in (c) of this section, if an employer declines to pay any compensation on the ground that there is no liability for compensation under this chapter, or [(b) IF AN EMPLOYER FAILS TO FILE TIMELY NOTICE OF CONTROVERSY OR FAILS TO PAY COMPENSATION OR MEDICAL AND RELATED BENEFITS WITHIN 15 DAYS AFTER IT BECOMES DUE, OR] otherwise resists the payment of compensation or medical and related benefits, and if the claimant has employed an attorney in the successful prosecution of his claim, the board shall make an award to reimburse the claimant for his costs in the proceedings, including a reasonable attorney fee. The award is in addition to the compensation or medical and related benefits ordered and shall be paid after final decision directly by the employer or carrier to the attorney for the claimant in a lump sum.

(c) If an employer pays or tenders payment of compensation, but contests the amount of compensation due, and the person seeking benefits utilizes the services of an attorney and an order is made or an agreement is reached thereafter on the amount of compensation due which is greater than the amount paid or tendered by the employer, a reasonable attorney's fee based

soley upon the difference between the amount ordered and the amount tendered or paid shall be ordered in addition to the amount of compensation, which shall be paid directly by the employer or carrier to the attorney for the claimant in a lump sum.

(d) In determining the amount of fees the board shall take into consideration the nature, length and complexity of the services performed, transportation charges, and the benefits resulting from the services to the compensation beneficiaries.

(e) If proceedings are had for review of a compensation or medical and related benefits order before a court, the court may allow or increase an attorney's fees. The fees are in addition to compensation or medical and related benefits ordered and shall be paid as the court may direct.

AS 23.30.155
PAYMENT OF COMPENSATION

Problems and Solutions:

1. Failure to notify the board within a given time period of a change in the amount of benefit paid, automatically subjects the employer or carrier to a fine of $100 plus $25 for each day late, a maximum fine of $2,500 on each claim. ACE believes penalties should be levied when the failure to do something results in damage to an interested party, not because an office clerk mislaid some correspondence. ACE recommends that the board "may" assess a penalty rather than "shall" assess a penalty, and that it only be assessed "if the failure to notify the board causes significant financial hardship to the employee".

2. An employer cannot recover overpayments inadvertently made to a claimant. Subsection (j) should include recovery of overpayments out of future installments due the employee.

3. Lump sum payment of awards provides a positive incentive, a pot-of-gold, for each employee to aim for when appropriate. Adequate testimony was presented before the committee to support the multiple incentives created by the existence of cash awards. The Workers' Compensation Board supports the conclusion that lump sum awards are generally not in the employee's best interest if truly injured. Additionally, the payment of a lump sum does not discharge the employer's liability for future medical treatment. The

Workers' Compensation Board supports the general discouragement of lump sum awards. ACE concurs but believes lump sum awards are appropriate only when the employee incurs the loss of a member (arm, leg, hand, foot) as provided in the recommended AS 23.30.190(a). In other situations, lump sum payments are appropriate "only under special circumstances as when the claimant can demonstrate that lump sum payments will definitely aid in his rehabilitation or are otherwise clearly in his best interest and that lump sum payments will avoid undue expense or undue hardship to any party". The payment of future liability in a lump sum will also include future medical expense, closing the claim forever. A lump sum payment will not be payable before six months after the employee reaches the date of maximum medical improvement, thereby precluding the utilization of a lump sum payment in contested medical cases. Application to the board for approval of a lump sum payment requires the parties to first agree to the amount and to jointly petition the board.

4. Compensation can only be paid by a check. Companies prefer to utilize a draft, however not all drafts are payable immediately. Subsection (o) provides for the payment of compensation by a draft, providing however, that the draft be cashable at any bank the day after it is received by the employee.

Justification:

1. ACE recommendation.
2. ACE recommendation.
3. Florida Worker's Compensation Act, Section 440.20(12) (a) and (b).
4. Division of Workers' Compensation, Department of Labor, H.B. 159.

Recommendation:

Sec. 23.30.155 PAYMENT OF COMPENSATION

(a) Compensation under this chapter shall be paid periodically, promptly, and directly to the person entitled to it, without an award, except where liability to pay compensation is controverted by the employer. To controvert a claim the employer must file a notice, on a form prescribed by the board, stating:

(1) that the right of the employee to benefits are controverted;

(2) the name of the employee;

(3) the name of the employer;

(4) the date of the alleged injury or death; and

(5) the type of benefits and all grounds upon which the right to benefits are controverted.

(b) The first installment of compensation becomes due on the 14th day after the employer has knowledge of the injury or death. On this date all compensation then due shall be paid. Subsequent compensation shall be paid in installments, every 14 days, except where the board determines that payment in installments should be made monthly or at some other period.

(c) Upon making the first payment, and upon an increase, reduction, termination, suspension, resumption or a change in rate or type of compensation paid, the employer shall notify the board within 14 days, on a form prescribed by the board, that payment of compensation has begun or has been increased, reduced, terminated, resumed, changed, or suspended, as the case may be. If the employer fails to notify the board within 14 days, the board may [SHALL] assess against the employer a civil penalty of $100 plus $25 for each day in excess of 14 days that the employer fails to give notice if the failure to notify the board causes significant financial hardship to the employee. Total penalties under this section may not exceed $2,500 for each failure to file a required report.

(d) If the employer controverts the right to compensation he shall file with the board on or before the 14th day after he has knowledge of the alleged injury or death or on or before an installment of compensation payable without an award is due, a notice of controversion on a form prescribed by the board.

(e) If any installment of compensation payable without an award is not paid within 14 days after it becomes due, as provided in (b) of this section, there shall be added to the unpaid installment an amount equal to 20 per cent of it, which shall be paid at the same time as, and in addition to, the installment, unless notice is filed under (d) of this section or unless the nonpayment is excused by the board after a showing by the employer that owing to conditions over which he had no control the installment could not be paid within the period prescribed for the payment.

(f) If compensation payable under the terms of an award is not paid within 14 days after it becomes due, there shall be added to that unpaid

compensation an amount equal to 20 per cent of it, which shall be paid at the same time as, but in addition to, the compensation, unless review of the compensation order making the award is had as provided in AS 23.30.125 and an interlocutory injunction staying payments is allowed by the court.

(g) Repealed

(h) The board may upon its own initiative at any time in a case in which payments are being made with or without an award, where the right to compensation is controverted, or where payments of compensation have been increased, reduced, terminated, changed, or suspended, upon receipt of notice from a person entitled to compensation or from the employer, that the right to compensation is controverted, or the payments of compensation have been increased, reduced, terminated, changed, or suspended, make the investigations, cause the medical examinations to be made, or hold the hearings, and take the further action which it considers will properly protect the rights of all parties.

(i) When the board considers it advisable it may require an employer to make a deposit with the Department of Revenue to secure the prompt and convenient payment of compensation and payments from the deposit upon an award shall be made upon order of the board.

(j) If an employer has made advance payments or overpayments of compensation, he is entitled to be reimbursed out of any unpaid installment or installments of compensation due.

(k) An injured employee, or in case of death his dependents or personal representative, shall give receipts for payment of compensation to the employer paying it and the employer shall produce them for inspection by the board, whenever required.

(l) Repealed

(m) An employer shall file on or before the date one year from the date of injury or upon termination of the claim whichever is sooner, a report on a form prescribed by the board, showing the total amount of all compensation, medical and related benefits, legal fees, and penalties paid during the period since the injury including the name of the claimant, the date of injury, and the claim number. If the claim is not terminated within one year, subsequent reports shall be made yearly until the termination of the claim.

(n)(1) It is the stated policy for the administration of the workers' compensation system that it is in the best interest of the injured worker that he receive disability payments on a periodic basis, and that a lump sum settlement shall be the exception rather than the rule. Lump sum payments in exchange for the employer's or carrier's release for liability for future payments of compensation and medical attendance shall be allowed only under special circumstances, as when the claimant can demonstrate that lump sum payments will definitely aid in his rehabilitation or are otherwise clearly in his best interests and that lump sum payments will avoid undue expense or undue hardship to any party. In no case shall a lump sum payment be allowed until 6 months after the date of maximum medical improvement has been reached.

(2) Upon the joint petition of the interested parties, and after giving due consideration to the interest of the parties, if the Board finds that a lump sum payment in exchange for a release from liability is in their best interest under paragraph 1, the Board will enter a compensation order requiring that the liability of the employer for compensation and medical and related benefits shall be discharged by the payment of a lump sum.

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

AS 23.30.175
RATES OF COMPENSATION

Problems and Solutions:

1. This section was compatible with our proposal as written, however, the Workers' Compensation Division recommended in H.B. 159 a complete re-wording of a major portion of the section in order to treat out-of-state recipients of compensation more fairly. These changes have been incorporated into our recommended change.

2. Subsections (e) and (f) were added which deal with the rounding off of compensation benefit payments to the nearest dollar, and the multiple to be used to convert weekly benefits to monthly benefits. These changes were made to facilitate the administration of the new benefits.

Justifications:

1. Division of Worker's Compensation, H.B. 159.
2. ACE recommendation.

Recommendation:

Sec. 23.30.175 RATES OF COMPENSATION

(a) The weekly rate of compensation for disability or death for a recipient residing in Alaska may not exceed 200 per cent of the Alaska average weekly wage in effect on the date of injury, nor be less than $65 per week.

(b) After June 30 and before December 1 of each year, the commissioner shall adopt and publish the average weekly wage for the preceeding calendar year as computed by the United States Secretary of Labor for the purpose of unemployment insurance. In determining the rate of compensation the commissioner shall use the average weekly wage figure for each jurisdiction, including Alaska, for which the Secretary of Labor computes an average weekly wage. These figures are the applicable average weekly wages for those jurisdictions for the following calendar year. The average weekly wage for Alaska is the amount determined by dividing (1) the total wages paid by all employers covered by the Alaska Employment Security Act by (2) the average monthly employment reported by those employers for the same period and dividing the result by 52.

(c) In jurisdictions for which no average weekly wage is computed by the Secretary of Labor for the purposes of unemployment insurance, the average weekly wage shall be as determined by the commissioner.

(d) The following rules apply to recipients who do not reside in Alaska:

(1) The weekly rate of compensation shall be calculated using the recipient's average weekly wage times the ratio of the average weekly wage of the jurisdiction in which the recipient resides to the average weekly wage of Alaska. The rate is based on the average weekly wage in effect when the recipient leaves Alaska and shall be adjusted annually upon publication of the average weekly wage for all jurisdictions.

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

(3) The calculation required by this subsection does not apply if the absence of the recipient is for medical or rehabilitation services not reasonably available in Alaska.

(4) Application of this subsection may not result in a reduction of the weekly compensation rate to less than $65 a week except as provided in (a) of this section.

(e) All payments of compensation shall be adjusted to the nearest dollar.

(f) The monthly wage-loss benefits shall not exceed 4.3 times the maximum weekly benefit as computed pursuant to paragraph (a).

AS 23.30.180
PERMANENT TOTAL DISABILITY

Problems and Solutions:

1. What losses or permanent impairments shall be presumptively considered to constitute permanent total disability? The argument for including the loss of both arms, both hands, both legs, etc. in the permanent total section, and creating a presumption that they constitute permanent total disability, is a weak argument as evidenced by the Work Draft Paper on H.B. 159 issued November 23, 1981 by the State of Alaska. This draft completely omitted the so-called shopping list. The list was retained in our recommendation mainly to avoid confrontation with advocates of retaining the list and we did require "conclusive proof" of a substantial earning capacity to avoid the award. This should prove a more difficult test than the mere showing of "conclusive proof to the contrary". All other cases, as in the past, are determined by the facts as interpreted by the board. A substantial earning capacity as defined in AS 23.30.265 "means that an employee is engaged in, or is physically capable of engaging in, gainful employment, including light work."

We do not contemplate a major cost reduction in the permanent total classification as this class represents a very minor portion (.81 percent) of total claims. The NCCI reports permanent total disability cost accounts for 3.7 percent of all compensation costs, so any change in this area will not have a large impact. (see Exhibit (II)

2. If an employee is drawing permanent total disability and subsequently develops an earning capacity, do payments of permanent total continue? The Alaskan Workers' Compensation Act does not preclude an employee who has been awarded permanent total disability status from subsequently obtaining employment. There is a reported, but unconfirmed, case where a resident has been awarded the permanent total disability status three times in his life. The dollars available for compensation are not infinite, and our recommendation clearly takes advantage of those cases where time and rehabilitation, and the employee's own incentives, have combined to produce an earning capacity. In the ACE recommendation, when an employee develops an earning capacity after being awarded permanent total disability benefits, the permanent total benefit will stop and wage-loss benefits will continue from that point on. The benefit computation is the same, but the wage-loss benefit is reduced by earnings and can extend for as long as 10 years.

3. Inflation has severely eroded the spending power of recipients who have been awarded permanent total benefits in the past. Testimony before the Committee indicates a real need for cost of living increases. It appears justified to include a cost of living clause in the permanent total disability section, as to do otherwise is gross neglect of the industrially injured. A cost of living increase has to be stated in terms that are actuarily computable or else the rating mechanism is thrown off balance, and rates have to be packed with extra contingency dollars. An annual increase of 5 percent of the original benefit is an acceptable increase. The inclusion of this benefit is a first step toward addressing the cost of living problem, and future legislators may want to liberalize this percentage in the future as compensation dollars become more plentiful.

Justification:

1-3 The permanent total disability sections of numerous state laws were researched as well as the complete review of Larson, Workers' Compensation Law. The Florida statutes provide the best guidance for wording and also their interpretation by the court was extensively documented to provide guidance to Alaskan's who will test these same issues in the Alaska courts.

Florida Workers' Compensation Act, Section 440.15(1).

Recommendation:

Sec. 23.30.180 PERMANENT TOTAL DISABILITY

(a) In case of total disability adjudged to be permanent, 80 [66 2/3] per cent of the injured employee's spendable [AVERAGE] weekly wages shall be paid to the employee during the continuance of the total disability.

(b) Loss of both hands, or both arms, or both feet, or both legs, or both eyes, or of any two of them, or paraplegia, or quadriplegia, in the absence of conclusive proof of a substantial earning capacity, [TO THE CONTRARY] constitutes permanent total disability. In all other cases permanent total disability is determined in accordance with the facts. In such other cases, no compensation shall be payable under paragraph (a) if the employee is engaged in, or is physically capable of engaging in, gainful employment, and the burden shall be upon the employee to establish that he is not able uninterruptedly to do even light work due to physical limitation.

(c) If an employee who is being paid compensation for permanent total disability shall become rehabilitated to the extent that he shall establish an earning capacity, he shall be paid instead of the compensation provided in paragraph (a), wage-loss benefits pursuant to AS 23.30.190(b). The division shall adopt rules to enable a permanently and totally disabled employee, who may have established an earning capacity to undertake a trial period of reemployment without prejudicing his return to permanent total status in the case that such employee is unable to sustain an earning capacity.

(d) In case of permanent total disability resulting from an accident incurred subsequent to the effective date of this section, the employee shall be entitled to receive additional weekly compensation equal to 5 per cent of the employees' weekly compensation rate at the time of the injury. Such additional 5 per cent benefit will accrue 12 months from the date of the award and each 12 month period thereafter.

(e) The division shall provide by regulation for the periodic reporting to the division of all earnings of any nature and social security income by the injured employee entitled to or claiming benefits for permanent total disability or additional compensation under paragraph (d). Neither the employer or carrier shall make any payment of the permanent total disability

or additional compensation under paragraph (d) for any period during which the employee willfully fails or refuses to report upon request by the division, employer, or carrier in the manner prescribed by said regulations.

(f) Two years after the date the employee is eligible to receive permanent total disability and every two years thereafter, the employer or carrier will re-evaluate the employee's physical condition to ascertain the employee's capacity for rehabilitation to develop an earning capacity. The employer or carrier will report such findings to the Board along with their recommendation for rehabilitation, if any.

AS 23.30.185
TEMPORARY TOTAL DISABILITY

Problem:

This section is not in need of revision except for changing average weekly wage to spendable weekly wage which is discussed in Section 220, to follow.

Recommendation:

Sec. 23.30.185 TEMPORARY TOTAL DISABILITY

(a) In case of disability total in character but temporary in quality, 80 [66 2/3] per cent of the injured employee's spendable [AVERAGE] weekly wages shall be paid to the employee during the continuance of the disability.

AS 23.30.190
COMPENSATION FOR PERMANENT PARTIAL DISABILITY

Preface:

The revision of this section of the statute is the most important revision of the recommendation, as it completely changes the entire philosophy of Alaskan Workers' Compensation from one that currently compensates for loss of earning capacity to one based upon compensation for actual economic loss. The only state to accomplish this change to date is Florida, however Louisiana, Washington, Oregon, and Delaware tried to pass the same program last year and will attempt again this year.

ACE selected a wage-loss program to meet it's goals; in fact the benefits

received by the employee who is truly injured is far greater under wage-loss than under the existing program.

The one factor that prompted the decision to utilize wage-loss is the high cost of the permanent partial disability cases in Alaska as compared to other states. Our existing compensation law is virtually the same as other state laws in this area, and what has been found to be fact in other jurisdictions is presumed at this time to be true in Alaska. The same claim survey that verified the facts in other states is being concluded here and the results will be available in early 1982. Surveys in other states with similar laws show that an average 70 percent of the employees who are compensated under the permanent partial disability section for presumed loss of future wage earning capacity, actually incur no economic loss after payment of the award. Seventy percent of the employees return to the same job, same pay, same or different employers. Alaskan employers no longer have sufficient dollars to pay employees who incur no economic loss when others are not paid enough.

The cost savings inherent in a wage-loss program are obtained by re-distributing those dollars. Florida used them to obtain a 36.4 percent rate reduction and also increased the maximum weekly benefit from 66 2/3rds percent of the states average weekly wage to 100 percent of the states average weekly wage, a 50 percent increase. Because Alaska is already at 200 percent of the average weekly wage, that benefit will not be increased. The savings will however, be directed toward increasing benefits for permanently impaired workers who were formerly compensated under the permanent partial disability schedule of benefits, and for employer rate reductions.

A common perception an analyst of workers' compensation systems is that the severly injured are under compensated and the slightly injured are over compensated. This should no longer be true under a wage-loss program. Loss, as defined by the worker on the street, is loss of dollars in the weekly paycheck as the impact is obvious. Loss, as understood by the worker on the street, is not the theoretical loss of some future wage earning capacity. Compensation for the later loss is a windfall to many and no longer affordable by employers in Alaska.

Problems:

Scheduled Benefits

- Insufficient compensation for loss of scheduled impairments. The loss of an arm to two workers earning the same wages is equal, but the impact to an electrical lineman is far more severe than to an executive in terms of future wage earning capacity.
- The loss of one member qualifies employee for a scheduled benefit of a certain amount for a certain number of weeks. No provision for a lump sum payment. In order to obtain a lump sum, the employee normally must hire an attorney to negotiate a sum less than the amount of the benefit times the number of weeks entitlement (present value). Employees loose; attorneys gain; employers pay.
- Benefit entitlement has no direct relationship to economic loss.
- The need for an attorney to collect the benefit creates an adversary environment not consistent with a no-fault program.
- The actual value of the benefit is reduced annually by inflation, requiring periodic legislative adjustment.

Unscheduled Benefits:

- The predominate impairment in this category is the common back injury.
- Most cases require the utilization of an attorney to advise the employee on how to obtain the maximum benefit. The employee with the best attorney receives more than a person utilizing no attorney or one who is slightly less than best.
- Appointments for medical examinations are missed to prelong payment of temporary total disability prior to settling the permanent partial disability loss for a lump sum (lump sum payment is authorized for unscheduled losses).
- Maximum compensation under this section is $60,000 regardless of the employee's actual economic loss resulting in approximately 10 - 30 percent of all employees being under compensated.
- Disability ratings are largely subjective encouraging over utilization of the medical profession in seeking higher ratings.
- No uniform standard of rating by physicians.

Solutions:

The section has been reworded making a dual benefit, permanent impairment and wage-loss.

The portion dealing with permanent impairment is comparable to the existing scheduled benefit. A true or 100 percent wage-loss program would not include this benefit as it is not based upon actual wage loss, but is a concession to those that historically place a value upon a lost arm or leg. The amount of dollars paid under the impairment subsection are not directly comparable to the existing scheduled benefits. Under the existing permanent partial schedule, that is all the employee receives, regardless of his future economic loss. Under the impairment subsection, a sum of money is paid in cash and any actual wage-loss over the next 10 years is also paid pursuant to subsection (b), Wage-Loss.

Under the existing schedule a person who lost an arm will receive a maximum of $43,680 (paid monthly). Under the recommended impairment schedule the employee would receive a 60 percent whole man disability rating entitling him to $471 X 60 = $28,260, PLUS 80 percent of the employee's actual decrease in wages over the next 10 years, which could equal as much as $489,840 if he incurred a 100 percent wage loss. A total sum of $518,100 ($489,840 + $28,260) is considerably higher than $43,680, the existing benefit. Critics of this low lump sum schedule should not forget that employer and union group life insurance plans also pay dismemberment benefits for the loss of an arm or leg.

Exhibit IV lists the major impairments listed in the subsection on impairments and lists the percentage of disability assigned as provided in the recommendation, and the cash benefit resulting from the application of the 1982 State Average Weekly Wage.

When a loss occurs which entitles the employee to a cash award, the award is due after the employee reaches maximum medical improvement. This period could be called the healing period and during this time, the temporary total disability benefit is payable (80% of spendable weekly wage).

The method employed in determining the employees disability or impairment rating is objective rather than subjective thereby eliminating doctor shopping for higher ratings. The AMA's Guide to the Evaluation of Permanent Impairment is reproduced in part in Exhibit V, and is easy to use and acceptable to all medical doctors. Both Florida and Kentucky have adopted its use to resolve numerous problems similar to Alaska's.

It should also be noted that the cash payments authorized in the impairment subsection of the recommendation allow payment of the benefit for those double losses (both arms, both legs) which carry a presumption of total disability as discussed in a preceding section on permanent total disability. The existing statute does not pay the cash benefit for the multiple member losses which constitute permanent and total disability, plus pay the permanent total benefit.

In summary, the recommended impairment subsection is clear and concise, allowing the average worker to determine the exact benefit to which he is entitled without the necessity of employing an attorney. Additionally, each year as the state average weekly wage increases, this benefit will keep pace with inflation.

The wage-loss section entitles the injured worker to a replacement of wages lost subsequent to an accident when the employee has incurred a permanent impairment. The permanent impairment may or may not have entitled the employee to a cash award under the impairment provisions of subsection (a) as discussed above. If the loss was one that is "scheduled" or named in the impairment section, both the lump sum cash benefit and the wage-loss benefit are payable. If the loss is not named in the impairment subsection, only the wage-loss benefit is due.

The weekly benefit is easily computed by subtracting post injury spendable weekly wages from pre-injury spendable weekly wages, and the benefit payable is 80 percent of that difference.

The most predominate loss occurring will be the back injury as it was with the non-scheduled permanent partial disability section previously discussed. However, no impairment ratings from physicians will be necessary again eliminating the need for "doctor shopping". To prevent the employee from attempting to extend the period of entitlement, when the employee reaches the date of maximum medical improvement, benefits are likely to be reduced by actual wages earned, or if no employment is available, by the unemployment benefit, or by the dollar value of his earning capacity if he were to accept employment.

The wage-loss benefit can continue for a period of 10 years, but eligibility is terminated if during a 2 year period its use is less than for 3 consecutive months.

Justification:

The guide for the recommendation on permanent impairment and wage-loss has been the Florida Workers' Compensation Act, Section 440.15(3). The overwhelming support of the business community and the predominate labor union, the AFL-CIO, have made it a success.

The success of the Florida Wage-Loss System is well documented in the 1981 NCCI report entitled, "Preliminary Report on the Wage-Loss Law in Florida", (Exhibit VI) and a similar report entitled "Florida's New Workers' Compensation System: An Interium Report, dated March 1981 with October 1981 Addendum, prepared by the Bureau of Economic Analysis, Division of Economic Development, Florida Department of Commerce. (Exhibit I)

Preliminary analysis of the claim figures presented to the committee during 1980 by the NCCI indicate Alaska's problems track statistically with Florida before enacting wage loss. Prior to wage-loss, 30 percent of Florida's claims involved permanent partial disability and our computation based upon NCCI figures indicates 24 percent for Alaska; approximately 3 times the average of some other states. Florida allocated 67.2 percent of its benefit dollars for permanent partial disability cases and Alaska allocates 66.2 percent of its benefit dollars; again 2 times the average of some other states.

The wage loss package recommended will reduce these figures to acceptable levels and as a result provide significant rate reductions for employers while allocating more dollars to the seriously injury employee.

Recommendation:

Sec. 23.30.190 COMPENSATION FOR PERMANENT IMPAIRMENT AND WAGE-LOSS

(a) Compensation for permanent impairment.

(1) In case of permanent impairment due to amputation or total loss of use of an arm, or leg or loss of 80 per cent or more of vision after correction, or the total loss of hearing, or serious head or facial disfigurement, there shall be paid to the injured worker for each per cent of permanent impairment of the body as a whole, a sum equal to the state average weekly wage at the time of injury. As used in this paragraph, the term "total loss of use" shall mean that a person is no better off with the member than he would be if the member had been severed.

(2) Once the employee has reached the date of maximum medical improvement impairment benefits are due and payable within 20 days after the carrier or employer has knowledge of the status.

(3) The division shall establish and use a schedule for determining the existence and degree of permanent impairment based upon medically or scientifically demonstrable findings. The schedule shall be based on generally accepted medical standards for determining impairment and may incorporate all or part of any one or more generally accepted schedules used for such purpose. Pending the adoption, by regulation, of a permanent schedule, Guides to the Evaluation of Permanent Impairment, copyright 1977, 1971, or as subsequently updated, by the American Medical Association, shall be the temporary schedule and shall be used for the purposes hereof.

(b) Compensation for wage-loss

(1) Each injured worker who incurs any permanent impairment, which permanent impairment is determined pursuant to the schedule adopted in accordance with paragraph (3) of subsection (a), may be entitled to compensation for wage loss under this subsection. Such compensation shall be based on actual wage loss and shall be equal to 80 per cent of the difference between the employee's spendable weekly wages at the time of injury and the employee's spendable weekly salary, wages, and other remuneration the employee is able to earn after reaching the date of maximum medical improvement, as compared on a monthly basis. Notwithstanding the provisions of AS 23.30.175(a), compensation for wage-loss will not be payable in any month when the amount of compensable wage loss is less than 10 per cent of the employee's spendable weekly wage at the time of the injury. The division may adopt, by regulation, rules to simplify the monthly comparison so as to coincide as closely as possible with an injured worker's pay periods.

(2) The amount determined to be the salary, wages, and other remunerations the employee is able to earn after reaching the date of maximum medical improvement shall in no case be less than the sum actually being earned by the employee, including earnings from sheltered employment. In the event the employee voluntarily limits his or her income or fails to accept employment commensurate with his or her abilities, the salary, wages and other remuneration the injured employee is able to earn after the date of maximum medical improvement shall be deemed to be the amount which would have been earned if the employee did not limit his or her income or accepted appropriate employment. Whenever compensation for wage-loss is payable as set forth in paragraph (1) the burden shall be on the employee to establish that any wage-loss claimed is the result of the compensable injury.

(3) The right to compensation for wage-loss shall terminate:

(A) At the end of any 2 year period commencing at any time subsequent to the month when the injured employee reaches the date of maximum medical improvement, unless during such 2 year period wage-loss benefits have been payable during at least 3 consecutive months; or

(B) 520 weeks after the injured employee reaches the date of maximum medical improvement; or

(C) when the injured employee reaches age 65 and becomes eligible for retirement benefits under 42 U.S.C. ss. 402 and 405, whichever comes first, but not before the payment of at least 2 years of wage-loss.

(4) When the injured employee reaches age 62, wage-loss benefits shall be reduced by the total amount of social security retirement benefits which the employee is receiving or is eligible to receive without reduction for age, not to exceed 50 per cent of the employee's wage-loss benefit.

AS 23.30.191
EXPENSES FOR REHABILITATING INJURED EMPLOYEES

ACE recommends repeal of this section as the content has been transferred to recommended Section 094, Rehabilitation.

Recommendation:

Sec. 23.30.191 EXPENSES FOR REHABILITATING INJURED ENPLOYEES

Repealed

AS 23.30.195
SURVIVAL OF THE RIGHT TO COMPENSATION

Problem:

The problems are minor and should be classified as editing which is made necessary by the adoption of wage-loss, and to give equity to surviving children. The changes have no impact on benefit levels or premium rates.

Recommendation:

Sec. 23.30.195 SURVIVAL OF THE RIGHT TO COMPENSATION

(a) Compensation to which any claimant would be entitled under AS 23.30.190 (a) of this chapter [EXCEPTING (20) OF THAT SECTION] shall, notwithstanding death arising from causes other than the injury, be payable to and for the benefit of the persons following:

(1) if there be a widow or widower and no child of the deceased, to the widow or widower;

(2) if there be a widow or widower and a surviving child or children of the deceased, one-half to the widow or widower, the other half to the surviving child or children, to share equally;

(3) if there be [A] surviving children [CHILD] of the deceased, but no widow or widower, then to the child or children to share equally.

(b) An award for disability may be made after the death of the injured employee.

AS 23.30.196
SUBSEQUENT INJURY
(AN ENTIRELY NEW SECTION)

Problem and Solution:

This section deals with apportionment of benefits. Apportionment can take three forms; between successive employers or carriers, between the employer and a second injury fund, and between an employer and the employee himself. The first two situations assure the employee of full benefits from either source, while the third means the employee will bear a portion of the claim himself. This section deals with the third situation; apportionment between the employer and employee.

Alaska already is a "last carrier" state which eliminates apportionment of costs between successive carriers or employers. Alaska has a second injury fund to fill the gap in benefit source for aggravation of injuries attributable to prior employment.

Paragraph (b) of the recommended section re-states current Alaska law pertaining to aggravation or acceleration of a preexisting condition, when that impairment is an obvious condition and ordinarily one capable of being rated, such as the loss of a hand or arm.

Workers who have general diseases or defects, especially degenerative diseases present an unusually serious exposure to loss to the employer. The

defect or disease not disabling itself, when merged or combined with a minor aggravation, can become totally disabling and cost the employer thousands in unanticipated loss without second injury fund protection. We do not believe an employer should be held liable under the workers' compensation program for that portion of the disability which is attributable to the employee's general diseases, especially degenerative diseases which are the result of age.

That portion of subsection (a) which reads "where a preexisting disease or anomaly is accelerated or aggravated by an accident arising out of and in the course of employment, only the acceleration of death or the acceleration or aggravation of the preexisting condition attributable to the accident shall be compensable with respect to permanent impairment or death" reduces this exposure to loss faced by employers. Compensation for permanent impairment and death therefore, are apportionable with the employee. Compensation for temporary total disability, medical and wage-loss are not apportionable with the employee, which has the effect of softening the harshness of this rule as 99 percent of all claims fall into these categories.

Approximately half of the states have some form of apportionment statute, Larson, Workers' Compensation Law was researched along with the provisions of various state statutes to find the most fair, complete, and adequate wording that has been tested in court to give guidance to Alaskans dealing with its provisions should our recommendation ever be enacted into law. The Florida law met the needs of Alaska more closely than any other, possibly because their section on apportionment is operational with the wage-loss program. Larson devotes considerable space to the decisions of the Florida Supreme Court in interpreting the historical development and principles supporting this section. For those who desire further information (see pages 10-345 to 10-534).

Subsection (c) and (d) deal with situations where an employee drawing wage-loss incurs a subsequent injury which entitles the employee to additional benefits, paid simultaneously. The benefit payable because of the prior injury is reduced if the total of the two exceeds normal maximums.

Justification:

Florida Workers' Compensation Act, Section 440-15(5).

Recommendation:

Sec. 23.30.196 SUBSEQUENT INJURY

(a) The fact that an employee has suffered previous disability, impairment, anomaly, or disease, or received compensation therefore, shall not preclude him from benefits for a subsequent injury nor preclude benefits for death resulting therefrom. However, where a preexisting disease or anomaly is accelerated or aggravated by an accident arising out of and in the course of employment, only the acceleration of death or the acceleration or aggravation of the preexisting condition attributable to the accident shall be compensable with respect to permanent impairment or death. Compensation for temporary disability, medical, and wage-loss shall not be subject to apportionment.

(b) If a compensable permanent impairment, or any portion thereof, is a result of aggravation or acceleration of a preexisting condition, or is the result of merger with a preexisting impairment, an employee eligible to receive impairment benefits under AS 23.30.190 (a) shall receive such benefits for the total impairment found to result, excluding the degree of impairment existing at the time of the subject injury or which would have existed by the time of the impairment rating without the intervention of the compensable injury. The degree of permanent impairment attributable to the injury shall be compensated in accordance with AS 23.30.190 (a). As used in the paragraph, "merger" means the combining of a preexisting permanent impairment with a subsequent compensable permanent impairment which, when the effects of both are considered together, result in a permanent impairment rating which is greater than the sum of the two permanent impairment ratings when each impairment is considered individually.

(c) If an employee is receiving compensation for wage-loss suffers a subsequent injury causing temporary disability, both wage-loss benefits and temporary disability benefits shall be payable during the duration of temporary disability; however, the total benefits payable shall not exceed the maximum compensation rate in effect for temporary disability at the time of the subsequent injury. Any reduction in benefits due to such limit shall be applied first to the wage-loss benefits payable as a result of the prior injury.

(d) If an employee receiving wage-loss benefits suffers a subsequent injury causing an additional compensable wage loss, benefits for each wage

loss shall be payable; however, the total wage-loss benefits payable shall not exceed the maximum compensation rate in effect for wage-loss at the time of the subsequent injury. Any reduction in wage-loss benefits due to such limitation shall be applied first to the benefits payable as a result of the prior injury.

AS 23.30.200
TEMPORARY PARTIAL DISABILITY

Problem:

Existing wording not compatible with wage-loss.

Solution:

This section has been completely re-written to coordinate the benefit with wage-loss. The benefit is almost exactly the same as the wage loss benefit, but this form of compensation does not contemplate the employee's injury being so acute that a permanent impairment will exist after reaching maximum medical improvement.

Both the existing benefit and the recommended version contain a maximum period of entitlement of 5 years. The recommended section contains provisions not contained in the existing section:

1. A provision to reduce the benefit if the employee voluntarily reduces income or fails to accept employment available.

2. A provision requiring reporting of wages earned if the employee leaves the employment of the original employer.

Justification:

Adopted from the Florida Workers' Compensation Act, Section 440-15(4).

Recommendation:

Sec. 23.30.200 TEMPORARY PARTIAL DISABILITY

(a) In case of temporary partial disability, benefits shall be based on actual wage loss and shall not be subject to the minimum compensation rate set forth in AS 23.30.175 (a). The compensation shall be equal to 80 per cent of the difference between the employee's spendable weekly wages at the

time of injury and the spendable weekly salary, wages, and other remuneration the employee is able to earn. In order to simplify the comparison of the pre-injury spendable weekly wages with the salary, wages, and other remuneration the employee is able to earn, the division may by regulation provide for the modification of the weekly comparison so as to coincide as closely as possible with the injured worker's pay periods.

(b) The amount determined to be salary, wages, and other remunerations the employee is able to earn shall in no case be less than the sum actually being earned by the employee, including earnings from sheltered employment. In the event the employee voluntarily limits his or her income or fails to accept employment commensurate with his or her abilities, the salary, wages, and other remuneration the employee is able to earn shall be deemed to be the amount which would have been earned if the employee did not limit his or her income or accepted appropriate employment. Whenever compensation as set forth in paragraph (a) may be payable, the burden shall be on the employee to establish that any wage loss claimed is the result of the compensable injury.

(c) Such compensation shall be paid during the continuance of such disability, not to exceed a period of 5 years.

(d) If an injured employee, when receiving compensation for temporary partial disability, leaves the employment of the employer by whom he was employed at the time of the accident for which such compensation is being paid, he shall, upon securing employment elsewhere, give to such former employer an affidavit in writing containing the name of his new employer, the place of employment and the amount of wages being received at such new employment and until he gives such affidavit the compensation for temporary partial disability will cease. The employer by whom such employee was employed at the time of the accident for which such compensation is being paid may also at any time demand of such employee additional affidavits in writing containing the name of his employer, the place of his employment and the amount of wages he is receiving, and if the employee, upon such demand, fails or refuses to make and furnish such affidavit, his right to compensation for temporary partial disability shall cease until such affidavit is made and furnished.

AS 23.30.205

INJURY COMBINED WITH PRE-EXISTING IMPAIRMENT

Problem:

1. Cost. Each employer contributes 6 percent of paid claims to support the second injury fund which is utilized by only a few employers and carriers. Employers and their carriers who do not document pre-hire or the current employee medical status essentially forfeit their right to participate in the benefits of the fund. Those employers pay the 6 percent surcharge to support the fund and also the full amount of subsequent claims that do not qualify for reimbursement. Contribution to the fund should be universal as should the utilization.

2. The existing law requires that employers, in order to qualify for reimbursement from the fund, "must establish by written records that the employer had knowledge of the permanent physical impairment before the subsequent injury and that the employee was hired or retained after the employer acquired that knowledge". Pre-employment physicals are costly and for employers who hire the construction trades for short periods of time during projects, the cost can be enormous. Health questionnaires are often inaccurate as the employee fears the continuance of his job if his employer knows his physican condition.

3. The original purpose of the section was to encourage the hiring of the handicapped by relieving employers of the cost of subsequent injuries made more serious by the pre-existing handicap. In this regard the section fails to achieve its purpose as the non-reimbursed portion of the claim can exceed $100,000.

4. Reimbursement is allowed subsequent to 104 weeks. Even though a claim qualifies for reimbursement from the second injury fund the costs associated with the first 104 weeks can be staggering. Consider a case where medical costs are $30,000 during the first 104 weeks (not uncommon) and the employee is entitled to the maximum benefit in 1982 of $942 per week, or $97,968, for a total of $127,968 within the first 104 weeks. This is a high cost to pay, especially if the accident would not have occurred except for the existence of the preexisting handicap.

Solutions:

The cost will increase generally in proportion to the degree to which reimbursement qualifications are liberalized, which is in conflict with solving problems 2, 3, and 4. The cost of the benefit was considered as important as facilitating the hiring of the handicapped, and the resulting compromise recommendation is suggested.

In order to reduce costs, the cost associated with claims must be reduced which will be accomplished in part by the wage-loss program. Additionally, the apportionment provision (section 196 (a)) which refers to permanent total disability and death which is accelerated or aggravated by a preexisting disease or anomaly, was added to apportion to the employee that portion of the cost of disability associated with the aging process: degenerative back disease, arthritis, and others. These factors will reduce benefits in cases where the preexisting condition is not the result of an accident but the result of simply aging. All employers will share in the costs as they do now, but all employers will be able to share in the benefits of the fund equally as each employee with a preexisting condition will be registered with the division. The employer's ability to give physicals or his method of hiring will not determine second injury fund eligibility.

Rather than require employers to absorb the costs associated with documenting prior knowledge of the preexisting condition, a new requirement used successfully in a number of other states has been added. In order for an employer to obtain second injury fund benefits, he must register with the Workers' Compensation Division the name of the employee and a description of the handicap. This pre-registration along with the combined effects of the apportionment and second injury fund should make the employment situation better for the handicapped, decrease costs, and provide absolute knowledge of second injury fund application.

The issue of reimbursement being allowed after 104 weeks being considered too long and too costly was very difficult to analyze without an accurate projection of the cost impact of any change. Considerable support existed for reducing the time period down to 26 or 52 weeks or to base reimbursement upon a percentage (50, 60, 70, or 80 percent of all costs from the first day rather than 100 percent after 104 weeks). Without rating help from the NCCI, it was determined that the 104 week provision had to remain, subject to further study.

Justification:

This section is in part modeled after the Florida provision, but extensively editited, and the existing Alaska statute. The schedule of preexisting conditions has been liberalized slightly to conform with the model act produced by The Council on State Governments, the Workers' Compensation and Rehabilitation Law, Revised. That part of the section pertaining to pre-registration of handicaps was obtained from the Kansas act, although others could have been utilized.

Recommendation:

Sec. 23.30.205 INJURY COMBINED WITH PRE-EXISTING IMPAIRMENT

(a) Legislative intent. It is the purpose of this section to encourage the employment of persons who have existing physical impairments by protecting employers from excess liability for compensation and medical expense when an injury to a physically impaired worker merges with his preexisting permanent physical impairment to cause a greater disability, permanent impairment, or wage-loss than would have resulted from the injury alone. The division shall inform all employers of the existence and function of the second injury fund. This section shall not be construed to create or provide any benefits for injured employees or their dependents not otherwise provided by this chapter. The entitlement of an injured employee or his dependents to compensation under this chapter shall be determined without regard to this section, the provisions of which shall be considered only in determining whether an employer or carrier who has paid compensation under this chapter is entitled to reimbursement from the second injury fund.

(b) Definitions. As used in this subsection:

(1) "Permanent physical impairment" means any permanent condition due to previous accident or disease or any congenital condition which is, or is likely to be, a hindrance or obstacle to employment.

(2) "Merger" describes or means that:

(A) Had the permanent physical impairment not existed, the subsequent injury would not have occurred;

(B) The permanent disability, permanent impairment, or wage-loss resulting from the subsequent injury is materially and substantially greater than that which would have resulted had the permanent physical impairment

not existed and the employer has been required to pay, and has paid, permanent total disability, permanent impairment, or wage-loss for that materially and substantially greater disability; or

(C) Death would not have been accelerated had the permanent physical impairment not existed.

(c) If an employee who has a preexisting permanent physical impairment incurs a subsequent permanent impairment from injury arising out of and in the course of his employment which merges with the preexisting permanent physical impairment to cause a permanent impairment, wage-loss, total disability, or the need for medical and related benefits, the employer shall, in the first instance, pay all compensation provided by this chapter, but subject to the limitations in subsection (e), such employer shall be entitled to reimbursement from the second injury fund created by AS 23.30.040 for the compensation and medical and related benefits he has been required to provide under this chapter subsequent to those payable for the first 104 weeks.

(d) When death results. If death results from the subsequent permanent impairment contemplated in subsection (c), and it shall be determined by the board that the death resulted from a merger, the employer in the first instance will pay the funeral and death benefits prescribed by this chapter, but he shall be reimbursed from the second injury fund created by AS 23.30.040 for for compesation and medical and related benefits payable in excess of 104 weeks.

(e) Reimbursement Limitations

(1) In order to qualify under this section for reimbursement from the second injury fund the employer must, prior to the occurrence of a subsequent injury to an impaired or handicapped employee, file with the division, on a form prescribed by the division, a notice of the employment or retention of the impaired employee, together with a description of the impairment or handicap claimed.

(2) No condition shall be considered a "permanent impairment" unless it is one of the following conditions:

(A) Epilepsy

(B) Diabetes

(C) Cardiac disease

(D) Arthritis

(E) Amputated foot, leg, arm or hand

(F) Loss of sight of one or both eyes or a partial loss of uncorrected vision of more than 75 per cent bilaterally

(G) Residual disability from poliomyelitis

(H) Cerebral palsy

(I) Multiple sclerosis

(J) Parkinson's disease

(K) Cerebral vascular accident

(L) Tuberculosis

(M) Silicosis

(N) Psychoneurotic disability following treatment in a recognized medical or mental institution

(O) Hemophilia

(P) Chronic osteomyelitis

(Q) Ankylosis of joints

(R) Hyperinsulism

(S) Muscular dystrophies

(T) Arteriosclerosis

(U) Thrombophlebitis

(V) Varicose veins

(W) Heavy metal poisoning

(X) Ionizing radiation injury

(Y) Compressed air sequelae

(Z) Ruptured intervertebral disk, or

(AA) any permanent physical condition which, prior to the injury, constitutes a 20 per cent impairment of the body as a whole determined pursuant to AS 23.30.190 (a)(3).

(3) The second injury fund shall not be liable for any costs, interest, penalties, or attorneys' fees.

(4) An employer's or carrier's right to apportionment or deduction pursuant to AS 23.30.196 shall not preclude reimbursement from said fund except when the merger comes within the definition of paragraph (b)(2)(B) and such apportionment or deduction relieves the employer or carrier from providing the materially and substantially greater permanent disability benefits otherwise contemplated in said paragraphs.

(f). The second injury fund may not be bound as to any question of law or fact by reason of an award or an adjudication to which it was not a party or in relation to which the commissioner of labor was not notified at least 3 weeks before the award or adjudication, that the fund might be subject to liability for the injury or death.

(g) An employer or his carrier shall notify the commissioner of labor of any possible claim against the second injury fund as soon as practicable, but in no event later than 100 weeks after the employer or his carrier have knowledge of the injury or death.

AS 23.30.210
DETERMINATION OF WAGE-EARNING CAPACITY

This section is in direct conflict with the wage-loss theory and its repeal is essential.

Recommendation:

Sec. 23.30.210 DETERMINATION OF WAGE-EARNING CAPACITY

REPEALED

AS 23.30.215
COMPENSATION FOR DEATH

Problems and Solutions:

1. The $1,000 death benefit is inadequate. ACE recommends that the death benefit be increased to $2,500 from the existing $1,000. The $2,500 is recommended by the Division of Workers' Compensation in H.B. 159 along with a cost of living proposal. ACE supports the $2,500 as a more appropriate benefit but believes automatic escalators to be detrimental to proper rating. Future increases can be requested.

2. Remarriage penalty is considered unjust in today's society. If a widow or widower entitled to death benefits remarries two (2) years of benefit entitlement are paid in a lump sum and future benefits are forfeited. ACE recommends the deletion of the remarriage penalty.

Justification:

ACE recommendation.

Recommendation:

Sec. 23.30.215 COMPENSATION FOR DEATH

(a) If death results within one year after the accident or follows continuous disability and results from the accident within 5 years thereafter, the compensation is known as the death benefit and is payable in the following amounts to or for the benefit of the following persons:

(1) Reasonable and necessary funeral expenses not exceeding $2,500 [$1,000];

(2) If there is a widow or widower or a child or children of the deceased, the following percentages of the deceased employee's spendable [AVERAGE] weekly wages:

(A) 80 [66 2/3] per cent for the widow or widower with no children;

(B) 40 [33 1/3] per cent for the widow or widower with one child and 40 [33 1/3] per cent for the child;

(C) 80 [20] per cent for the widow or widower with two or more children, payable 1/3 to the widow or widower, and 2/3 divided equally among the children [AND 46 2/3 PER CENT DIVIDED EQUAILY AMONG THE CHILDREN];

(D) deleted

(E) 80 [66 2/3] per cent for an only child where there is no widow or widower;

(F) Deleted

(G) 80 [66 2/3] per cent, divided equally, if there are two or more children and no widow or widower.

(3) [IF THE WIDOW OR WIDOWER REMARRIES, SHE OR HE IS ENTITLED TO BE PAID IN ONE SUM AN AMOUNT EQUAL TO THE COMPENSATION TO WHICH THE WIDOW OR WIDOWER WOULD OTHERWISE BE ENTITLED IN THE TWO YEARS COMMENCING ON THE DATE OF REMARRIAGE AS FULL AND FINAL SETTLEMENT OF ALL SUMS DUE THE WIDOW OR WIDOWER.]

(4) If there is no widow or widower or child or children, then for the support of father, mother, grandchildren, brothers and sisters, if dependent upon the deceased at the time of the injury, 35 per cent of the spendable [AVERAGE] weekly wage of the deceased to such beneficiaries, share and share alike, not to exceed $20,000 in the aggregrate.

(b) In computing death benefits, the spendable [AVERAGE] weekly wage of the deceased shall be computed under AS 23.30.220 of this chapter and shall be paid in accordance with AS 23.30.155 of this chapter and subject to the weekly maximum limitation in the aggregate as provided in AS 23.30.175 of this chapter, but the total weekly compensation may not be less than $45 for a widow or widower nor less than $15 weekly to a child or $30 for children.

(c) All questions of dependency shall be determined as of the time of the injury, or death.

(d) Compensation under this chapter to aliens not residents (or about to become non-residents) of the United States or Canada is the same in amount as provided for residents, except that dependents in a foreign country are limited to widow or widower and child or children, or if there is no widow or widower and child or children, to surviving father or mother whom the employee has supported, either wholly or in part, for a period of one year before the date of injury. The board, at its option, or upon the application of the employer or carrier, may commute all future installments of compensation to be paid to an alien dependent who is not a resident of the United States or Canada by paying or causing to be paid to him one-half of the commuted amount of the future installments of compensation as determined by the board.

(e) Death benefits payable to a widow or widower in accordance with (a) of this section shall abate as that person ceases to be entitled and does not inure to persons subject to continued entitlement. In the event a child ceases to be entitled, that child's share shall inure to the benefit of the surviving spouse subject to adjustment as provided in (f) of this section.

(f) Except as provided in (g) of this section, the death benefit payable to a widow or widower shall:

(1) five years following date of death of the deceased worker be reduced to 66 2/3 per cent of the benefit being then paid;

(2) eight years following date of death of the deceased worker be reduced to 50 per cent of the benefit being then paid;

(3) terminate 10 years following death of the deceased worker.

(g) The provisions of (f) of this section do not apply to a widow or widower who at the time of death of the deceased worker is permanently and totally disabled. The death benefits payable to a widow or widower are not subject to reduction under (f) of this section after the widow or widower has attained the age of 52 years.

(h) In the event a deceased worker is survived by children of a former marriage not living with the surviving widow or widower, then those children shall receive the amount being paid under a decree of child support; the difference between this amount and the maximum benefit payable under this section shall be distributed pro-rata to the remainder of those entitled.

(i) In the event the total amount of all benefits computed under (a)(2) of this section exceeds the maximum benefit provided in AS 23.30.175 of this chapter, the maximum benefit under AS 23.30.175 of this chapter shall be pro-rated among entitled survivors.

AS 23.30.220

DETERMINATION OF SPENDABLE [AVERAGE] WEEKLY WAGE

Problems:

1. The utilization of 66 2/3 percent of average weekly wage allows high wage earners to bring home practically the same after tax dollars while injured than they would working. A disincentive to return to work.

For low income wage earners who have fewer discretionary dollars, they are bring home considerably less than their normal after tax income when injured. (see Exhibit VII)

2. The average weekly wage is presently computed utilizing the highest earnings recorded over the past 3 calendar years. Employers who have jobs available avoid hiring employees who have work histories showing high prior earnings. Employers ordinarily willing to employ workers under a rehabilitation or retraining program can be hit with shock losses for subsequent injuries with compensation based on prior earnings.

3. Somewhat unique to Alaska are the North Slope jobs which utilize an extraordinary shift (3 weeks on, 3 weeks off). Normal formulas for computing average weekly wage can produce a windfall to the employee or the employer, or be detrimental to either.

4. Workers who are employed on a permanent basis working 8 A.M. - 5 P.M., five days a week, are paid based upon last year's wage, but should be paid on existing wage. All workers are entitled to compensation based upon existing rather than last year's wage.

5. Workers' compensation premiums are paid on existing wages but benefits paid often show no relationship to premiums which introduces

variability into the rating scheme.

6. Employees holding two jobs or who are self employed on a part- time basis, can draw benefits from one employer far in excess of normal wages paid. Employer's should know before hand of outside wages.

7. Employees who have no wage history because they are new to the work force, are always paid the minimum of $65 per week by carriers until the board hears the case and assigns a compensation rate.

Solutions:

1. As recommended in the model law drafted by The Council on State Governments, the Workmen's Compensation and Rehabilitation Law, Revised, when the maximum benefit exceeds 100 percent of the state average weekly wage (Alaska is 200 percent), average weekly wage should be dropped in favor of spendable weekly wage. Spendable weekly wage is gross wage less federal income and social security tax.

ACE recommends the use of 80 percent of the spendable weekly wage. (see Exhibit VIII) In comparing this benefit level with the existing benefit level, be aware that the recommended benefit is 80 percent of the current spendable weekly wage. The existing law bases average weekly wage on last year's wage which is generally lower than existing wages. The utilization of this formula will insure the same income replacement level for all wage earners, high and low.

2, 3 & 4. Utilizing an employees highest earnings during any of the three previous calendar years has some good and bad features depending upon the evaluator's point of view. Numerous possibilities were discussed, including basing temporary disability benefits on current wage and permanent disability benefits upon the average of the past 3 years. They were discarded in favor of the recommendation because of our desire to base the benefit on current wage rates rather than previous wages. An employee earning $35,000 on a new job is entitled to receive compensation based upon the existing wage, not $25,000, the salary earned in a previous job.

The recommendation covers every employee as fairly as possible, from the worker on annual, monthly, weekly, or hourly rates of pay; even the worker employed on an exceptional North Slope shift. If a current wage rate is not applicable and prior year wages need to be utilized, prior year wages are divided by 50 rather than 52 to approximate the effect of inflation. (see subsection (d)).

5. Compensation paid is more directly related to existing wage rates bringing a closer correlation between benefits and premiums.

6. The recommendation excludes a reference to self employment income in the computation of average weekly wage. However, subsection (n) makes the employer liable for compensation derived from other employment if the employer is aware of the other employment.

7. Employees who have no wage history, will now have compensation rates based upon actual earnings over the previous 13 weeks, or what he would have earned had he worked the past 13 weeks, eliminating the necessity for board hearings and the issuance of $65 minimum payment checks during the initial weeks of disability.

Justification:

The majority of this recommendation has been adopted from the model act prepared by The Council on State Governments, the Workmen's Compensation and Rehabilitation Law, Revised. Also adopted by Kansas, Kentucky, Idaho, and others.

Recommendation:

AS 23.30.220 DETERMINATION OF SPENDABLE [AVERAGE] WEEKLY WAGE

Except as otherwise provided in this chapter, the spendable weekly wage of the injured employee at the time of the injury is the basis for computing compensation, and shall be the employee's average weekly wage minus the deductions for federal income and social security taxes that the employee would pay if he were to receive his average weekly wage for a year and if he were to take the standard income tax deductions for the maximum number of dependents to which he is entitled for federal income tax purposes. The Division shall annually prepare formulas which shall be used to calculate an employee's spendable weekly wage on the basis of his average weekly wage and of his number of dependents.

(a) If at the time of the injury the wages are fixed by the week, the amount so fixed shall be the average weekly wage;

(b) If at the time of the injury the wages are fixed by the month, the average weekly wage shall be the monthly wage so fixed multiplied by twelve and divided by fifty-two;

(c)(1) If at the time of the injury the wages are fixed by the day, hour, or by the output of the employee, the average weekly wage shall be the wage most favorable to the employee computed by dividing by thirteen the wages said employee earned in the employ of the employer in the first, second, third, or fourth period of thirteen consecutive calendar weeks in the fifty-two weeks immediately preceding the injury.

(2) If the employee has been in the employ of the employer less than thirteen calendar weeks immediately preceding the injury, his average weekly wage shall be computed under the foregoing paragraph, taking the wages for such purpose to be the amount he would have earned had he been so employed by the employer the full thirteen calendar weeks immediately preceding the injury and had worked, when work was available to other employees in a similar occupation.

(d) Notwithstanding (a), (b), and (c) above, if an employee is scheduled to work a pre-determined number of days, weeks, or months and receives a pre-determined number of days, weeks, or months off, the employee's average weekly wage shall be determined by accumulating wages earned from the scheduled work and dividing by the total number of scheduled days, weeks, or months worked and given off.

(e) If at the time of the injury the wages are fixed by the year, the average weekly wage shall be the yearly wage so fixed divided by fifty-two;

(f) If at the time of the injury the hourly wage has not been fixed or can not be ascertained, the wage for the purpose of calculating compensation shall be taken to be the usual wage for similar services where such services are rendered by paid employees.

(g) In occupations which are typically seasonal or characterized by intermittent periods of employment and unemployment, and therefore normally cannot be carried on throughout the year, the spendable weekly wage shall be computed using one fiftieth of the total wages which the employee has earned from all occupations during the immediately preceding calendar year.

(h) When the employee is working under concurrent contracts with two or more employers and the defendant employer has knowledge of such employment prior to the injury, his wages from all such employers shall be considered as if earned from the employer liable for compensation.

(i) If the employee was a minor, apprentice or trainee when injured, and it is established that under normal conditions his wages should be expected

to increase during the period of disability, that fact may be considered in computing his average weekly wage.

AS 23.30.235
CASES IN WHICH NO COMPENSATION IS PAYABLE

Problems:

1. Requires that intoxication be the "sole" cause of the injury, which is almost impossible to show.
2. Intoxication is not defined.
3. Entire section is not effective in cases involving alcohol.
4. Employers go to great expense to establish safety rules to protect employees. Employees can wilfully violate rules and still receive compensation.
5. Employees can misrepresent his physical condition when applying for a job. When such misrepresentations result in the employer assuming an increased amount of risk, there is no recourse for the employer.

Solutions:

1, 2, & 3. Subsection (a) in the recommendation deletes the word "solely" in conjunction with the cause of alcohol related injuries. In its place is a double standard:

(a) "if the injury was occasioned by an employee under the influence of alcohol".

(b) "if there was at the time of injury 0.10 percent or more by weight of alcohol in the employee's blood ..."

This change will have broad implications for employee's on business trips or employees working in remote sites in Alaska, as many alcohol related injuries will not be covered by compensation. It should be remembered by the reader that employees will not be destitude because of this change as such accidents will be covered by non-occupational accident and sickness programs that virtually every employee has in his non-occupational benefit package.

This recommendation is adopted from Florida where it has been proven to be effective for several years

4. Almost every state includes provisions concerning a reduction or forfeiture of compensation when safety rules are willfully disregarded or ignored or when an employee injures himself while not using available safety devices. The wording employed by many states is similar, and the recommendation adopts common wording. Reviewing Larson, Workers' Compensation Laws on this subject reveals very limited success in proving willful intent.

5. The State of Alaska, for workers' compensation, is a "last employer" state. The last employer takes the employee as he finds him and any preexisting physical impairment which causes subsequent disability is the risk of the new employer.

Employers believe they have a right to be informed of an employee's actual physical condition when hired, as the unexpected cost of injury related to preexisting conditions can be a major loss. Employees, fearful of not being hired, often misrepresent their physical condition in employment applications. The provisions of this recommendation in subsection (c) allow an employer to discontinue the payment of compensation where an employee misrepresented his pre-hire physical condition which subsequently contributed to a claim. With an apportionment provision (Section 196) reducing the employer's liability when preexisting conditions are involved in an injury, and the registration of the employee and handicap with the second injury fund, the employer's willingness to hire the handicapped should improve considerably, thereby eliminating the need for an employee to misrepresent his physical condition.

This provision has been adopted from the Kansas law and conversations with adjusters there indicate it is only effecitve in those cases involving "gross" misrepresentation - our target.

Justification:

1, 2, & 3. Adopted from the Florida Workers' Compensation Act, Section 440.09(3).

4. Standard wording in almost all workers' compensation acts.

5. Kansas Workers' Compensation Act, Section 44.567 (2)(c).

Recommendation:

Sec. 23.30.235 CASES IN WHICH NO COMPENSATION IS PAYABLE OR IS REDUCED

(a) No compensation shall be payable if the injury was occasioned by an

employee under the influence of alcohol; by the influence of any narcotic drugs, barbiturates, or other stimulants which affected the employee to such an extent that the employee's normal faculties were impaired; or by the willful intention of the employee to injure or kill himself, herself, or another. If there was at the time of the injury 0.10 per cent or more by weight of alcohol in the employee's blood, it shall be presumed, in the absence of substantial evidence to the contrary, that the injury was occasioned primarily by the intoxication of the employee. Per cent by weight of alcohol in the blood shall be based upon grams of alcohol per 100 milliliters of blood.

(b) When the injury is caused by the willful disobedience of a safety rule or the willful failure to use a safety device, compensation as provided in this chapter shall be reduced 25 per cent.

(c) No compensation is payable if an employee, in connection with an application for employment or an employment medical examination or otherwise in connection with obtaining or retaining employment with the employer, knowingly

(1) misrepresents himself or herself as not having an impairment or handicap;

(2) misrepresents himself or herself as not having had any previous accidents;

(3) misrepresents himself or herself as not having previously been disabled or compensated in damages or otherwise because of any prior accident, injury or disease;

(4) misrepresents himself or herself as not having had any employment terminated or suspended because of any prior accident, injury or disease;

(5) misrepresents himself or herself as not having any mental, emotional or physical impairment, disability, condition, disease or infirmity; or

(6) misrepresents or conceals any facts or information which is reasonably related to the employee's possible subsequent claim for workers' compensation.

AS 23.30.236

RESIDENT EMPLOYEES

(A NEW SECTION)

Problem:

Employees working in remote sites are covered by workers' compensation 24 hours per day, and for employers whose primary business is at remote sites, the cost of claims resulting from injuries occurring during off duty hours is enormous. Testimony before legislative committees during the past two years has repeatedly brought to light the unfairness of charging the employer with such claims. The testimony, whether from employers, attorneys, or unions, was unanimous in that the employer should not have those claims charged to compensation. (see Exhibit IX, testimony, Alascom Inc., January 16, 1981)

Solution:

The situation in Alaska is the result of Supreme Court decisions, who undoubtedly had no other recourse as the workers' compensation act gave no legislative guidance in these cases. Therefore, in order to change the situation, legislative guidance is required.

The problem was analyzed as one which combines two common workers' compensation problems which have ample case law history; resident employees and recreational and social activities. Larson, Workers' Compensation Law, devotes section 22 to recreational and social activities and section 24 to resident employees. His summation of the laws of the states is easy to read and is concise. Larson states:

> § 22.00 Recreational or social activities are within the course of employment when
>
> 1. They occur on the premises during a lunch or recreation period as a regular incident of the employment; or
>
> 2. The employer, by expressly or impliedly requiring participation, or by making the activity part of the services of an employee, brings the activity within the orbit of the employment; or
>
> 3. The employer derives substantial direct benefit from the activity beyond the intangible value of improvement in employee health and moral that is common to all kinds of recreation and social life.
>
> § 24.00 When an employee is required to live on the premises, either by his contract of employment or by the nature of the

employment, and is continuously on call (whether or not actually on duty), the entire period of his presence on the premises pursuant to this requirement is deemed included in the course of employment. However, if the employee has fixed hours of work outside of which he is not on call, compensation is awarded usually only if the source of injury was a risk associated with the conditions under which claimant lived because of the requirement of remaining on the premises.

These two summations were combined into the recommended Section, 236 Resident Employees. Others have recommended that injuries which occur outside of normal work hours be excluded from coverage altogether but a cursory review of Larsons, Workers' Compensation Laws, reveals that many legitimate claims would be excluded at remote sites that would be covered under the same circumstances in urban employment.

Justification:

No other state has severe problems in this area which precluded ACE from seeking guidance from other state statutes. The recommendation is original, but the words are time tested.

Recommendation:

AS 23.30.236 RESIDENT EMPLOYEES

(a) When an employee is required to live on the premises, either by his contract of employment or by the nature of the employment, and is continuously on call, the entire period of his presence on the premises pursuant to this requirement is deemed included in the course of employment except when the source of the injury derives from an activity that is strictly personal to the employee. However, if the employee is not continuously on call, compensation and medical and related benefits shall not be paid unless

(1) the accident occurs on the premises during a lunch or recreational period which is a regular incident of the employment, or

(2) the employer has expressly or impliedly required participation, or made the activity part of the services of an employee bringing the activity within the orbit of employment, or

(3) the employer derives a substantial direct benefit from the activity beyond the intangible value of

(A) improvement in employee health or morale that is common to all kinds of recreation and social life, or

(B) recreation as an economic factor in industrial relations, and

(4) the source of the injury was a risk distinctly associated with the conditions under which the employee lived because of the requirement of remaining on the premises.

(b) In any case, notwithstanding (a), compensation for disability shall be limited to reasonable travel time both to and from the point where adequate medical treatment can be obtained and the number of days the employee was under the care of the physician.

AS 23.30.238
COORDINATION WITH OTHER BENEFITS
(A NEW SECTION)

Problem:

Employee's often submit claims that are denied by employers or carriers, and on appeal to the board or courts, the controversion is reversed and benefits awarded. In making a case for occupational benefits, the employee defeats a non-occupational claim under a group program. As a result, the employee finds both workers' compensation and group insurance non-responsive to the claim for injury. All benefits are denied and the appeal process can take weeks, months, or years. Occasionally, non-occupational plans step in and voluntarily pay but are hurt financially when employees fail to return the benefits when compensation is finally awarded. Employers and carriers cannot honor a group insurance company's request for reimbursement out of compensation due.

Solution:

The purpose of this section is to assure employees who submit controverted claims, that if compensation is denied, non-occupational group plans will pay, while at the same time protecting the non-occupational group insurer's access to future compensation awarded.

Justification:

Delaware model Workers' Compensation Act. Section 14.

Recommendation:

Sec. 23.30.238 COORDINATION WITH OTHER BENEFITS

(a) Sickness and/or Accident Health Insurance.

1. In any case where, due to a dispute over whether benefits are due to an employee under this chapter, benefits are not being paid by the employer or its workers' compensation carrier and the employee is covered by a sickness and/or accident insurance policy provided by the employer or a collective bargining unit of a type which would pay him benefits only if the injury is determined not to be compensable under this chapter, the sickness and/or accident carrier shall make all payments it would normally be required to make to the employee under its policy if the injury had been determined not to be compensable under this chapter, pending a final determination of compensibility; provided, however, that it shall be required to make such payments only to the extent they would also be required under this chapter if the injury is compensable.

2. If the injury is subsequently and finally determined to be compensable under this chapter, the party required to pay the workers' compensation claim shall, upon notification of the amount due, promptly pay to the sickness and/or accident carrier all sums paid by it to the injured employee, along with the carriers reasonable costs and attorneys' fees necessary to enforce this right if not promptly so paid; provided, however, that the obligation of the workers' compensation carrier to make such payment shall be solely limited to the payments required under this chapter.

3. All sums paid by the sickness and/or accident carrier pursuant to this subsection shall count toward the total compensation, if any, due to the injured employee under this chapter.

4. In no case shall this section be interpreted to relieve the sickness and/or accident carrier from any liability for payment otherwise due under its contract of insurance, including but not limited to its obligation to make supplemental payments in workers' compensation claims to the extent required by that contract of insurance.

AS 23.30.239

EMPLOYEE ELIGIBLE FOR BENEFITS UNDER THIS CHAPTER WHO HAS RECEIVED OR IS ENTITLED TO RECEIVE UNEMPLOYMENT COMPENSATION

(A NEW SECTION)

Problem:

The Workers' Compensation Act has been called upon throughout the years to compensate employees after they reach the date of maximum medical improvement and before that point in time when employment opportunities improve and jobs become available. The practice is based upon the theory that a compensable injury caused a loss of the job, and therefore the unemployment is the result of the industrial injury and workers' compensation is proper until a new job is available.

Solution:

In such cases it is the belief of ACE that the primary benefit should be unemployment compensation and that workers' compensation, if still payable, shall be supplemental to the unemployment compensation. This provision is successful in other states in reducing employer costs.

Justification:

Adopted from the Florida Workers' Compensation Act, Section 440.15(11).

Recommendation:

Sec 23.30.239 EMPLOYEE ELIGIBLE FOR BENEFITS UNDER THIS CHAPTER WHO HAS RECEIVED OR IS ENTITLED TO RECEIVE UNEMPLOYMENT COMPENSATION

(a) No compensation shall be payable for temporary total disability or permanent total disability under this chapter for any week in which the injured employee has received, or is receiving, or is eligible for unemployment compensation benefits.

(b) If an employee is entitled to both compensation for wage-loss pursuant to AS 23.30.190(b) and unemployment compensation benefits, such unemployment compensation benefits shall be primary and the compensation for wage-loss shall be supplemental only, the sum of the two benefits not to

exceed the amount of wage-loss compensation which would otherwise be payable. For purposes of termination of wage-loss pursuant to AS 23.30.190(b)(3)(A), the term "payable" shall be construed to include payment of unemployment compensation benefits in lieu of compensation for wage-loss as provided in this section.

AS 23.30.250
PENALTY FOR MISREPRESENTATION

Problems:

1. Provision would apply only to someone providing false information to "obtain" a benefit; an employee. The provision should also apply to an adjuster who might mislead an injured employee.

2. The existing statute is not an effective tool in prosecuting someone suspected of defrauding the system.

Solution:

Reviewing the statutes of other states in conjunction with the information contained in Larsons, Workers' Compensation Laws, reveals that statutes vary widely. Their biggest attribute is the deterrent they pose to the person who might otherwise consider utilizing a deceptive tactic to further his own desire.

The recommendation should be adopted, and the provisions and penalty advertised, as people pay attention to the word "felony".

The provision is infinitely more complete than the existing statute which will contribute a great deal in enforcing the provision when needed.

Justification:

Adopted from the Florida Workers' Compensation Act, Section 440.37(1) and (2)(a).

Recommendation:

Sec. 23.30.250 PENALTY FOR MISREPRESENTATION

(a) Any person who wilfully makes a false or misleading statement or representation for the purpose of obtaining or denying any benefit or payment under this chapter, or who presents or causes to be presented any written or oral statement as part of, or in support of, a claim for payment or other

benefit pursuant to any provision of this chapter, knowing that such statement contains any false or misleading information concerning any fact or thing material to such claim, or who prepares or makes any written or oral statement that is intended to be presented to any employer, insurance company, or self-insured program in connection with, or in support of, any claim for payment or other benefit pursuant to any provision of this chapter, knowing that such statement contains any false or misleading information concerning any fact or thing material to such claim, is guilty of theft as defined in AS 11.46.100(3) and punishable as provided in AS 11.46.120 - 11.46.150 [A MISDEMEANOR, AND UPON CONVICTION IS PUNISHABLE BY A FINE OF NOT MORE THAN $1,000, OR BY IMPRISONMENT FOR NOT MORE THAN ONE YEAR, OR BY BOTH].

(b) All claim forms as provided for in this chapter shall contain a notice that clearly states in substance the following: "Any person who, knowingly and with intent to injure, defraud, or deceive any employer or employee, insurance company, or self-insured program, files a statement of claim containing any false or misleading information is guilty of a felony."

AS 23.30.265
DEFINITIONS

ACE has added five (5) new definitions and has altered the definitions of three terms.

The word "accident" was defined as it is now used in the definition of injury.

The phrase "date of maximum medical improvement" is added because it becomes a significant date in the wage-loss program; specifically section 190, Permanent Impairment and Wage-Loss. That date triggers the time period (20 day) limitation after which any lump sum impairment award is due and payable. In the wage-loss subsection it is the date when the wage-loss benefit begins as the employee is entitled to total temporary disability prior to that time.

The term "primary duties" is used in section 094, Rehabilitation. The term is used to differentiate between employees entitled to vocational rehabilitation and those who are not. If an employee can perform the primary duties of his occupation or any other occupation for which he is

qualified by education, training, and experience, he is not entitled to vocational rehabilitation.

The term "suitable gainful employment" is used in the Rehabilitation section to define the goal of the rehabilitation effort and add direction to future rehabilitation programs.

The term "substantial earning capacity" is primarily used in section 180, Permanent Total Disability. If after injury and after reaching the date of maximum medical improvement, an employee has a "substantial earning capacity", disability is not considered permanent and total. The wage-loss benefit would be payable in these cases rather than the permanent total benefit.

The definition of "injury" was also modified in that portion which addresses breakage or damage to prosthetic devices. The problem with the current definition is that it is not necessary to have an accident to the body in conjunction with or simultaneously with damage to teeth or prosthetic devices. Fillings falling out of teeth are covered at remote site operations, glasses falling off an employee's face are covered, all without an accident to the body. (see Exhibit IX) ACE believes the intent of the Workers' Compensation Act has been exceeded and requires tightening.

Originally requested in H.B. 159 by the Workers' Compensation Division, "pain clinic services" has been added in the definition of medical and related benefits. The definition of medical and related benefits also specifically included "physical rehabilitation", apparently to the exclusion of "vocational rehabilitation". Section 094, Rehabilitation covers both, and both should be considered medical, therefore necessitating the deletion of the word "physical".

The definition of "wages" has also been altered to clarify its meaning in regard to board, rent, housing, lodging or similar advantages received in remote site work and for clarification of the status of employee benefits.

The value of lodging in remote site work is substantial and including that value in wages would materially affect the employer's compensation costs. The value of lodging is normally included in wage calculations when the salary has been reduced to offset the cost of on-site housing when on-site housing is to the advantage of the employer. Wage rates have not been reduced for remote site employment and therefore the wage base for workers' compensation should not include such value.

Clarification of the status of employee benefits is also deemed desirable as it has not been addressed by the legislature or courts in Alaska. It has been discussed in terms of wages lost when an employee is totally and permanently disabled and thereafter looses his employer funded benefit package. Excluding benefits from the definition of wages allows employers and employees to bargain solutions to any remaining problem.

The words "in force at the time of hiring" have also been deleted as recommended in H.B. 159 proposed by the Workers' Compensation Division.

Recommendation:

Sec. 23.30.265 DEFINITIONS. as used in this chapter

(1) "accident" means only an unexpected or unusual event or result, happening suddenly, the results of which are neither expected or intended from the standpoint of the employee.

(2) "adoption" or "adopted" means legal adoption before the time of the injury;

(3) "board" means the Alaska Workers' Compensation Board;

(4) "child" includes a posthumous child, a child legally adopted before the injury of the employee, a child in relation to whom the deceased employee stood in loco parentis for at least one year before the time of injury, and a stepchild or acknowledged illegitimate child dependent upon the deceased, but does not include married children unless wholly dependent on him;

(5) "grandchild" means a child as defined in (4) of this section of a child as defined in (4) of this section;

(6) "brother" and "sister" include stepbrothers and stepsisters, half brothers and half sisters, and brothers and sisters by adoption, but do not include married brothers and married sisters unless wholly dependent on the employee;

(7) "child," "grandchild," "brother," and "sister," include only persons who are under 19 years of age, persons who, though 19 years of age or over, are wholly dependent upon the deceased employee and incapable of self-support by reason of mental or physical disability, and persons of any age while they are attending the first four years of vocational school, trade school, or college, and persons of any age while they are attending high school;

(8) "compensation" means the money allowance payable to an employee or his dependents as provided for in this chapter, and includes the funeral benefits provided for in this chapter;

(9) "date of maximum medical improvement" means the date after which further recovery from, or lasting improvement to, an injury or disease can no longer resonably be anticipated, based upon reasonable medical probability;

(10) "death" as a basis for a right to benefits means only death resulting from an injury;

(11) "disability" means incapacity because of injury to earn the wages which the employee was receiving at the time of injury in the same or any other employment;

(12) "employee" means an employee employed by an employer as defined in paragraph (13);

(13) "employer" means the state or its political subdivison or a person employing one or more persons in connection with a business or industry coming within the scope of this chapter and carried on in this state;

(14) "injury" means accidental injury or death arising out of and in the course of employment, and an occupational disease or infection which arises naturally out of the employment or which naturally or unavoidably results from an accidental injury, and includes breakage or damage to eyeglasses, hearing aids, dentures, teeth, and [OR] any prosthetic devises which function as part of the body, but only when damage is shown to be part of, or in conjunction with and as a result of, an accident in the normal course of employment, and further includes an injury caused by the willful act of a third person directed against an employee because of his employment.

(15) "insurance director" refers to the person who heads the insurance division or section of the Department of Commerce and is charged with the administration of the state insurance laws;

(16) "married" includes a person who is divorced but is required by the decree of divorce to contribute to the support of his former spouse;

(17) "medical and related benefits" includes but is not limited to physicians' fees, nurses' charges, pain clinic services, hospital services,

hospital supplies, medicine and prosthetic devices, [PHYSICAL] rehabilitation, and treatment for the fitting and training for use of such devices as may reasonably be required which arises out of or is necessitated by an injury, and transportation charges to the nearest point where adequate medical facilities are available;

(18) "parent" includes stepparents and parents by adoption, parents-in-law, and a person who for more than three years before the death of the deceased employee stood in the place of a parent to him, if dependent on the injured employee;

(19) "permanent impairment" means any anatomic or functional abnormality or loss, existing after the date of maximum medical improvement, which results from injury;

(20) "physician" includes doctors of medicine, surgeons, chiropractors, osteopathys, dentists, and opteomyelits;

(21) "primary duties" are those activities which comprise the substantial amount of time for, and are essential to, the performance of that position after the employer has made reasonable accommodations for the worker's physical impairments;

(22) "reserve rate" means the unencumbered second injury fund balance on October 31 of each year as a percentage of disbursements from the second injury fund during the twelve month period ending on June 30 of the same calendar year.

(23) "self-insurers" means an employer who, instead of insuring his liability under this chapter as it provides, elects to pay directly the benefits provided for, and who has furnished to the board satisfactory proof of his financial ability to make the direct payments;

(24) "suitable gainful employment" means employment or self employment which is reasonably attainable in light of the injured individual's age, educational background, previous occupation, and injury and which offers an opportunity to restore the individual as soon as practical and nearly as possible to his average weekly earnings at the time of his injury;

(25) "substantial earning capacity" means that an employee is engaged in, or is physically capable of engaging in, gainful employment, including light work;

(26) "widow" includes only the decedent's wife living with or dependent for support upon him at the time of his death, or living apart for

justifiable cause or by reason of his desertion at such a time;

(27) "widower" includes only the decedent's husband living with or dependent for support upon her at the time of her death, or living apart for justifiable cause or by reason of her desertion at such a time;

(28) "prosthetic devices" includes but is not limited to eyeglasses, hearing aids, dentures, and such other devices and appliances, and the repairment or replacement of the devices necessitated by ordinary wear and arising out of an injury;

(29) "volunteer fireman" means an individual whose name is registered with the state fire marshal as a member of a regularly organized volunteer fire department or who serves with a full-time fire department on a temporary, voluntary basis;

(30) "regularly organized volunteer fire department" means a volunteer fire department registered with the state fire marshal which has official recognition and financial support from the political subdivision where it is situated;

(31) "volunteer policeman" means an individual who serves as a peace officer with a full-time police department of a general law or home rule municipality on a temporary, voluntary basis;

(32) "volunteer ambulance attendant" means an individual who serves as an ambulance attendant on a temporary, voluntary basis with a volunteer or full-time fire department or municipal ambulance service of a general law or home rule municipality;

(33) "wages" means the money rate at which the service rendered is recompensed under the contract of hiring, [IN FORCE AT THE TIME OF THE INJURY,] and includes the reasonable value to the employee of board, rent, housing, lodging, or similar advantage received from the employer, gratuities received in the course of employment from <u>other</u> [OTHERS] than the employer, <u>except the value of board, rent, housing, lodging or similar advantage received from an employer in conjunction with remote site employment, and excluding in any situation the cost or value of employee benefits provided voluntarily or by labor agreement by an employer;</u>

OCCUPATIONAL DISEASES

During the Legislative hearings considerable testimony was presented describing the inadequacy of the Workers' Compensation Act in meeting the needs of workers who suffer from an occupational disease known as asbestosis. The disease results from the inhalation of asbestos fibers causing damage to the lungs which is practically impossible to diagnose prior to death.

In the Alaska Workers' Compensation Act, the word "injury", by definition, includes occupational disease. For a normal or regular occupational disease the coverage provided appears adequate and responsive. Because of the peculiar traits of asbestosis, the coverage provided under the act has been demonstrated to be non-existent in time of need.

The ACE study has not been able to cope with this disease in that people experienced and knowledgable in this disease do not reside in Alaska. Further study is needed in order to make intelligent and meaningful recommendations on how it should be integrated into the workers' compensation system.

Therefore, we recommend that the Alaska legislature will continue to study this desease and its effects on Alaskan residents, and put together a recommended program for this group of Alaskans who so desperately need help.

EXHIBIT SCHEDULE

I. Florida's New Workers' Compensation System: An Interim Report, March, 1981.

II. National Council on Compensation Insurance, Graphs.

III. Workmen's Compensation and Rehabilitation Law, Revised, The Council on State Government, Lexington, Ky., 1974.

VI. Comparison of Permanent Partial Disability Schedule Awards and 1982 Impairment Values.

V. Guide to the Evaluation of Permanent Impairments, American Medical Association, 1977.

VI. Preliminary Report on the Wage-Loss Law in Florida, National Council on Compensation Insurance, 1981.

VII Alaska Income Replacement Levels, National Council on Compensation Insurance.

VIII. Comparison of 66 2/3 Percent of Average Weekly Wage with 80 Percent of Spendable Weekly Wage, National Council on Compensation Insurance.

IX. Alascom, Inc.'s Paper In Support of Worker's Compensation Committee of Alaska.

EXHIBIT I

FLORIDA'S NEW WORKERS' COMPENSATION SYSTEM: AN INTERIM REPORT

March 1981

(WITH OCTOBER 1981 ADDENDUM)

Prepared By:

BUREAU OF ECONOMIC ANALYSIS
DIVISION OF ECONOMIC DEVELOPMENT
FLORIDA DEPARTMENT OF COMMERCE

ADDENDUM

October 1981

Since the completion of this report in March 1981 there has been a second Workers' Compensation premium reduction ordered by the State Insurance Commissioner. This reduction can be described briefly.

The effective date of the rate reduction was July 1, 1981. On average, Workers' Compensation premiums paid to private insurance carriers were decreased 15.6%. Since the volume of premiums paid in a year in Florida is about $1 billion, that would mean a savings of $156 million for Florida employers annually.

The actual premium reduction varied by employment class. All 600 classes were guaranteed at least a 5% reduction. The manufacturing classes averaged a 22.7% decrease with rates for some manufacturing classes falling by as much as 48%.

This latest action was the third Workers' Compensation premium decline since the 1979 reforms. The first, a 15% across-the-board reduction was enacted by the Legislature as a part of the 1979 reform package. The Insurance Commissioner ordered an 11.4% rate reduction in January 1981 which actually translated into a 5.1% premium dollar reduction when other changes were considered.

Cumulatively, the impact of these premium reductions has been to lower premium rates by 36.4% and save Florida employers $325 million annually in premiums. The average Workers' Compensation premium rate is now at its lowest point since September 1975 and places the State only 23rd highest in the nation. Before the reforms, Florida had ranked among the five most expensive states in this regard.

Further premium reductions may be in the offing. As is indicated on pages 21-24 of this report, early indications of claims activity, total claim costs, attorney involvement and other factors are quite promising. The State Insurance Commissioner has requested another Workers' Compensation premium rate filing later this year to take effect January 1, 1982.

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I. OVERVIEW

At one time, Florida's Workers' Compensation program was a system seriously in need of fundamental reform. Injured workers genuinely entitled to assistance received inadequate benefits. Employers were overburdened with premiums while insurance carriers lost millions of dollars annually attempting to provide Workers' Compensation coverage. The State's efforts to attract new industry were severely hampered by the reputation of the Florida Workers' Compensation system as extremely costly to employers.

Study of the system indicated that its very structure encouraged subjectivity in benefit determination. This fact, in turn, provided incentives for exaggerated if not invalid claims, and for the unusually frequent involvement of attorneys and medical specialists. The inadequate authority and resources accorded those government agencies charged with overseeing Workers' Compensation further contributed to the problem.

These problems were directly addressed in sweeping changes to the Workers' Compensation law effective August 1, 1979. These reforms were aimed at making Florida's Workers' Compensation system affordable, equitable and efficient. Perhaps the most important change was a switch to the "wage-loss" concept in benefit determination. Under this concept, a worker disabled by an injury on the job would receive (in addition to coverage of his medical expenses) compensation based on the actual decrease in average wages he suffered as a result of his disability.

Among the more important additional changes were: 1) an increase in statutory benefit levels for injured workers; 2) fundamental revisions in the authority and responsibilities of the Bureau of Workers' Compensation; 3) an enhancement of the ability of both the citizenry and its government to participate in the rate-making process; 4) a shift, to the claimant, of responsibility for paying attorneys' fees; 5) the discouragement of lump sum settlements of claims; and, 6) an across-the-board 15 percent reduction in premium rates with further reductions anticipated as experience was gained under the new law.

Any future reductions in Workers' Compensation premium rates are likely to be ordered by the Florida Insurance Commissioner based on his evaluation of rate filings made by the insurance industry. (Direct action by the Legislature is always a theoretical possibility.) Not until June 1981 will the insurance industry make its first premium rate adjustment filing based directly on experience under the new law.

Nevertheless, the early indications are quite positive in regard to the Legislative objective of reducing the cost of the Workers' Compensation system. Substantial progress already has been made; available information encourages the belief that further premium rate reductions are a distinct possibility. At this point, the following observations are warranted:

1. The Workers' Compensation insurance industry has been able to absorb two sizable premium rate reductions. Estimates made at the time these rate reductions were put into effect suggest that they will result in combined premium savings of approximately $170 million annually for Florida employers. The two rate reductions marked the reversal of a long-term trend of rapidly increasing Workers' Compensation premiums in the State. Before the 1979 legislative action, Florida ranked 5th in the nation in terms of its premium rates for Workers' Compensation coverage. It now has fallen to 13th.

2. These significant premium reductions have occurred even while statutory benefits available to injured workers were being increased substantially. The maximum weekly benefit amount has gone from $130 in 1978 to $226 in 1981, moving Florida's rank among the states from 41st to 18th. The maximum period for benefit collection has been extended; the inflation adjustment used in benefit calculation, increased; and the schedule of fees for medical services, revised upward by nearly 30 percent.

3. Available analyses suggest that the new law is having its intended effects in terms of the costliness of Workers' Compensation claims.

   - A study commissioned by the Insurance Committee of the Florida House of Representatives found that, during the first five months of operation of the new law, the percentage of claims of the particularly expensive "permanent partial" injury type had declined significantly. So too had indemnity costs and the percentage of claims involving attorney representation. The proportion of workers returning to their same employer after recovery from their injury had increased.

   - A November 1980 analysis by the National Council on Compensation Insurance (NCCI) also found a decrease in the frequency of permanent partial injury claims. While concluding that available data did not yet provide an adequate basis for a premium rate adjustment decision, one preliminary finding was an indication of significant insurance carrier cost reductions resulting from experience under the new law.

   - A Division of Workers' Compensation comparison of 1979 and 1980 data revealed that, during the first full year under the new law, there was a 4 percent reduction in total premiums paid by employers in the State. The number of formal claims declined by 48 percent. The number of joint petition settlements of Workers' Compensation claims fell by 36 percent while benefits paid in these claims dropped by 18 percent--a savings of $15.7 million. The amount of attorneys' fees awarded in Workers' Compensation cases decreased by 10.6 percent.

As the first state in the nation to adopt the wage-loss concept as the basis for determining permanent disability benefits for injured workers, Florida is serving as an experimental model watched closely by other states. Perhaps the best guarantee that Florida's Workers' Compensation reforms will succeed is the number of determined and careful monitoring programs being conducted both inside and outside government.

II. WORKMEN'S COMPENSATION IN FLORIDA (1935-1979)

A System in Need of Reform

In 1935, the State of Florida established a Workmen's Compensation system designed to lend stability and predictability to an employer's obligations to his injured employees while, at the same time, insuring that the injured worker would receive prompt and adequate compensation for his injury.[1] By the 1970s, Workmen's Compensation had evolved into a system which was unsatisfactory from virtually every perspective.

Consider the plight of the parties directly involved in the Workmen's Compensation system prior to its reform in 1979:

The Injured Worker--The benefits available to the average injured worker in Florida were quite low compared to those available in other states. An analysis conducted by the National Council on Compensation Insurance (NCCI) revealed that Florida's "statutory benefits", that is the maximum benefit amounts and collection periods set by law, ranked the state 37th in the nation.[2] For example, while in most states an injured worker received 66-2/3 percent of his average weekly wage while disabled, in Florida he received 60 percent.

Furthermore, compensation claims were taking a long time to resolve. The Miami Herald, in a comprehensive analysis of Florida's Workmen's Compensation system, reported that many injured workers were forced to hire attorneys because their legitimate claims were not being paid on time.[3]

The Employer--The cost to Florida employers of carrying the required Workmen's Compensation insurance was extremely high. Florida's premium rates (the decimal fractions applied to payrolls to calculate premiums due) were the fifth highest in the nation in 1979 according to NCCI data.[4] These premium rates had increased 229 percent from 1970 to 1978 and further rate increases were being requested by the insurance industry.[5] In 1979, the total premiums paid by Florida employers ranked it seventh in the nation according to figures from the National Association of Insurance Commissioners.[6]

These ever-increasing premiums did more than just force up the cost of doing business in Florida. They also put the State's businesses at a disadvantage when bidding for contracts against out-of-state firms. Bids submitted by Florida firms reflected the unusually high Workmen's Compensation premiums.[7]

The Insurance Companies--During the five-year period extending from 1973 through 1977, insurance companies offering Workmen's Compensation coverage in the State experienced $205.1 million in net losses according to NCCI data.[8] Although investment returns did result in a 3 percent net profit in 1978, there had not been an underwriting profit in Florida Workmen's Compensation since the 1950s.[9]

The impact of this unsatisfactory system extended beyond those directly involved. Ultimately, all Floridians felt the effects of the escalating premiums. Producers of goods and services passed their increased operating costs on to consumers.

State efforts to diversify the Florida economy, to further develop the industrial base, were severely hampered by the costly Workmen's Compensation system. Premium rates paid by Florida employers were nearly triple those paid by Alabama, North Carolina and South Carolina--states very much in competition with Florida in efforts to attract new industries. The NCCI reported that the cost of claims from permanently and totally disabled Florida workers was double that of seven other southern states.[10] An "Economic Development Study" prepared by the Fantus Company for the Florida Council of 100 cited high Workmen's Compensation premium rates as a competitive disadvantage for the State in its effort to recruit industry.[11]

In their efforts to attract new industry to Florida, officials often were confronted with questions about the reputation of Florida's Workmen's Compensation system. Former Commerce Department Secretary Phil Ashler once described a standard industrial recruitment scenario demonstrating the obstacle posed by Florida's high Workmen's Compensation premiums. According to Ashler, a prospective employer typically would ask a series of questions about the adequacy of labor supply and other business conditions. As State officials responded to these questions, the attractiveness of Florida to the prospect would grow--until the issue of Workmen's Compensation was encountered. At that point, Florida's image suffered a setback.[12]

The Miami Herald reported that the Governor and Lieutenant Governor had similar experiences. While delivering a promotional speech in Chicago, Governor Bob Graham was interrupted by a firm's indignation over Florida's Workmen's Compensation rates. Lieutenant Governor Wayne Mixson lamented the effects of a costly Workmen's Compensation system on industrial recruitment.

> Several prospects that we've had, specific prospects that we've talked to in other states that have had the kind of industry or business that we would desire to locate in Florida, have been reluctant to make any commitment because of that, the workmen's comp.[13]

Further Defining the Problem

Florida's Workmen's Compensation system was costing employers and insurance companies far more than the typical benefits paid to the vast majority of injured workers warranted. Why was this the case?

In 1978, a study was conducted by the National Council on Compensation Insurance (NCCI) with the results printed by the Florida Association of Insurance Agents.[14] This analysis, which compared Florida's claim and benefit figures to those of Alabama and Georgia, identified the major elements of Florida's Workmen's Compensation problem.

1. Total medical benefits paid to injured workers in Florida were significantly higher than those paid in other states.[15] The average medical benefits paid, the proportion of cases in which specialized medical practitioners were used, the frequency with which injured workers were confined to a hospital and the average hospital bill in Florida were invariably higher than in Alabama and Wisconsin.

2. Benefits paid for impairment or disability in Florida were higher than for Alabama and Wisconsin despite Florida's comparatively low statutory benefits.

3. Workmen's Compensation activity in Florida featured an unusually great amount of litigation. The percentage of Florida cases in which attorneys were involved on the plaintiff side (20.8 percent) was far above that of Alabama (2.8 percent) and Wisconsin (3.0 percent). Attorneys typically became involved at an earlier point in Florida cases; Florida cases normally took a longer time to be resolved; and, a greater number of cases were reopened by plaintiff attorneys. According to the Division of Workers' Compensation, Florida Compensation lawyers took in $19.7 million in fees during 1978.[16]

4. The proportion of cases which involved "permanent partial" disabilities was far higher in Florida than in Alabama or Wisconsin. Furthermore this injury category was responsible for a disproportionately large share of the Workmen's Compensation benefits paid in the State.

Because this fourth item was perhaps the key finding, it deserves more detailed attention. In the table below, Florida's

distribution of Workmen's compensation by injury type is compared to those of Alabama and Wisconsin.

TABLE 1

PERCENTAGE DISTRIBUTION OF RESOLVED WORKMEN'S COMPENSATION CASES BY INJURY TYPE: FLORIDA, ALABAMA AND WISCONSIN (November-December 1977)

Injury Type	Florida	Alabama	Wisconsin	
Death	0.4	0.2	0.4	0.89
Permanent Total	0.8	0.1	0.5	0.15
Permanent Partial	30.0	7.1	9.0	24.16
Temporary Total	68.5	90.6	89.0	74.60
Temporary Partial	0.3	2.1	1.2	0.13

SOURCE: Florida Association of Insurance Agents, 1977 Workmen's Compensation Closed Claim Study, conducted by the National Council on Compensation Insurance, March, 1978.

Note that the proportion of resolved Florida cases which fall into the permanent partial category was more than three times the proportion recorded in Wisconsin and more than four times the Alabama figure.

The disproportionately large role of permanent partial injuries is just as striking when the distribution of benefits by injury type is examined as in Table 2.

TABLE 2

PERCENTAGE DISTRIBUTION OF BENEFITS PAID IN RESOLVED WORKMEN'S COMPENSATION CASES BY INJURY TYPE: FLORIDA, ALABAMA AND WISCONSIN (November-December 1977)

Injury Type	Florida	Alabama	Wisconsin	
Death	1.6	2.1	5.4	19.14
Permanent Total	10.8	1.9	2.2	2.73
Permanent Partial	67.2	37.5	40.8	66.91
Temporary Total	20.3	57.4	50.8	11.21
Temporary Partial	0.0	1.0	0.8	0

SOURCE: Florida Association of Insurance Agents, 1977 Workmen's Compensation Closed Claim Study, conducted by the National Council on Compensation Insurance, March, 1978.

As the table reveals, permanent partial injury cases accounted for 67.2 percent of medical and indemnity benefits paid in Florida but only 37.5 percent and 40.8 percent of Alabama and Wisconsin benefits, respectively.

Causes Underlying the Problems

The responsibility for these problems appeared to rest with the structure of Florida's Workmen's Compensation system itself. More specifically, it was a system which placed too much reliance on the subjective judgments required of doctors and of Judges of Industrial Claims. It was a system which encouraged the active involvement of attorneys and the granting of lump sum settlements by insurance companies. It was a system which provided government agencies with insufficient authority and resources with which to regulate the program in the public interest. Finally, it was a system which provided indemnity benefits to injured workers who had not actually suffered any loss in wages.

The subjectivity of procedures was most evident at the point of "maximum medical improvement" or MMI, i.e., the point of which a doctor decided that the injured worker had recovered to the greatest extent possible. At that point, it would be determined whether the worker had either: 1) no disability, 2) a partial disability which was nonetheless permanent (permanent partial), or 3) a permanent and total disability (permanent total).

As noted previously the permanent partial category was responsible for an unusually large number of cases and a disproportionately high level of benefits in Florida. If a worker had received a permanent partial disability in the form of an injury specified in the Florida Statutes (a "scheduled" injury), he received a specific number of weeks of compensation at 60 percent of his average weekly wage. These benefits were paid whether or not the worker had been able to resume employment at his previous wage or even higher.

For "unscheduled" injuries within the permanent partial category, a doctor assigned a percentage disability rating to the worker. This percentage disability rating then was multiplied <u>first</u> by a specified number of weeks (175 for a 1-to-10 percent rating, 350 for an 11-to-50 percent rating, and 525 for a 51-to-100 percent rating) and <u>then</u> by 60 percent of the worker's average weekly wage.

This rating system was not only highly judgmental, it also provided a strong incentive for attempting to increase the disability rating. Fred Karl, speaking for the Florida Association of Insurance Agents, provided an example of this. At the time his example was formulated, the maximum weekly benefit amount available to an injured worker was $130. Note the difference in benefits paid if the worker's disability rating were to be raised from 10 percent to 11 percent.

10% x 175 weeks @ $130 per week = $2,275
11% x 350 weeks @ $130 per week = $5,005

A one percentage point revision in the disability rating raised the benefits paid to twice the original amount. This was because, as was explained earlier, the 11 percent disability rating marked a threshold in the benefit structure. The disability rating increased by one percentage point, but, more significantly, the number of weeks of benefits paid jumped from 175 to 350. This latter change was primarily responsible for the huge jump in the benefit amount. A similar threshold existed at the 51 percent rating level.

The subjectivity did not stop with the doctor's disability rating however. In recognition of the fact that the same injury could affect the careers of two people in different occupations to a much different extent (for example, compare the ramifications of the loss of a finger to a lawyer as opposed to a pianist), the system had a second form of disability rating, wage diminution. The worker's lifelong wage earning capacity could be diminished by his injury. This contention would be presented to a Judge of Industrial Claims who would determine a diminution of wage earning capacity rating based on such factors as the age, occupation, education of the worker and other circumstances. In the end, the higher of the two disability ratings, the wage diminution rating from the judge or the physical disability (impairment) rating from the doctor, would determine the worker's benefits.

In other words, the system provided the injured worker with an incentive to obtain a higher disability rating. This incentive, combined with the subjectivity of the ratings themselves, resulted frequently in the use of legal counsel and the involvement of medical specialists. The NCCI study of two months' of resolved permanent partial cases in 1977 revealed that 71 percent of injured Florida workers were represented by an attorney. This proportion was more than twice the Alabama figure and four times that of Wisconsin.[17] Medical specialists, as opposed to general practioners, were involved in 63.4 percent of the Florida cases in which physicians were consulted. The corresponding percentages for Alabama and Wisconsin were 30.8 percent and 39.3 percent, respectively.[18] This suggested what the Miami Herald called "doctor shopping", an attempt to find the physician who would give a higher disability rating.[19]

While the role of subjective judgments in benefit determination was perhaps the most central deficiency in the system, there were other, often related problems.

1. Attorneys' fees were related to benefit and settlement amounts. Until 1978, the claimant paid no attorney's fees. Legislation in that year required that claimants pay 25 percent of the fees with certain exceptions. Thus, attorneys had an incentive to strive for the largest award possible unencumbered by concern about the claimant's ability to pay an attorney's fee.

2. According to the Miami Herald, many Judges of Industrial Claims tended to give the benefit of the doubt to the Workmen's Compensation claimants. That publication reported instances of compensation awards when there was, in fact, no injury.[20]

3. Insurance companies frequently faced lengthy and costly litigation. To extricate themselves, they tended to offer lump sum settlements or washouts of medical expenses to injured workers.[21]

4. The government agencies involved lacked the authority and resources to remedy the situation. The Bureau of Workmen's Compensation was too overwhelmed with paperwork to advise claimants on rights and procedures or to see that benefits were paid equitably and in a timely manner. The Department of Insurance had to rely on the National Council on Compensation Insurance, an insurance industry organization, to provide the statistical basis for evaluating rate adjustment requests.[22]

III. THE MAJOR ELEMENTS OF THE 1979 CHANGES TO THE WORKMEN'S COMPENSATION LAW

The Intent of the Legislature

It had become clear that rather fundamental changes were needed in Florida's Workmen's Compensation system. A joint Senate-House Select Committee was appointed and the Workmen's Compensation issue was identified as the key issue facing the 1979 Legislature.[23]

The overall goal of the legislative effort was to reduce the cost of Workmen's Compensation to employers. However, the aims of restoring equity in benefit awards and of reducing the delays in claims resolution were also important. In other words, it was hoped that the system could be made affordable, efficient and equitable.

Two major targets of reform were identified. The first was comprised of the indemnity benefit determination provisions in the existing law which required subjective estimates of disability by doctors and by Judges of Industrial Claims. This subjectivity had led to extensive litigation which, in turn, had been a major factor in the high cost of the system. The second target consisted of the administrative provisions used in handling a claim. The ineffectiveness of these provisions had resulted in delays in claims processing and had contributed to the extensive litigation characteristic of the system. An improved administrative structure was seen as increasing the equity of benefit determination by reducing the system's dependence on ". . . the vagaries of the adversary process."[24]

The Changes in the Law

By the end of the 1979 Legislative sessions, Florida had a new "Workers'" Compensation law. The major changes were the following.[25]

1. Florida became the first state to adopt a "wage-loss" concept for a considerable proportion of Workers' Compensation benefit determination. The switch to a wage-loss concept was intended to decrease dramatically the subjectivity involved in benefit determination.

   This change concerned the indemnity component rather than the medical services component of Workers' Compensation benefits. Recall that, under the old system, injured workers suffering a permanent and partial disability either were eligible for benefits specified by statute (scheduled injuries) or were compensated based on a disability rating (unscheduled injuries). Within the unscheduled category, workers received the higher of the physical impairment and the diminution of earning capacity ratings.

Under the new system, impairment benefits would be paid for certain severe injuries: amputation, 80 percent loss of vision (after correction), or serious head or facial disfigurement. However, indemnity benefits in the majority of cases were to be determined solely by the actual loss in wages experienced by the injured worker due to his disability.[26] Under the wage-loss concept, the injured worker would receive 95 percent of the difference between 85 percent of his pre-injury wages and his wages after maximum medical improvement. This rule translates into the proposition that the worker must have experienced at least a 15 percent wage loss. After the worker had collected wage-loss benefits for two years, his post-injury wages would be discounted to adjust for inflation.

2. The statutory benefit levels for injured workers were raised. The maximum weekly benefit amount was increased from 66-2/3 percent of the statewide average weekly wage to 100 percent of that figure.

3. The structure and authority of the agency responsible for overseeing the operation of the Workers' Compensation were changed in the interest of making that agency more administratively effective. The Bureau of Workmen's Compensation was upgraded to a Division within the Department of Labor and Employment Security. This Division was instructed to ". . .assume an active and forceful role" in administering the system.[27] Under the new law, the employer would report employee injuries directly to the Division rather than indirectly to the Division through the insurance carrier. Steps were to be taken to ensure that injured workers were fully and promptly informed of proper procedures and their rights under the law. For example, injured workers were to be mailed an informational brochure while those suffering injuries which might permanently disable them were to be contacted personally. The Workers' Compensation Division would become more actively involved in controverted claims issuing advisory opinions as to benefits payable in each case. The judges of industrial claims were retitled deputy commissioners. Appeals of rulings by the deputy commissioners would now go to the First District Court of Appeals rather than to the Industrial Relations Commission, abolished by the 1979 legislation. The main burden of workers rehabilitation was shifted from the Division to the insurance carrier and employer. Finally, the Division was required to examine claims files, report annually on carrier promptness of payment and notify the Department of Insurance of patterns of questionable claims handling techniques by carriers.

4. The ability of citizenry and government to participate in the rate-making process was increased. A Bureau of Workers' Compensation Rating was established within the Department of Insurance to provide analytical support to the Insurance Commissioner in his review of insurance industry rate filings. Insurance company reporting requirements were changed in order to facilitate analysis by the Department of Insurance. Meetings by insurance industry rate-making authorities were required to take place in Florida and in the "sunshine." Excessive profits by insurance companies were prohibited.

5. The responsibility for paying attorneys' fees was shifted entirely to the claimants. Previously the claimant was to pay 25 percent of the fees while the remaining 75 percent was paid by the employer or insurance carrier. Certain exceptions to the rule of claimant payment were set forth. For example, attorneys' fees for recovery of medical benefits were to be paid by the employer or insurance carrier.

6. "Washouts" of benefits were to be strongly discouraged. Prior to the 1979 legislation, all parties could agree to a one-time payment to the claimant for benefits, thereby ending or "washing out" the employer's liability. Washouts of medical benefits would be prohibited. Lump sum settlements of disability benefits would be barred until six months after maximum medical improvement and then permitted only in special circumstances.

7. A 15 percent, across-the-board reduction in premium rates was mandated by the statute. The Legislature expected changes in the Workers' Compensation law--particularly the switch to a wage-loss system of disability benefit determination--to result in a substantial decline in insurance carrier costs. This decline was expected to more than counter-balance the increases called for in compensation benefits. To avoid excessive insurance carrier profits, the 15 percent premium rate reduction was ordered.

IV. THE EARLY PERFORMANCE OF FLORIDA'S NEW WORKERS' COMPENSATION SYSTEM

Examining the Impact

The fundamental reforms made in the Workers' Compensation law in 1979 were intended to make the system more equitable and efficient in meeting the genuine needs of injured workers while at the same time, making the system less costly to employers and insurance carriers. The reforms have been in effect for twenty months as of this writing. Although the new system will not have been given a fair test until it has been in operation for a number of years, an examination of the early performance of the law is warranted. Essentially, the question to be asked is this: Does the new Workers' Compensation law appear to be having its intended effects?

The scope of this analysis will be limited to the effects on employer costs (which reflect insurance carrier costs to a substantial extent). Certainly, the new system will not be considered a success unless it results in the fast, efficient and equitable delivery of compensation and services to the injured worker. However, an evaluation of that aspect of the system's performance is considerably more complicated than an assessment of the impact of the new law on employer costs. An examination of available statistics--benefits paid, numbers of claimants, premium rates and amounts--can provide a good preliminary indication of the impact of the new law on costs.

Reductions Already Accomplished in Employer Premiums

As was reported in Section III, one element of the 1979 legislation was a 15 percent, across-the-board reduction in Workers' Compensation premium rates. Simplifying somewhat, premium rates are multiplied by the employer's payroll to determine his Workers' Compensation insurance premium. At the time this rate reduction was enacted, a legislative staff analysis estimated that it would save Florida employers $135-142 million annually.[28]

As of yet, the insurance industry has not filed for a premium rate adjustment based directly on performance of Florida's new Workers' Compensation law. Nevertheless, an insurance industry rate filing submitted in December 1980 is worth noting. That filing concerned changes to the expense program used in calculating premiums and to the transition program for switching to a "total payroll" concept in computing premiums. As approved by the State Insurance Commissioner on January 1, 1981, this filing resulted in average premium rate reductions of 11.4 percent overall.[29] The Department of Insurance estimated that this premium rate reduction would result in savings of $34 million to Florida employers.[30] The NCCI determined that Florida's average manual premium rate following this change would rank it 13th among the 45 states permitting private Workers' Compensation insurance in the nation.[31] As was noted earlier, Florida had ranked fifth in the nation prior to the 1979 legislation. While the 11.4 percent rate reduction was

not based directly on experience under the new law, it does seem to suggest an improved economic state for insurance carriers after over a year and a half under the new law.

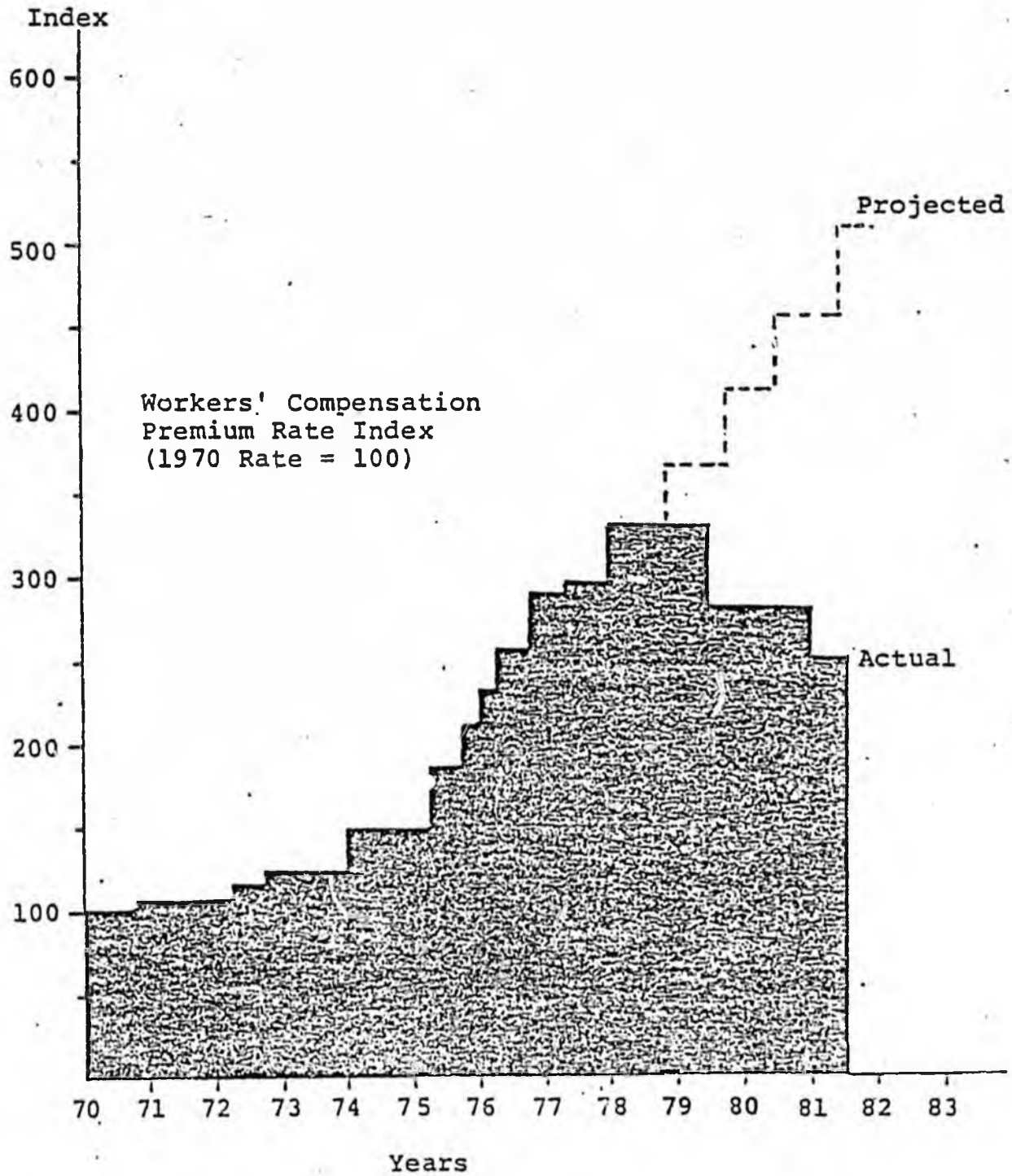
These premium rate reductions give early indication that the long-term trend of ever-increasing Workers' Compensation insurance premiums in Florida has been ended or perhaps even reversed. To demonstrate this development, an index of the overall Workers' Compensation manual premium rate has been developed. The average manual premium rate for all covered Florida employers, excluding those with self-insurance arrangements, as of January 1970 was set equal to 100.[32] Changes in the index over time then were calculated by applying the percentage changes in the overall manual premium rate reported at the time of the legislative action or the approved industry filing.[33] For example, an insurance industry filing for a rate increase was approved by the Insurance Commissioner and made effective August 1, 1970. This increase was estimated to have the effect, on the average, of raising Workers' Compensation premium rates by 7.2 percent. Thus, the value of the index was increased from 100 to 107.2 (100 + 7.2 percent) as of August 1, 1970.

In Figure 1, the trend in the manual premium rate index from 1970 to the present is portrayed. (The actual index trend is portrayed by the darkened area. The dashed lines are explained subsequently.) Note the rapid--even accelerating--rate of increase prior to the 1979 legislation. The 15 percent rate reduction ordered by the legislation was the first rate reduction of the decade. The second rate reduction, effective January 1, 1981, brought the premium rate index to its lowest level since September, 1976.

The reduced premium rate levels stand in stark contrast to what might have been the case had the Workers' Compensation legislation not been enacted. From January 1970 through July 1979, there were eleven premium rate increases affecting most or all classifications. That constitutes an average of one rate increase every 10.5 months. The average rate increase was 11.5 percent, compounded. Assuming that this trend had continued from the date of the final premium rate increase (effective January 1, 1978) prior to the 1979 legislation, the Workers' Compensation premium rate index would have stood at 457.0 in March 1981 rather than at its actual level of 248.3. The dashed-line bars in Figure 1 portray this possible path of the index had the 1979 changes to the Workers' Compensation law <u>not</u> been put into effect.

FIGURE 1

OVERALL TREND IN FLORIDA WORKERS' COMPENSATION PREMIUM RATES, 1970-1982: IMPACT OF NEW LAW



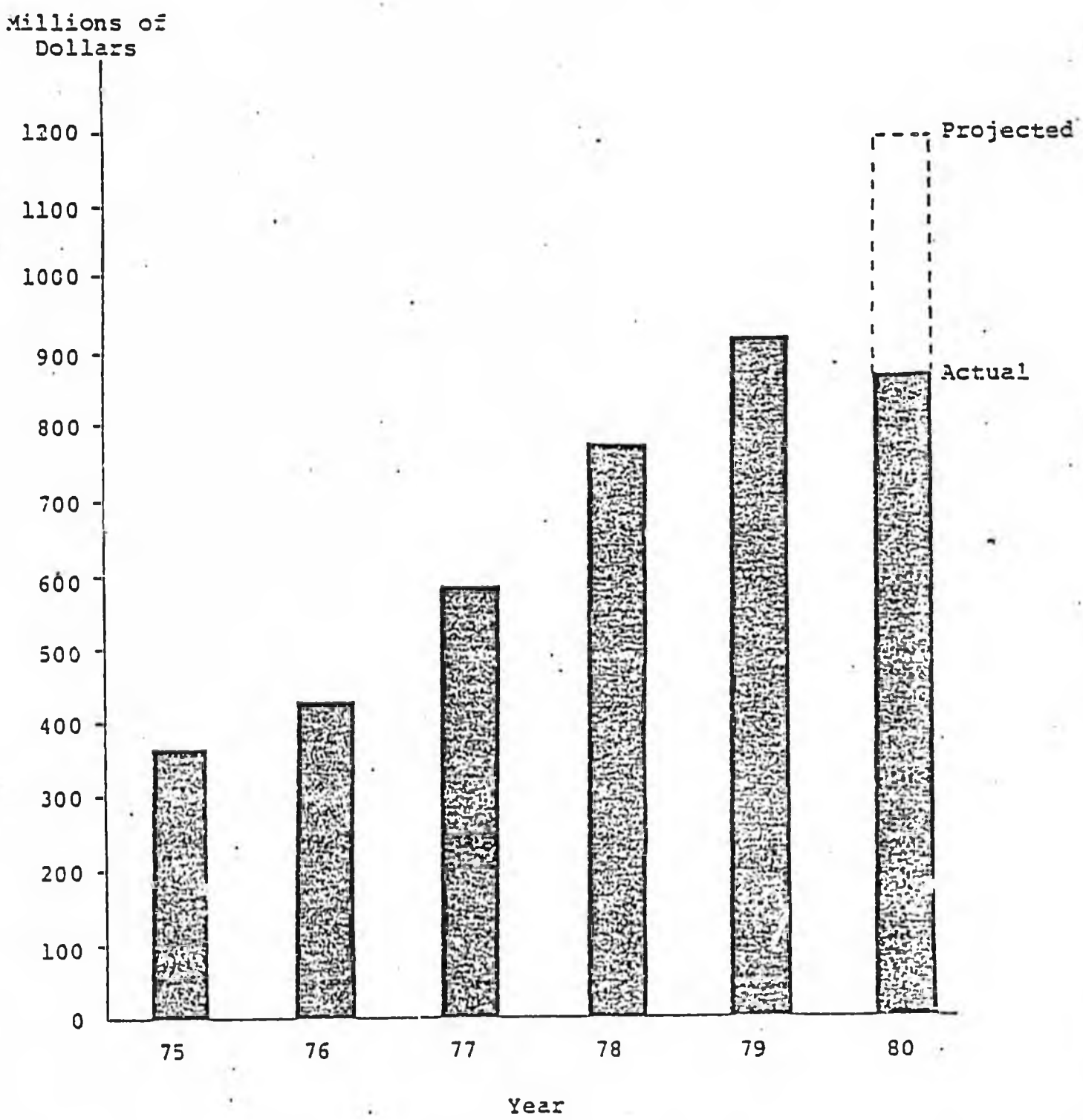
SOURCE: Historical rate increase data series provided upon special request by Bureau of Workers' Compensation Rating, Florida Department of Insurance. All index values, including hypothetical projections, calculated by Bureau of Economic Analysis, Florida Department of Commerce.

These premium rate reductions already have had an effect on actual Workers' Compensation premiums paid by Florida employers. Each year, the Division of Workers' Compensation within the Department of Labor reports the total premiums paid for Workers' Compensation coverage in the State.[34] In Figure 2, the historical trend in total premiums paid is shown. The darkened bars represent the actual premium totals for each year. Note the decrease in total value of premiums reported in 1980--the first full year affected by operation of the new law. This reduction occurred despite a 4.2 percent rise from 1979 to 1980 in the number of employees covered by Workers' Compensation and a 8.1 percent increase in the official average weekly wage in the State.

The dashed-line extension of the 1980 bar represents an estimate of the premium level which would have been attained without the 1979 legislation. The estimate assumes that the average annual percentage increase in premiums paid from 1975 through 1979 would have occurred once more in 1980. That average annual increase was 26.3 percent, compounded. Such an increase would have resulted in a 1980 premium total of $1.2 billion rather than the actual $877.6 million.

FIGURE 2

TREND IN WORKERS' COMPENSATION PREMIUMS REPORTED, 1975-1980: IMPACT OF THE NEW LAW

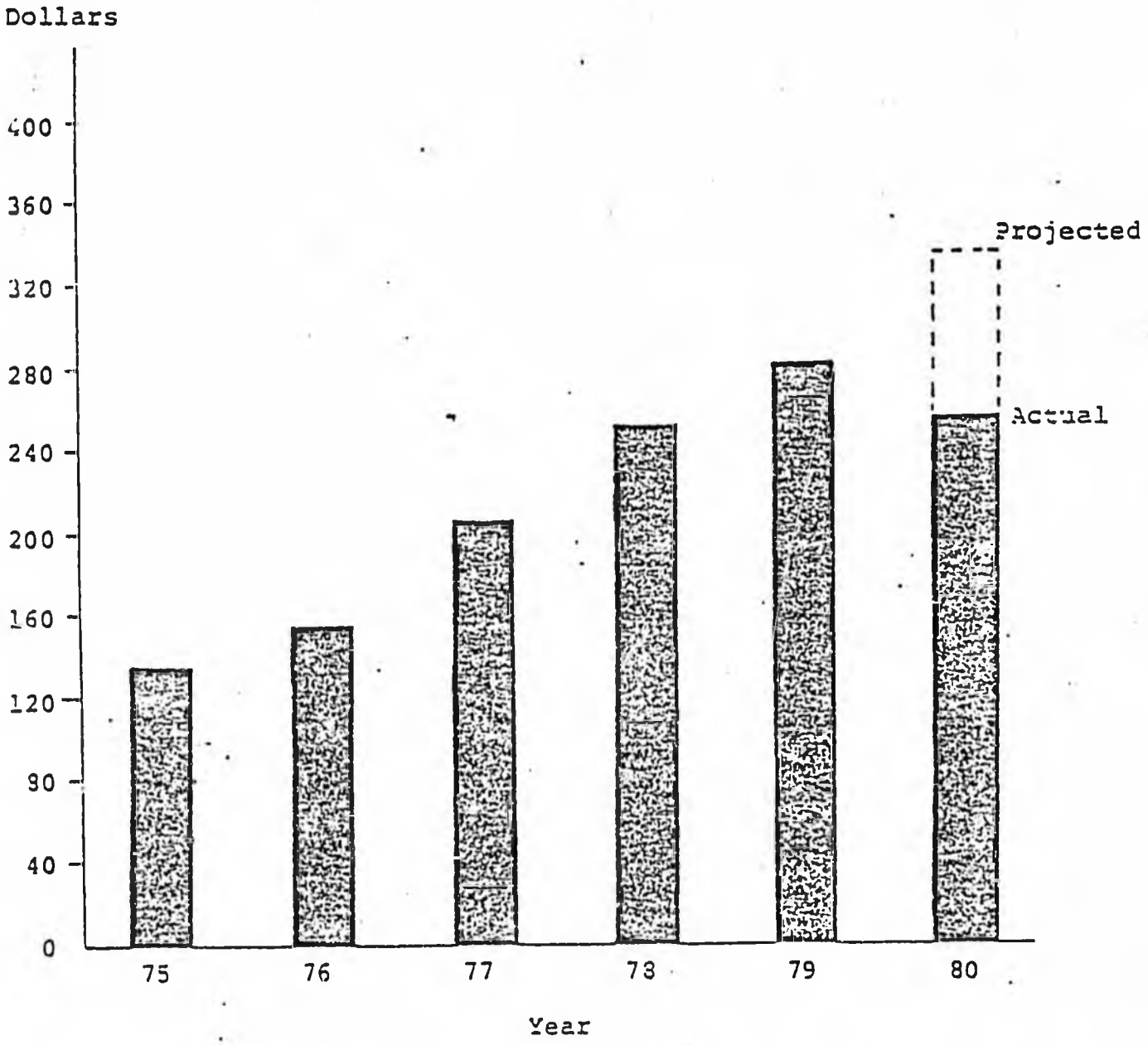


SOURCE: Actual historical data from 1977-1978 Cases Causes Costs, Division of Workers' Compensation, Department of Labor and Employment Security, 1979, p. 214 and by special request. 1980 projection by Bureau of Economic Analysis, Florida Department of Commerce.

Because the number of employees covered by Workers' Compensation is a major determinant of premiums paid, it might be expected that "controlling for" Florida's rapid employment growth might significantly alter the trend in Workers' Compensation costs. However, Figure 3 demonstrates that this is not the case. When the Workers' Compensation premiums paid per covered employee figure is plotted over time, the trend appears quite similar to that of total premiums paid (Figure 2). Once again, the rapid rise in premiums from 1975 to 1979 is clearly evident as is the positive effect of the 1979 legislation. On the average, Florida employers paid substantially less in Workers' Compensation premiums for each of their employees in 1980 than they would have without the new law.[35]

FIGURE 3

TREND IN WORKERS' COMPENSATION
PREMIUMS PER COVERED EMPLOYEE, 1975-1980:
IMPACT OF THE NEW LAW



SOURCE: Actual historical data from 1977-1978, Cases Causes Costs, Division of Workers' Compensation, Department of Labor and Employment Security, 1979, p. 214 and by special request. 1980 projection by Bureau of Economic Analysis, Florida Department of Commerce.

Increasing Benefits While Decreasing Premiums

It is important to note that these positive developments in terms of employer costs have taken place at the same time that benefits available to injured workers were being increased rather dramatically. The fact that the maximum weekly benefit amount was increased from 66-2/3 percent of the statewide average weekly wage to 100 percent of that figure has been mentioned. This maximum benefit amount was increased from $195 to $211 as of January 1, 1980, and increased again to $228 as of January 1, 1981. The NCCI has reported that these changes moved Florida from 37th place to 18th place in the nation in this regard.[36]

Other benefit increases were a direct or indirect result of the 1979 legislation. The maximum period for collecting wage-loss benefits, following maximum medical improvement, was raised from 350 to 525 weeks. The annual inflation adjustment used in calculating wage-loss benefits was increased from 3 percent per annum to 5 percent per annum. An overall 29.3 percent increase was made in the schedule of medical fees.[37] The medical fee schedule is to be revised annually.

Many of these benefit changes concern "maximum" benefits available. They are aimed at ensuring that injured workers receive just and adequate medical benefits and disability compensation for their injuries. Continued monitoring and careful examination of experience of the new law will be necessary in order to determine whether the wage-loss concept and the other benefit changes are indeed achieving the objectives for which they were established.

The Possibility of Further Premium Reductions: Early Signals

It was the hope of the Governor and the Legislature that the 1979 amendments to the Workers' Compensation law would result in further premium reductions in subsequent years. More specifically, the use of an objective wage-loss system of disability benefit determination and the deemphasis of subjective disability ratings were expected to result in considerable cost savings through a reduction in controverted claims, the decreased use of attorneys and medical specialists, a lower frequency of unjustified claims, and so on. These savings would be reflected in the experience of insurance carriers and ultimately result in premium reductions.

Comprehensive data pertaining directly to the possibility of further premium rate reductions will be available in June of this year. At that time, the insurance industry, through the National Council on Compensation Insurance, will make its first "experience filing" under the new law. This request for a rate adjustment (or, if no adjustment is requested, this "informational filing") will reflect 100 percent of the first full calendar year's experience under the new law and 83 percent of the 1979 policy year experience, five month's of which came under the new law.[38] It is, in effect, the average of the experiences during these two conceptual years which will serve as the basis for any rate adjustment. The final determination on any Workers' Compensation premium rate adjustment, unless the Legislature decides to directly mandate a reduction as in 1979, will be made by the State Insurance Commissioner, after considering supporting material submitted by

the NCCI, public comments and the advice of the Workers' Compensation Rating Bureau within the Department of Insurance.

Until those data are available it is necessary to rely on information from other sources to obtain an indication of possible future rate reductions. Three sets of preliminary data were available at the time of this writing

Data Call by Florida House of Representatives, Committee on Insurance--In January, 1980, the Committee on Insurance of the Florida House of Representatives issued to the top fifteen Workers' Compensation Carrier Groups in the State a request for claims data.[39] Two samples of data were requested, one consisting of 30 percent of the population of time claims with injury dates between August 1, 1979 and December 31, 1979; the second, the same proportion of claims having injury dates ranging between August 1, 1978 and December 31, 1978. The former sample thus concerned the first five months of operation of the new law. The latter sample covered the same months in the preceding year, while the old law was still in effect. The five insurance carriers responding had written 22 percent of Florida's Compensation Insurance. The actuarial consultant hired by the Committee to conduct the study, Dr. Lena Chang, described the sample of respondents as a "good cross representation" with regard to the company size and the mix of mutual versus stock companies.[40]

In her report to the Insurance Committee, Dr. Chang compared the distribution of Workers' Compensation claims under the new law to that under the old law, for a number of different dimensions. She cited several instances in which the comparison indicated that the intent of the new law was being achieved.

1. The percentage of claims of the permanent partial injury type appeared to have decreased dramatically under the new law. Such claims comprised 24.0 percent of all claims for the five-month survey period under the old law (1978), but only 6.7 percent of claims under the new law. As was discussed in Section II, the permanent partial category was the foremost problem area under the old system accounting for an inordinate amount of Workers' Compensation claim costs.[41]

2. Total indemnity costs, including wage-loss and impairment benefits, were 25.8 percent lower in the new law period.

3. The percentage of claims involving attorney representation decreased from 13.0 percent prior to the new law's enactment to 4.1 percent during the first five months of operation under the new law.

4. The time lag from the date of injury to the first reporting date was reduced by seven days. This suggested faster notification and initial processing of Workers' Compensation claims.

5. The proportion of workers returning to their same employer after recovery from their injury increased 9 percent (from 74 percent to 83 percent). Dr. Chang theorized that the new wage-loss system may have been responsible for this development.

Several other findings were presented in Dr. Chang's report. Some further supported the impression that the 1979 amendments were having their intended effects in terms of cost reductions. Other findings showed no definite trend. One comparison, that concerning medical costs, appeared to contradict the intent of the law. However, Dr. Chang attributed at least a part of this unexpected trend to technical adjustments by the insurance companies which would not ultimately affect premium levels.[42]

Early Analysis by the National Council on Compensation Insurance (NCCI)--On November 12, 1980, the NCCI staff presented to the Florida Classification and Rating Committee (an insurance industry board) an analysis of the need for a Workers' Compensation premium rate adjustment.[43] The analysis was based on a supplementary data call to insurance carriers issued during the summer.

On the advice of the NCCI staff, the Classification and Rating Committee decided to postpone a decision on whether to file for a rate adjustment based on experience under the new law until May 1981. The major reason for this was the fact that, at that time, data concerning only 51 percent of experience under Florida's new law was available for analysis. The insurance industry representatives preferred to wait until a more complete picture of the effects of the new law was available.

Despite this decision, the preliminary analysis prepared by the NCCI did include notable findings. First, as with the study prepared for the Florida House of Representatives discussed previously, the data indicated a significant drop in the proportion of Workers' Compensation claims of the permanent partial injury type. According to a NCCI statistical table, the proportion of claims in the permanent partial injury category fell from 20.0 percent prior to enactment of the 1979 legislation to 6.9 percent under the new law. Thus, further evidence was provided of a lower frequency for this particularly costly type of claim. Second, the analysis suggested that, if it were possible to consider experience alone, a 17.3 percent premium level reduction would have been warranted. This indicates considerable claim costs reductions from the perspective of the insurance carriers. However, it is not possible to consider experience alone. At the time the analysis was prepared, it was estimated that the expense of a series of scheduled benefit increases would slightly outweigh the cost savings stemming from claim cost experience.

1980 Data From the Division of Workers' Compensation--The Secretary of the Department of Labor and Employment Security presented a report to the Commerce Committee of the Florida Senate on March 3, 1981. This report included a discussion of the progress made by

the Division of Workers' Compensation in implementing the reforms mandated by the 1979 legislation. It also contained evidence of the effects of the new law on Workers' Compensation claims activity.

This statistical evidence was in the form of comparisons between calendar year 1980 and calendar year 1979 figures.

1. The number of formal Workers' Compensation claims filed fell dramatically from 1979 to 1980.[44] During the former year, 24,082 such claims were reported while only 12,472 were received during the latter year. That is a decline of 11,610 or 48.2 percent.

2. A substantial decrease was also experienced in the number of joint petitions and washouts. The number of such petitions fell from 15,422 in 1979 to 9,806 in 1980--a 36.4 percent drop.

3. The amount of benefits awarded in these joint petitions fell from $91.7 million in 1979 to $76.0 million in 1980. This amounted to an 17.1 percent reduction and a $15.7 million savings in benefits paid.

4. The amount of attorneys' fees awarded in controverted claims for Workers' Compensation fell from $18.9 million in 1979 to $16.9 million in 1980, a 10.6 percent decline.[45] The 1980 figure was 20.3 percent below the highest yearly attorney fee figure ever recorded, $21.2 million in 1977. In 1978, the Legislature began to shift to the claimant the responsibility for attorney fee payment. This trend was continued in the 1979 legislation as has been discussed.

Again, it is important to remember that the further premium rate reductions in all probability will be decided by the State Insurance Commissioner based primarily on his evaluation of a rate filing by the insurance industry. The positive trends suggested by the House Insurance Committee Report, the NCCI analysis and the 1980 data from the Division of Workers' Compensation will not necessarily translate into further rate reductions when all factors are considered. Nevertheless, those desiring further Workers' Compensation premium rate reductions in Florida should be encouraged by the data available at this point.

V. THE FUTURE OF FLORIDA'S WORKERS' COMPENSATION SYSTEM: MAKING SURE IT WORKS

Florida as a Model

The 1979 amendments to Florida's Workers' Compensation law were fundamental reforms to the system. As has been noted, Florida became the first state to adopt the wage-loss concept as the basis for long-term disability benefits for injured workers.

The nature of such reforms has given the Florida Workers' Compensation system the status of an experimental model. The ultimate success of that model is of great interest to other states. Representatives from the States of Washington, California and Delaware have visited Florida to observe the Workers' Compensation system in operation. The Director of the Division of Workers' Compensation has been invited to appear before legislative committees in several states to explain the wage-loss system and administrative reforms.[46]

Monitoring the System's Effectiveness

Perhaps the most important factor in determining the ultimate success of Florida Workers' Compensation system will be the determination of those who participated in its reforms--both inside and outside government--to monitor closely its operation. The Florida Legislature assured continued monitoring of the Workers' Compensation system by statute and by the Legislature's own activities. Several business, professional and labor organizations also have demonstrated their intent to continue their scrutiny of the system.

An example of a monitoring program established by statute is the Medical Utilization and Peer Review program.[47] Under this program, Workers' Compensation claim histories would be examined for possible instances of needless medical tests or treatment and of excessive charges for medical services. Ultimately, physicians involved in over-utilization of medical services would be subject to review by a committee of their peers. By February of this year, the Division of Workers' Compensation was able to report substantial progress toward establishing this program. A program budget had been prepared, positions established and a program director hired. The Division had entered into a contractual agreement with the Florida Medical Foundation to provide peer review services.[48]

The activities of Legislative Committees constitute another form of governmental monitoring of the Workers' Compensation system. Following the passage of the 1979 legislation, the Speaker of the House of Representatives officially charged the Committee on Insurance with the responsibility for legislative oversight of the implementation of the new law. The Insurance Committee Chairman delegated this responsibility to the Subcommittee on Oversight. That subcommittee has met periodically over the months since then obtaining detailed progress reports from the

Division of Workers' Compensation and hearing testimony from other interested parties.[49] The subcommittee has issued two calls for claims data from the insurance carriers. The results of the first call have been discussed in some detail earlier in this report.

The Senate Commerce Committee also has maintained an active program of monitoring the success of the Workers' Compensation system. The Division of Workers' Compensation data reported in Section IV was largely taken from testimony offered before that committee.[50]

Just as important to the success of the new system will be the efforts of organizations outside government. Naturally, the insurance industry, through the National Council on Compensation Insurance, will play a central role in future developments--particularly as regards future premium rate changes. The direct and continuing role of the NCCI has been apparent in the frequent reference to that organization throughout this report.

Associated Industries of Florida, which describes itself as "the voice of business" in the State, was very much involved in the 1979 reforms to the Workers' Compensation law and has remained in close touch with the implementation process. This business association issues periodic newsletters on potential problems in the law and recently has commissioned an analysis of a sample of Workers' Compensation claims filed during the first year of the new law's operation.[51]

The Florida Association of Insurance Agents, very active in promoting the adoption of the wage-loss concept, has begun a two-year program of monitoring the total effectiveness of Florida's Workers' Compensation system. The efficiency of claims processing, rehabilitation services and safety programs are early subjects of study.[52]

Having participated directly in the efforts leading to the 1979 Workers' Compensation legislation, the Florida AFL-CIO has continued its involvement in the Workers' Compensation program. The labor organization's major emphasis has been in monitoring the efficiency and equity with which injured workers have been provided their benefits. The current monitoring technique used is to randomly select case files then to telephone the claimants asking whether they have been satisfied with the way their case has been handled by the employer, the insurance carrier and the Division of Workers' Compensation.[53]

Notes

[1]For an excellent discussion of the theory underlying Florida's Workmen's Compensation system and Worker's Compensation systems in general, see: William E. Sadowski, Jack Herzog, R. Terry Butler and Ruth L. Gokel, "The 1979 Florida Workers' Compensation Reform: Back to Basics," Florida State University Law Review 7 (Fall 1979): 641-649.

[2]"The Payoff for Pain: A Look at Florida's Workmen's Compensation System," reprinted from The Miami Herald, 18 March through 25 March 1979, p. 2.

[3]Ibid., p. 11.

[4]Ibid., p. 2.

[5]Florida Department of Insurance, History of Florida Workers' Compensation Rate Revisions Since 7/1/70, special table prepared for this report, January 28, 1981.

[6]Florida Association of Insurance Agents, Workmen's Compensation Wage-Loss Reform Conferences: January 16-February 9, 1979, p. 10.

[7]"Payoff for Pain," Miami Herald, p. 5.

[8]Ibid., p. 11.

[9]Florida Association of Insurance Agents, Wage-Loss Conferences, p. 14.

[10]"Payoff for Pain," Miami Herald, p. 2.

[11]The Fantus Company, Economic Development Study: The State of Florida (Ft. Lauderdale: The Florida Council of 100, 1978), p. 6.

[12]Florida Association of Insurance Agents, Wage-Loss Conferences, p. 5.

[13]"Payoff for Pain," Miami Herald, p. 5.

[14]National Council on Compensation Insurance, 1977 Workmen's Compensation Closed Claim Study (Tallahassee: Florida Association of Insurance Agents, 1978).

[15]Previously, the comparatively low statutory benefits in Florida were noted. Here, the medical benefits paid to injured workers are described as ". . .unusually high compared to those paid in other states." This apparent paradox is resolved by noting that the benefits were claimed more often, and more frequently up to their maximum allowable limits, than in other states. As a result, the total amount of benefits paid was much higher in Florida.

[16]Division of Workers' Compensation, 1977-1978 Cases Causes Costs: Analysis of Work Injuries Covered by Workers' Compensation (Tallahassee: Department of Labor and Employment Security, 1979), p. 23.

[17]NCCI, Closed Claim Study, p. 6.

[18]Much of the discussion of compensation determination is based on an analysis presented by Fred Karl, Florida Association of Insurance Agents, Wage-Loss Conferences, pp. 30-33. The data for medical specialist involvement is from the NCCI Closed Claim Study, p. 2.

[19]"Payoff for Pain," Miami Herald, p. 16.

[20]Ibid, p.2.

[21]Ibid., pp. 11.

[22]Ibid., pp. 19-20, 24.

[23]Ibid., p. 2.

[24]Sadowski et al., "The 1979 Florida Workers' Compensation Reform," p. 650. The preceding discussion of legislative intent is based primarily on this same source, pp. 649-654.

[25]The following discussion of the major changes in the Workers' Compensation law is based on Sadowski et al., "The 1979 Florida Workers' Compensation Reform," pp. 654-686 and two "Staff Analyses and Economic Impact Statements," prepared by the Senate staff, April 18 and June 4, 1979.

[26]Actually, those workers who suffer the impairment injuries previously described would be able to collect wage-loss benefits in addition to their impairment benefits.

[27]Florida Statutes, Section 440.44.

[28]Senate, "Staff Analysis," April 18, 1979, p. 9.

[29]The 11.4 percent reduction in the manual premium rate was partially counter-balanced by other changes affecting other determinants of the premiums paid by employers. When all changes are considered, the actual reductions in premiums paid was an estimated 5.1 percent.

[30]Florida Department of Insurance, "Commissioner Gunter Approves Workers' Compensation Rate Cut of $34 Million," statement released to the press January 6, 1981.

[31]Letter from Bob Hilton of National Council on Compensation Insurance to Florida Insurance Commissioner Bill Gunter, December 2, 1980.

[32]An index is used here rather than the actual average manual premium rate. The National Council on Compensation Insurance estimates the overall premium rate impact, in terms of a percentage change, for each approved rate filing. However, the

National Council is hesitant to provide a calculated average manual rate due to the complications which would arise in attempting to weigh the different premium rates for each of the 500 or so employment classifications and due to the possibility of misleading comparisons with the overall rates of other states. The historical trend of the index used here is, in all probability, identical to the trend of the actual manual rate if that data were available.

[33]Florida Department of Insurance, History of Rate Revisions.

[34]Data provided Bureau of Research and Planning, Division of Workers' Compensation, Department of Labor and Employment Security, Special Request, March 16, 1981.

[35]The hypothetical 1980 value was calculated by applying the average compounded rate of increase from 1975 through 1979 in premium amount paid per employee to the 1979 value for premium per employee.

[36]Letter from Bob Hilton to Bill Gunter, December 2, 1980 (previously cited). This ranking also was confirmed in a letter from Clifford Wess, National Council on Compensation Insurance, to Dennis Harmon, Florida Department of Commerce, March 4, 1981.

[37]National Council on Compensation Insurance, Memorandum to Florida Classification and Rating Committee: Exhibit I, November 12, 1980.

[38]Ibid.

[39]Memorandum from Lena Chang, Actuarial Consultant, to the Honorable William Sadowski, Chairman, Committee on Insurance, Florida House of Representatives, August 8, 1980, "Preliminary Report on Committee Study of the New Workers' Compensation Law."

[40]Ibid, pp. 2-3.

[41]The decrease in the claims share accounted for by the permanent partial category was accompanied by an increase in the proportion held by the temporary total category. The number of claims in this category also increased absolutely. Historically, the temporary total injury type claim has not had the extreme claim costs associated with it that has the permanent partial category. Nevertheless, trends in this category probably will be closely watched for problems.

[42]Chang memorandum to Sadowski, p. 4.

[43]NCCI Memorandum to Florida's Classification and Rating Committee. This committee is comprised of representatives of insurance carriers which sell Workers' Compensation insurance in Florida. The insurance industry bases its rate filing decisions on the recommendations of this committee.

[44]A formal claim is a claim filed by an injured worker with the Division of Workers' Compensation. The filing of such a claim indicates that the worker is dissatisfied with the benefits he has received.

[45]If the unrounded data are used, this percentage change is 10.3 percent. This particular data was provided upon special request by the Bureau of Research and Planning, Division of Workers' Compensation, Department of Labor and Employment Security, March 19, 1981.

[46]Testimony of Wallace Orr, Secretary, Department of Labor and Employment Security, before Senate Commerce Committee, "St[illegible] of Florida's Workers' Compensation Law," March 3, 1981, pp.3-4.

[47]Section 440.13(3)(C-D), Florida Statutes.

[48]Department of Labor and Employment Security, Division of Workers' Compensation, "Response to the Report of the Subcommittee on Overview, Committee on Insurance, Florida House of Representatives," February 1981, p. 17.

[49]Florida House of Representatives, Committee on Insurance, Subcommittee on Oversight, "Legislative Oversight of the Implementation of the 1979 Reform of Florida's Workers' Compensation Law," April 1980.

[50]Testimony by Secretary Orr, pp. 3-4.

[51]An example is the Special Notice issued by Associated Industries of Florida, February 19, 1981 entitled: "Report to the Governor and Legislature on the Implementation of the New Workers' Compensation Law."

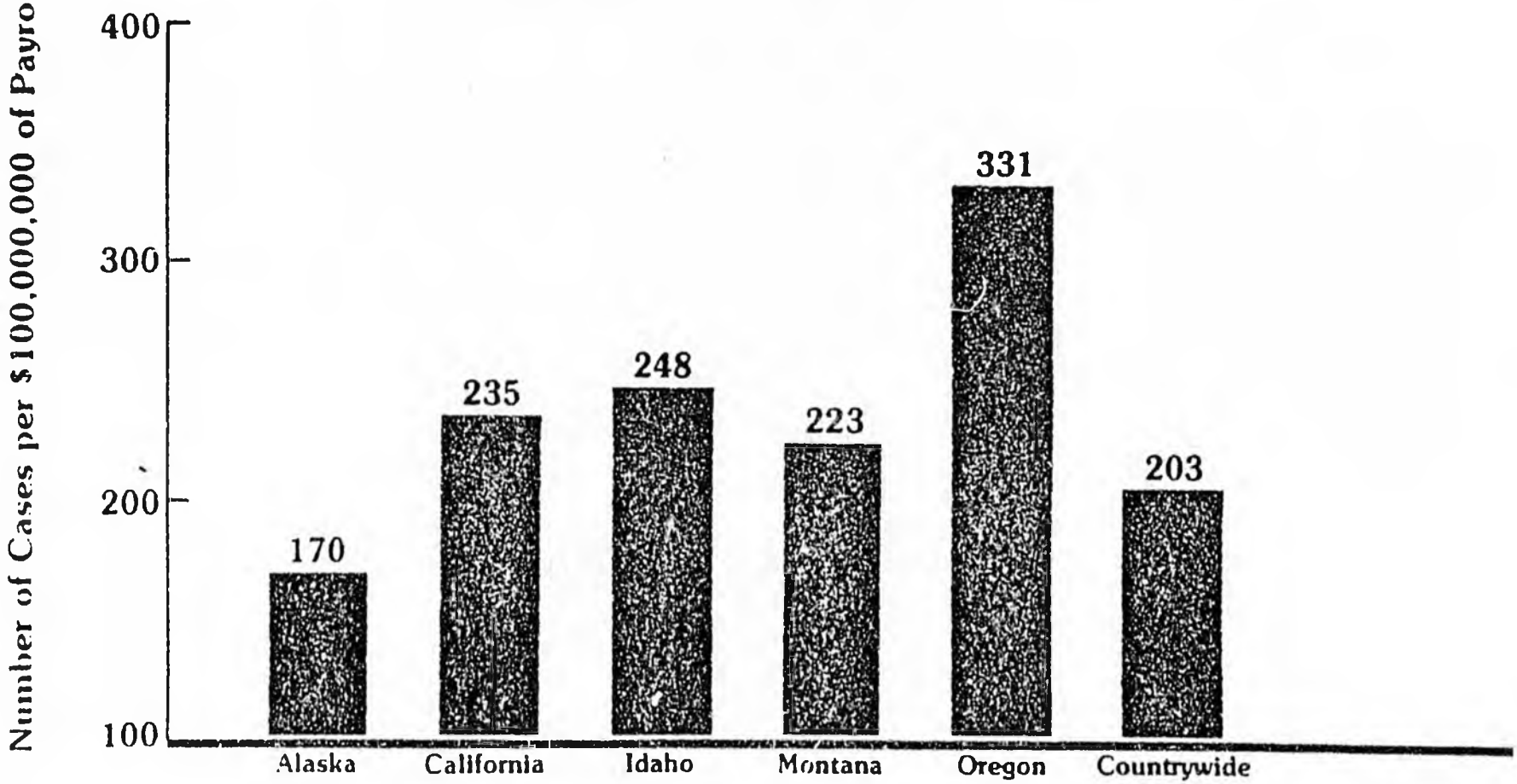
[52]Telephone conversation with Jim Brainerd, Florida Association of Insurance Agents, March 27, 1981.

[53]Telephone conversation with Ken Cooper, Florida AFL-CIO, March 27, 1981.

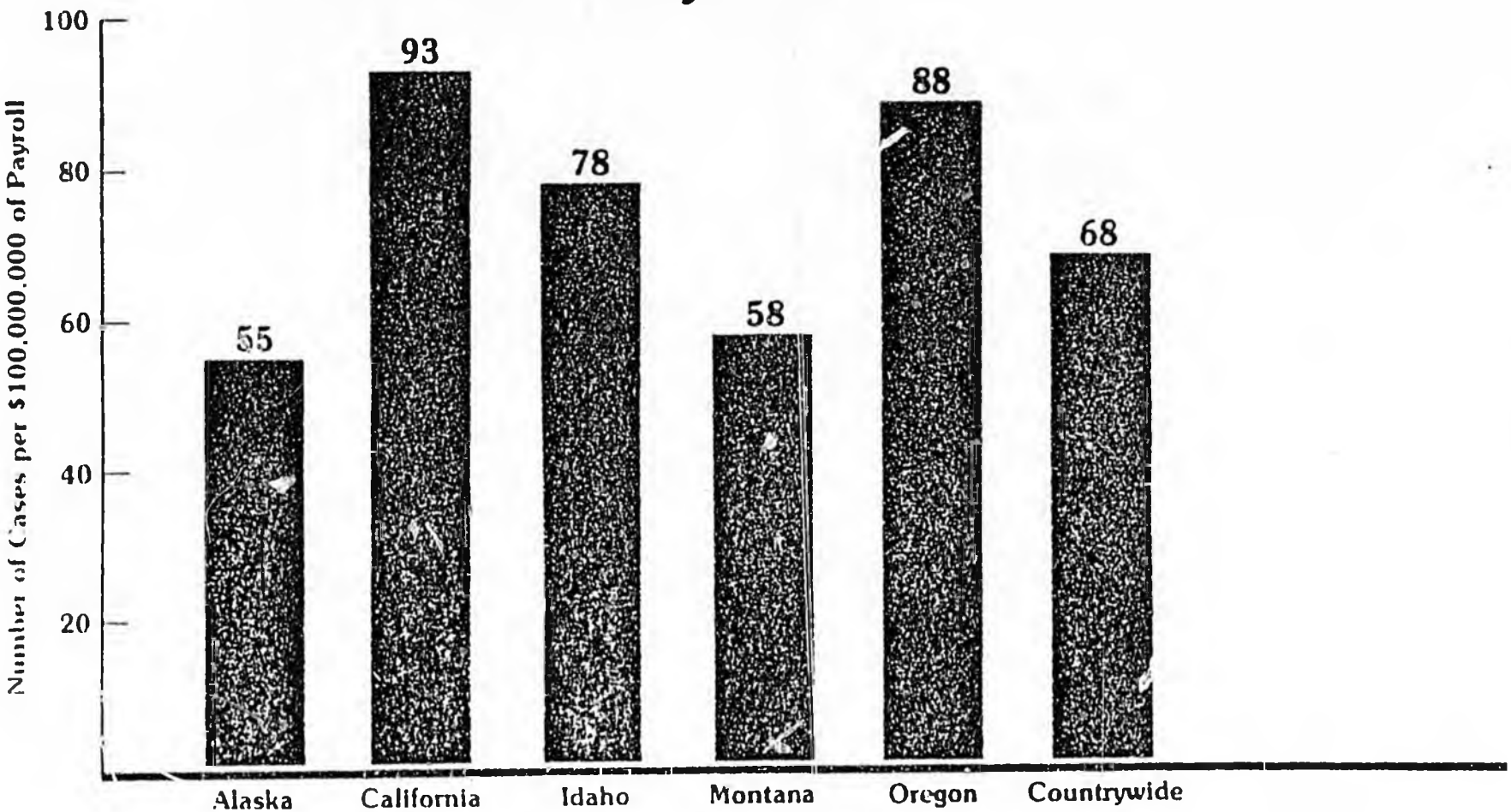
EXHIBIT II

OCCI

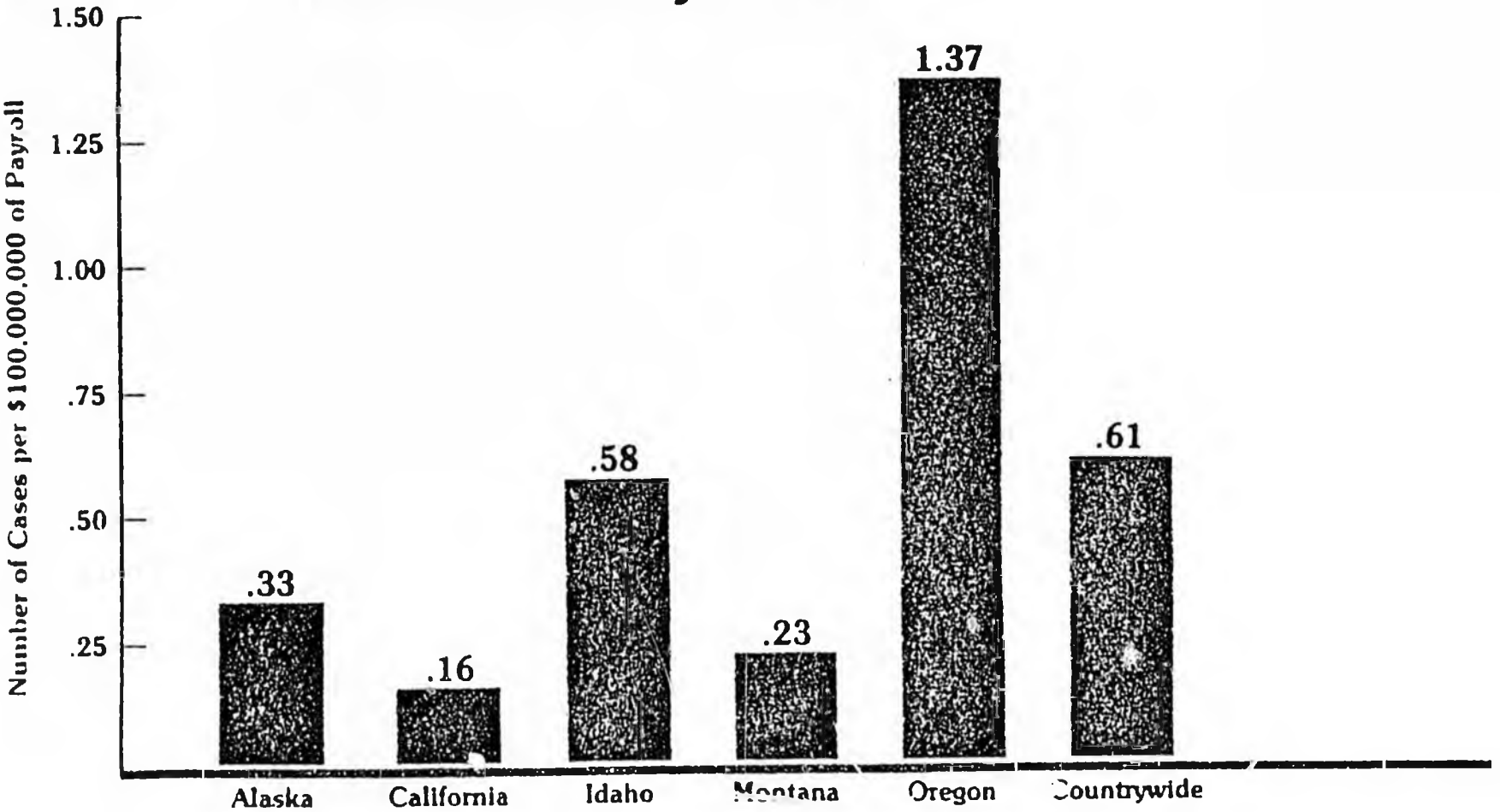
Frequency of Temporary Total Disability Cases



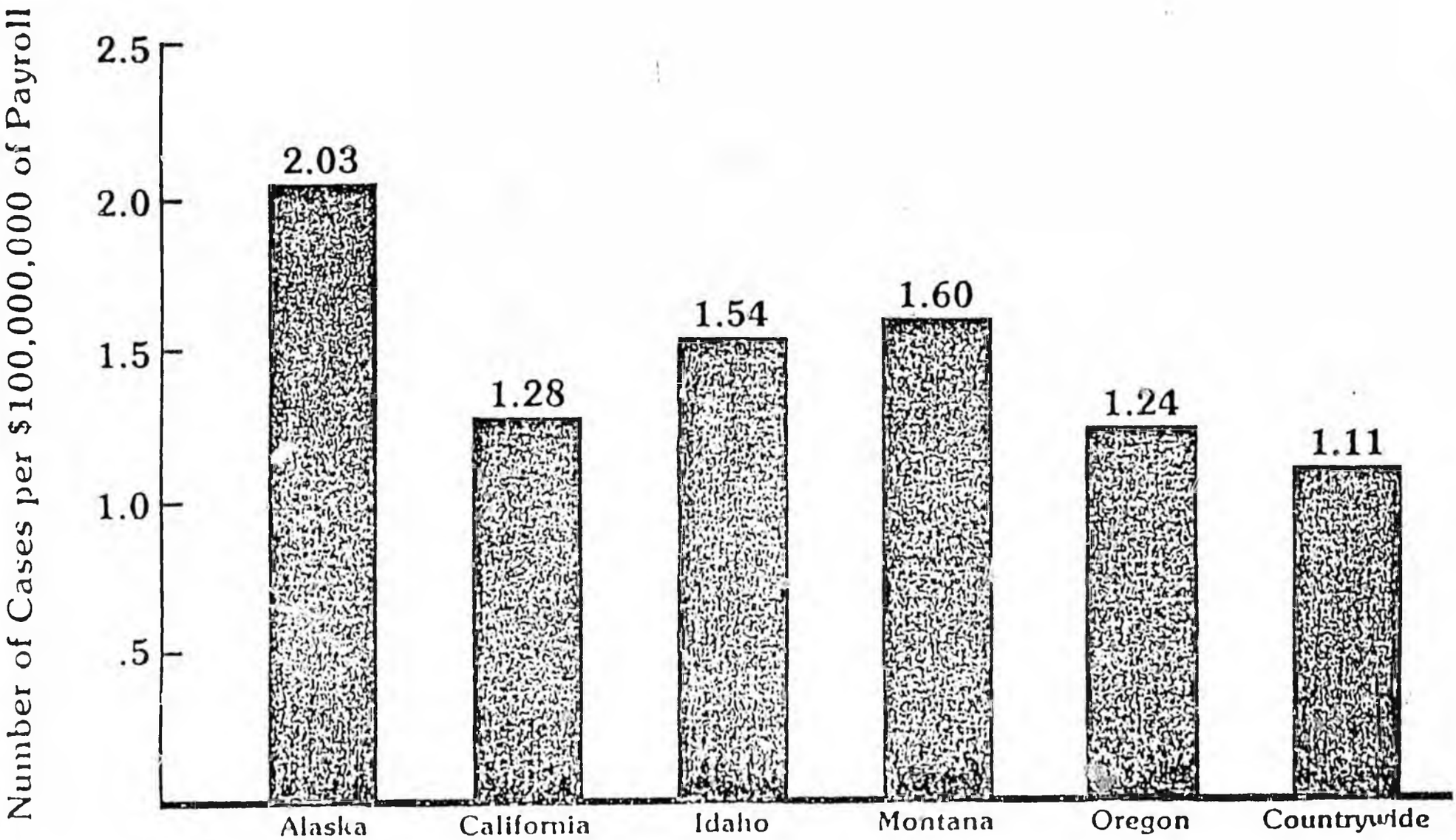
Frequency of Permanent Partial Disability Cases



Frequency of Permanent Total Disability Cases



Frequency of Death Cases



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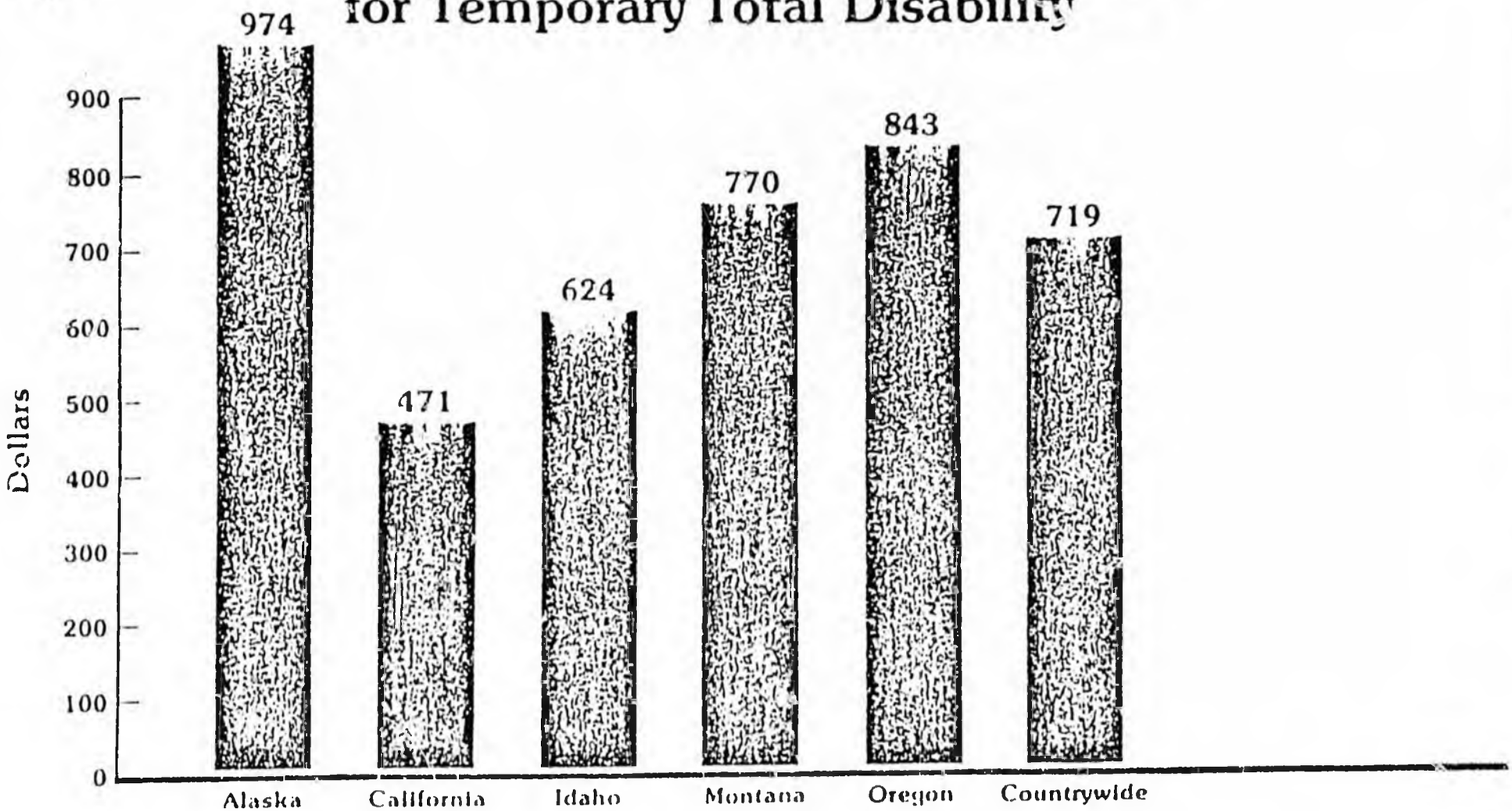
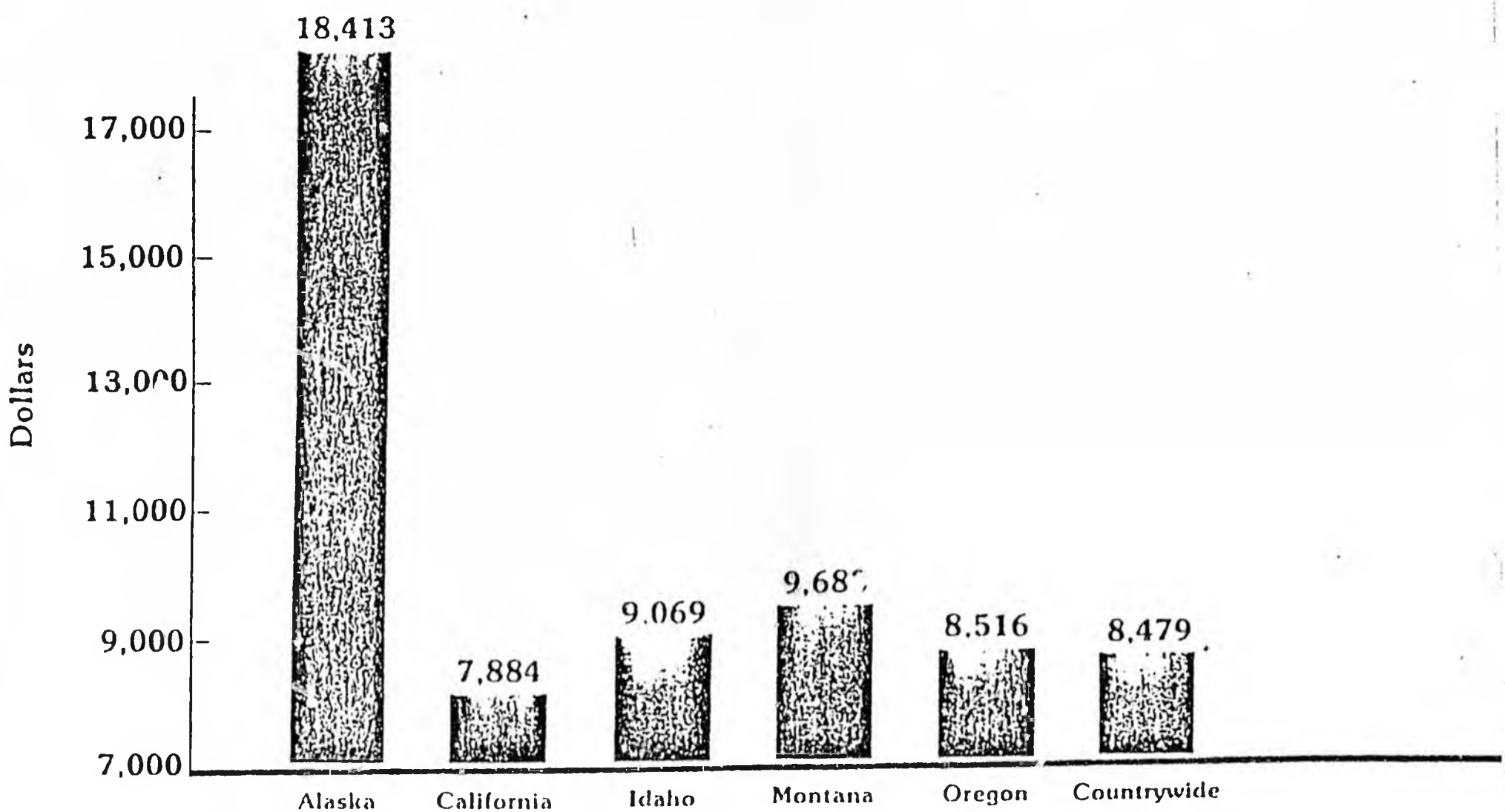
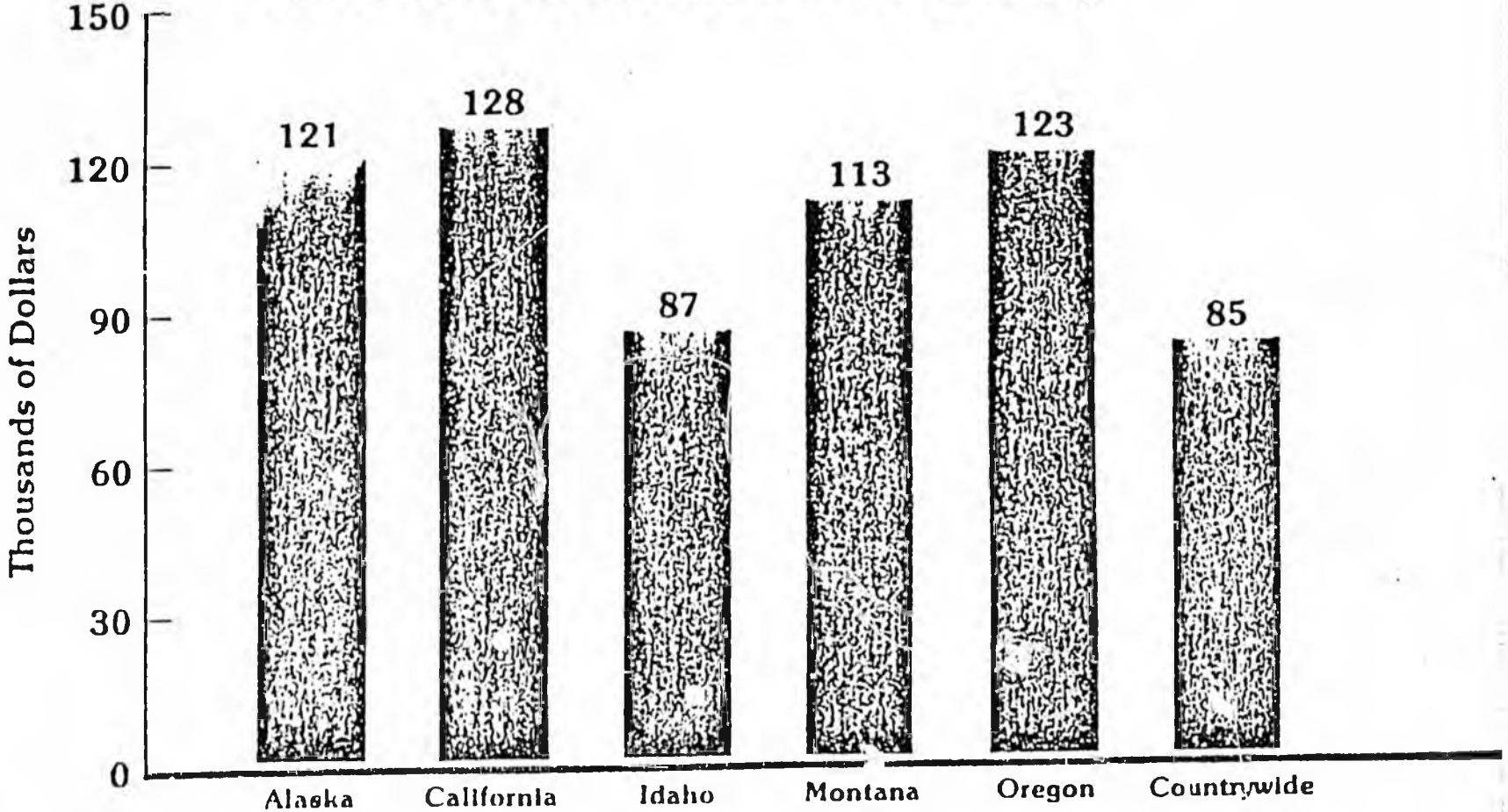
Comparison of Average Cost Per Case for Temporary Total Disability



Comparison of Average Cost per Case for Permanent Partial Disability



Comparison of Average Cost Per Case for Permanent Total Disability



Comparison of Average Cost Per Case for Death Benefits

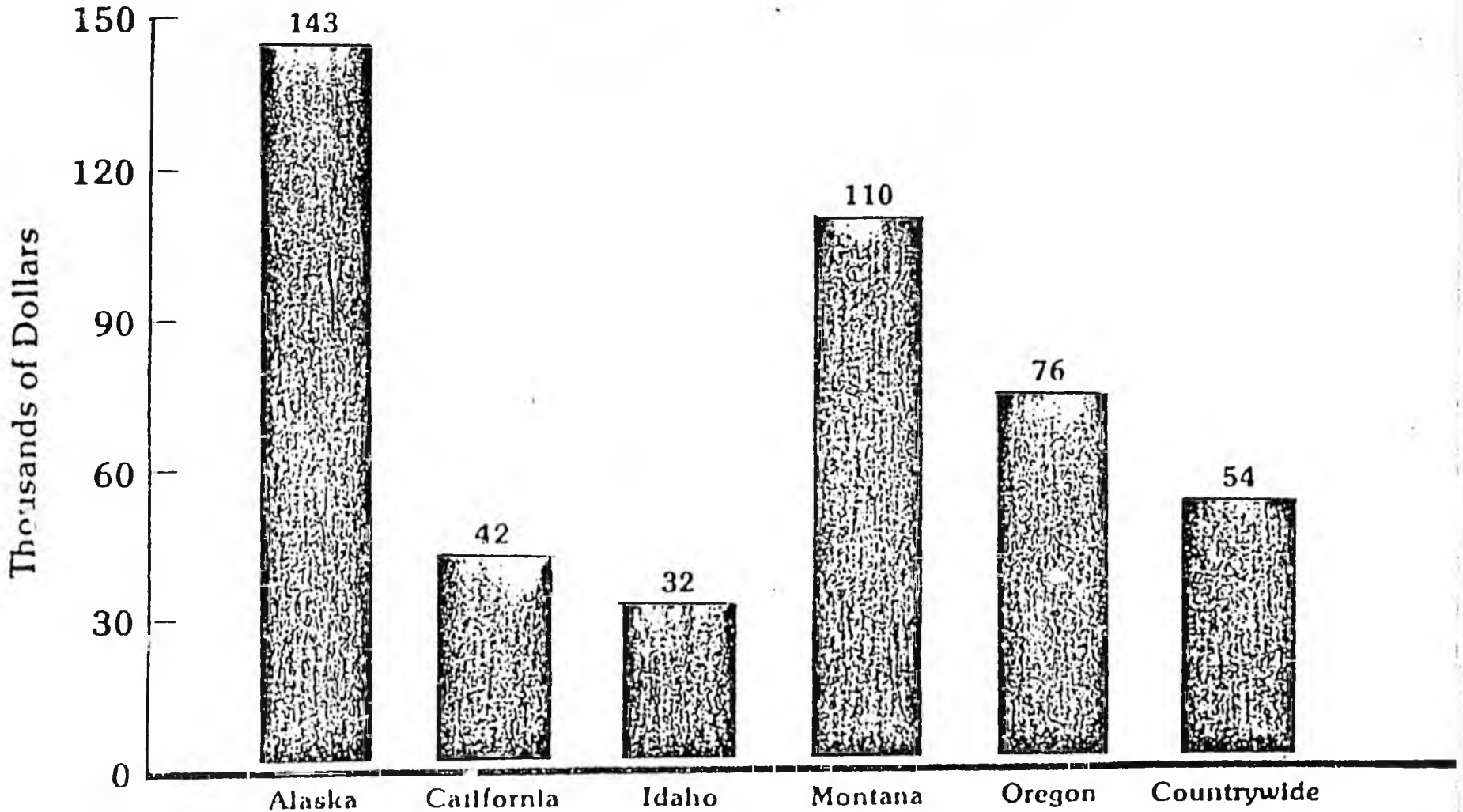


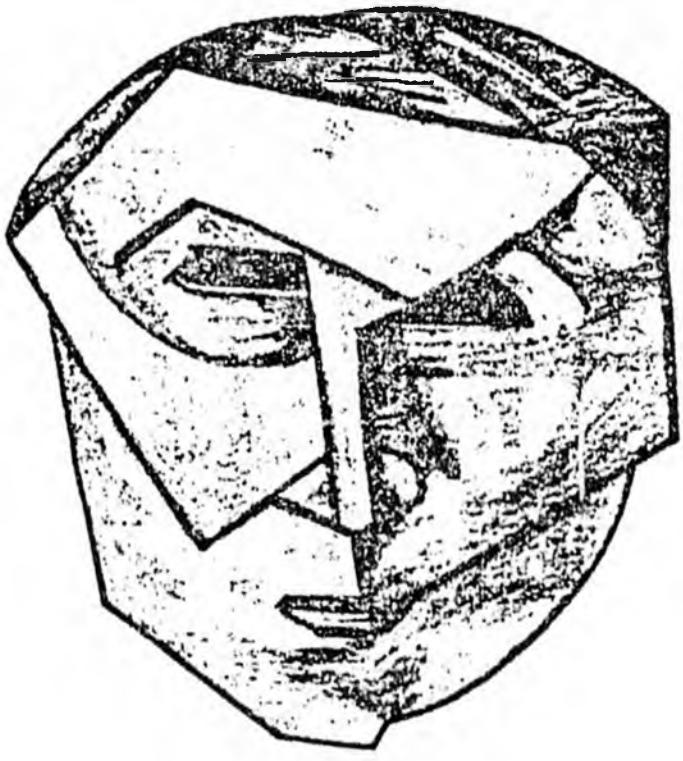
EXHIBIT III

WORKMEN'S COMPENSATION AND REHABILITATION LAW

(Revised)

THE COUNCIL OF STATE GOVERNMENTS
Lexington, Kentucky

Workmen's Compensation and Rehabilitation Law



Revised

The Council of State Governments

Published July 1974 by
The Council of State Governments
Iron Works Pike, Lexington, Kentucky 40511

Printed in the United States of America

RM-[illegible]
Price: $4.[illegible]

Foreword

Early in this century the States pioneered in the development of workmen's compensation laws. The enactment and administration of such laws thus became a standard state function and a traditional state responsibility. By the same token, the Council of State Governments has long had an interest in helping the States to improve and perfect their programs for workmen's compensation.

A little more than a decade ago the Council, through its Committee on Suggested State Legislation, drafted a "Workmen's Compensation and Rehabilitation Law," with the advice and guidance of an outstanding advisory committee. Portions appeared in both the 1963 and 1965 volumes of *Suggested State Legislation;* and the fully integrated act was subsequently published in a single volume, together with a comprehensive commentary.

In early 1973, sensing the need for further action by the States to improve their workmen's compensation laws in light of the findings of a National Commission on State Workmen's Compensation Laws, the Council again established an Advisory Committee on Workmen's Compensation Laws with representation from nationally recognized experts in the field. Senator Wilfrid J. Ullrich of Indiana was designated as Chairman of the Advisory Committee, thus assuring coordination with the Council's Committee on Suggested State Legislation (of which Senator Ullrich is also Chairman).

The Advisory Committee's first task was to prepare a report for immediate consideration by the States, including specific amendatory legislation that adequately met all major recommendations of the National Commission. That report, *Workmen's Compensation: A Challenge to the States,* was issued in February 1973 while there was still time in most States for preliminary legislative review. As a further step, the Advisory Committee agreed to review the entire text of the Council's earlier model act and to incorporate therein appropriate amendments which would assure that a State enacting them would meet in full all recommendations of the National Commission.

This further work of the Advisory Committee is incorporated in the present report, providing an integrated and updated Workmen's Compensation and Rehabilitation Law for consideration by State Legislatures. No attempt was made to revise the earlier commentary, which is still in print and available to those who are not familiar with it. As will be noted later, in Introductory Comments by the Advisory Committee, it has not been our intention to change basic provisions of the earlier version of the draft law. To do so would have delayed for at least a year the printing of this report, and it was believed that the original version still stood the test of time in most respects.

The hard work and superb assistance and guidance rendered by members of the Advisory Committee are most deeply appreciated by the Council of State Governments. Without these dedicated persons there would be no report to issue, and all of us would be the losers.

Brevard Crihfield
Executive Director
The Council of State Governments

Lexington, Kentucky
June 1974

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Introductory Comments by the Advisory Committee

All members of the Council of State Governments' Advisory Committee on Workmen's Compensation, whose names appear on the opposite page, are pleased to have been of assistance to the Council in preparing this revised version of the *Workmen's Compensation and Rehabilitation Law* and the predecessor report entitled *Workmen's Compensation: A Challenge to the States.* We hope that our efforts will be of assistance to all those who are interested in an equitable and adequate workmen's compensation program.

Purpose of the Committee

The Council's Advisory Committee wants to make clear the purposes of this revision effort. In the mid-1960s, an earlier Advisory Committee on Workmen's Compensation prepared a *Workmen's Compensation and Rehabilitation Law.* This law was drafted over a period of four years and was published with a Section by Section Commentary by Arthur Larson, chairman of the Advisory Committee. This law has been of great value during the last decade.

The Occupational Safety and Health Act of 1970 established the National Commission on State Workmen's Compensation Laws, which submitted its *Report* to the Congress and to the President on July 31, 1972. The *Report* criticized many aspects of state workmen's compensation programs and made 84 specific recommendations for a modern workmen's compensation program. Nineteen of the recommendations were designated as essential. The National Commission urged that compliance of the States with the 19 recommendations should be evaluated on July 1, 1975, and, if necessary, Congress with no further delay in the effective date should guarantee compliance with these essential recommendations.

The *Report* of the National Commission has had a salutary effect on state workmen's compensation programs. The National Commission, however, did not attempt to translate its recommendations into statutory language. Further, a number of the recommendations were either not covered in, or were at least partially inconsistent with, the language in the *Workmen's Compensation and Rehabilitation Law* as published in the 1960s. This new Advisory Committee was constituted to revise the original law solely to the extent necessary to accommodate the recommendations of the National Commission. No effort was made to duplicate the substantial task which faced the original Advisory Committee when it drafted an entirely new statute. Nor did this Advisory Committee consider the merits of the recommendations of the National Commission. Our purpose was strictly to provide language which would permit a State to follow the recommendations of the National Commission if it wished to do so. While our responsibility was therefore narrowly defined, we believe that the result will be of value in many States.

Because of the immediacy of the July 1, 1975, deadline when States will be evaluated in terms of their compliance with the 19 essential recommendations of the National Commission, our first priority was the preparation of statutory language encompassing these recommendations. The result was the February 1973 publication of *Workmen's Compensation: A Challenge to the States.* Our second task was the preparation of language covering all 84 of the recommendations of the National Commission, and the result is the current publication, entitled the *Workmen's Compensation and Rehabilitation Law* (Revised). Unlike the original edition, we have not prepared a commentary. However, the great bulk of the original draft was not affected by our revision efforts and, therefore, the commentary on the original law will be useful to many using the revised edition. The original law with the accompanying commentary is still available from the Council of State Governments.

medical opinion is necessary.

(3) Advise on the gathering of statistics, the maintaining of records and the rendering of reports under this act and under rules and regulations adopted by the Director.

(4) Assist in keeping physicians currently informed of this act and of rules and regulations adopted by the Director and of their responsibilities thereunder.

(5) Advise and assist in the achievement of impartiality in medical testimony in workmen's compensation cases.

(6) Encourage the expansion and improvement of existing rehabilitation facilities and the development of additional facilities to insure optimal rehabilitation in workmen's compensation cases.

(7) Recommend improvement in the methods of measuring physical impairment in workmen's compensation cases.

(8) Recommend improvements in this act and in rules and regulations adopted by the Director and in their administration to insure optimal medical care and rehabilitation.

(9) Advise the Director with respect to the constitution and operation of the Disability Evaluation Unit.

(f) The Director, after consultation with the Medical Advisory Committee, shall establish a Disability Evaluation Unit[5] under the supervision of the Medical Director. The Unit shall, at the request of the Director, report to him its findings and determination on such questions as the etiology of a disease and the extent of a worker's impairment or disability due to a work-related injury or disease.

Section 13. [*Rehabilitation.*]

(a) One of the primary purposes of this act shall be restoration of the injured employee to gainful employment. To this end there is hereby created a Rehabilitation Unit within the Agency which shall be composed of specialists in medical and vocational rehabilitation to be appointed by the Director.

(b) The Unit shall continuously study the problems of rehabilitation, both physical and vocational, and shall investigate and maintain a directory of all rehabilitation facilities, both private and public. The Director, in consultation with the Unit, shall approve as qualified such facilities, institutions and physicians as are capable of rendering competent rehabilitation service to seriously injured employees. No facility or institution shall be considered as qualified unless it is specifically equipped to provide rehabilitation services for persons suffering either from some specialized type of disability or general type of disability within the field of occupational injury and is staffed with trained and qualified personnel, and

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5. The establishment of a Disability Evaluation Unit may not be necessary in those States where the volume of claims does not warrant such an organizational component.

with respect to physical rehabilitation, unless it is supervised by a physician qualified to render such service. No physician shall be considered qualified unless he has had the experience and training specified by the Director.

(c) An employee who has suffered an injury covered by this act shall be entitled to prompt medical rehabilitation services. When as a result of the injury he is unable to perform work for which he has previous training or experience, he shall be entitled to such vocational rehabilitation services, including retraining and job placement, as may be reasonably necessary to restore him to suitable employment. If such services are not voluntarily offered and accepted, the Director on his own motion, or upon application of the employee or carrier, after affording the parties an opportunity to be heard, may refer the employee to a qualified physician or facility for evaluation of the practicability of, need for, and kind of service, treatment or training necessary and appropriate to render him fit for a remunerative occupation. Upon receipt of such report, and after affording the parties an opportunity to be heard, the Director, in consultation with the Unit, may order that the services and treatment recommended in the report, or such other rehabilitation treatment or service he may deem necessary, be provided at the expense of the employer.

(d) Where rehabilitation requires residence at or near the facility or institution away from the employee's customary residence, reasonable cost of his board, lodging or travel shall be paid for by the employer.

(e) Refusal to accept rehabilitation pursuant to an order of the Director shall result in loss of compensation for each week of the period of refusal.

(f) The Director and the Rehabilitation Unit shall cooperate on a reciprocal basis with the vocational rehabilitation section of the [Department of Education] and the employment service of the [Division of Employment Security].

Section 14. [*Burial Expense.*] If death results from the injury, the employer shall pay the cost of burying in an amount not to exceed [$] to any person who performed such service or incurred the liability for the service, whether or not the employee leaves dependents within the meaning of this act. Any such person is hereby authorized to file a petition with the Director for the fixing of the amount of the service and for an order requiring the employer to pay the cost of the service. If death occurs while the employee is away from his usual place of business or residence, the employer will be liable for the reasonable cost of transportation of the body to the employee's place of residence within the United States or Canada.

EXHIBIT IV

EXHIBIT IV

Amputation	% of Whole Man	1982 Cash Benefit Paid in Addition to Wage-Loss	Existing Maximum Benefit
Both arms	84%	$39,564	$87,360
Arm - at shoulder	60%	28,200	43,680
Arm - at elbow	57%	26,447	43,680
Arm - between elbow & wrist	54%	25,434	43,680
Hand - at wrist	54%	25,434	33,600
Both hands	79%	37,209	67,200
Both legs	64%	30,144	80,640
Leg - at hip	40%	18,040	40,320
Leg - at knee	36%	16,956	40,320
Leg - between knee & ankle	28%	13,188	40,320
Foot - at ankle	28%	13,188	28,700
Arm & leg	76%	35,796	84,000

EXHIBIT V

GUIDES TO THE EVALUATION OF PERMANENT IMPAIRMENT

American Medical Association

Committee on Rating of
Mental and Physical Impairment

Foreword

The ad hoc Committee on Medical Rating of Physical Impairment was created by the Board of Trustees of the American Medical Association in September 1956. The Committee was directed to establish a series of practical guides for the rating of physical impairment of the various body systems. As the work of the Committee progressed, it was determined that the name was restrictive; in November 1963 the name was changed to Committee on Rating of Mental and Physical Impairment.

With the assistance of the outstanding consultants and members of subcommittees listed ahead, a series of thirteen "Guides to the Evaluation of Permanent Impairment" was developed and published in the Journal of the American Medical Association. The subject matter, with dates of publication in JAMA, includes: Extremities and Back, Special Edition, February 15, 1958; Visual System, 168: 475-485, September 27, 1958; Cardiovascular System, 172:1049-1060, March 5, 1960; Ear, Nose, Throat, and Related Structures, 177:489-501, August 19, 1961; Central Nervous System, 186:24-35, July 6, 1963; Digestive System, 188:159-171, April 13, 1964; Peripheral Spinal Nerves, 189:128-142, July 13, 1964; Respiratory System, 194:919-932, November 22, 1965; Endocrine System, 198:195-208, October 10, 1966; Mental Illness, 198:1284-1296, December 19, 1966; Reproductive and Urinary Systems, 202:624-636, November 13, 1967; Skin, 211:106-112, January 5, 1970; and Hematopoietic System, 213:1314-1324, August 24, 1970.

During the past 14 years, physicians and others have requested over 225,000 reprints of the individual "Guides." This wide acceptance and use of the "Guides" has been most gratifying.

The "Guides" have been reviewed periodically to insure their continuing value. The revised material as published in this single volume supersedes all previous individually published "Guides."

The text of the extremities and back guide has undergone the most revision, with new material on the carpometacarpal joint of the thumb, flexion-extension of the elbow joint and knee joint, vertebral fractures, and percentages of impairment in the cervical region. The percentages of impairment for respiratory disorders have also been changed. A new table for rating hearing impairment has been derived for use when hearing tests are recorded on audiometers calibrated in accordance with the new American National Standard Institutes–specifications for audiometers (ANSI, S3.6-1969). Other changes also have been made throughout the book.

With the publication in this single volume of the entire series of updated "Guides" which cover all the body systems–the whole man–the Association is providing authoritative material to assist physicians and others in discharging a responsibility to their patients, clients, or applicants who are seeking benefits from the various agencies and programs serving the disabled.

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---

*deceased

Preface

Evaluation or rating of permanent disability has long been recognized as an important and complex subject. In the past much confusion has resulted from inadequate understanding by physicians and others of (a) the scope of medical responsibility in the evaluation of permanent disability and (b) the difference between "permanent disability" and "permanent impairment."

It is vitally important for every physician to be aware of his proper role in the evaluation of permanent disability under any private or public program for the disabled. It is equally important for him to have the necessary authoritative material to assist him in competently fulfilling his particular responsibility—the evaluation of permanent impairment. It is the purpose of this and other reports of the Committee on Rating of Mental and Physical Impairment to correct a past confusion of terms and to provide a series of practical guides to the evaluation of various types of permanent impairments.

The following explanation of generally used terms in programs for the disabled is provided.

(1) *Permanent Impairment.*—This is a purely medical condition. Permanent impairment is any anatomic or functional abnormality or loss after maximal medical rehabilitation has been achieved, which abnormality or loss the physician considers stable or nonprogressive at the time evaluation is made. It is always a basic consideration in the evaluation of permanent disability.

(2) *Permanent Disability.*—This is not a purely medical condition. A patient is "permanently disabled" or "under a permanent disability" when his actual or presumed ability to engage in gainful activity is reduced or absent because of "impairment" which, in turn, may or may not be combined with other factors. A permanent condition is found to exist if no fundamental or marked change can be expected in the future.

(3) *Evaluation (Rating) of Permanent Impairment.*—This is a function that physicians alone are competent to perform. Evaluation of permanent impairment defines the scope of medical responsibility and therefore represents the physician's role in the evaluation of permanent disability. Evaluation of permanent impairment is an appraisal of the nature and extent of the patient's illness or injury as it affects his personal efficiency in one or more of the activities of daily living. These activities are self-care, communication, normal living postures, ambulation, elevation, traveling, and nonspecialized hand activities.

(4) *Evaluation (Rating) of Permanent Disability.*—In the last analysis, this is an administrative and not solely a medical responsibility and function. Evaluation of permanent disability is an appraisal of the patient's present and future ability to engage in gainful activity as it is affected by such diverse factors as age, sex, education, economic and social environment, in addition to the definite medical factor—permanent impairment. The first group of factors has proved extremely difficult to measure. For this reason, permanent impairment is in fact the sole or real criterion of permanent disability far more often than is readily acknowledged. However, in actual practice the final determination of permanent disability is an administrative decision as to the patient's entitlement.

Competent evaluation of permanent impairment requires adequate and complete medical examination, accurate objective measurement of function, and the avoidance of subjective impressions and such factors as age, sex, or employability.

The Committee on Rating of Mental and Physical Impairment believes that permanent impairment cannot vary because of the circumstances of its occurrence or the geographical location of the patient at the time. Furthermore, unlike disability, permanent impairment can be measured with a reasonable degree of accuracy and uniformity, as it is evidenced by loss of structural integrity, loss of functional capacity, or persistent pain that is substantiated by clinical findings.

The Committee is familiar with the various formulas developed in the past for use in evaluation of permanent disability. These formulas are usually administrative devices which equate specific medical criteria to specific percentages of permanent partial or total disability (loss of working or earning capacity). From the medical standpoint the medical criteria may undeniably represent various anatomic or functional impairments. However, it is unrealistic to presume that all of these impairments, especially those of a minor nature, will necessarily at some time result in disability. Although a number of valuable contributions have been made in the past, the Committee has found no comprehensive practical system of the type necessary for the evaluation of permanent impairment by individual body systems or of the whole man. For this reason, the Committee undertook to prepare a series of "Guides." All of the "Guides" have been developed after careful study of the literature and views of recognized authorities.

Each guide contains recommended percentage values related to the criteria provided. The use of numerical values is preferred because of difficulty in communication and variability in interpretation of such terms as "slight," "marked," and "moderate." Numerical values provide a practical means of expressing and calculating the extent of permanent impairment and encourage accurate, equitable, and uniform evaluation. Methods of calculating impairment

are uniform, are explained in detail with examples, and require a minimum of computation. Generally, when a single impairment is involved, the percentage value may be read directly from the text or transposed to a relative value of a unit of the body or of the whole man by referring to appropriate tables.

When two or more impairments are involved, however, the value of each impairment must be ascertained and transposed to a common denominator, such as the whole man. Thereafter, these values must be combined rather than added. A Combined Values Chart is provided by which any combination of impairments may be easily assessed. The method generally used to combine various impairments is based on the principle that each impairment acts not on the whole part but on the portion which remains after the preceding impairment has acted. For purposes of computation, the source and chronology of the impairment values are immaterial.

After the values of all impairments involved have been computed and transposed to a common denominator, the final impairment value, whether the result of single or combined impairments, should be expressed in terms of the nearest 5%.

associated loss of sensation. However, consideration was not given for loss of sensation in establishing the values for ankylosis and restricted motion for the hand, which is both a prehensile and sensory organ. Therefore, when evaluating impairment of the hand, it is necessary to refer to Chapter II page 49 The Peripheral Spinal Nerves, in addition to the following material.

Special Consideration–Since the basic tasks of everyday living are more dependent upon the preferred upper extremity, dysfunction of the non-preferred upper extremity results in less impairment than dysfunction of the preferred extremity. Therefore, when the impairment of an upper extremity has been determined to be between 5% and 50%, this value should be reduced by 5% if the impairment is of the non-preferred upper extremity. If the value is 51% to 100% impairment of the upper extremity, the value should be reduced by 10% for the non-preferred extremity before converting to whole man impairment.

TABLE 1 – AMPUTATIONS

	Impairment of:			
	Digit	Hand	Upper Extremity	Whole Man
Forequarter amputation				70%
Disarticulation at shoulder joint			100%	60%
Amputation of arm above deltoid insertion			100%	60%
Amputation of arm between deltoid insertion and elbow joint			95%	57%
Disarticulation at elbow joint			95%	57%
Amputation of forearm below elbow joint proximal to insertion of biceps tendon			95%	57%
Amputation of forearm below elbow joint distal to insertion of biceps tendon		100%	90%	54%
Disarticulation at wrist joint		100%	90%	54%
Midcarpal or mid-metacarpal amputation of hand		100%	90%	54%
Amputation of all fingers except thumb at metacarpophalangeal joints		60%	54%	32%
Amputation of thumb at metacarpophalangeal joint or with resection of carpometacarpal bone	100%	40%	36%	22%
At interphalangeal joint	75%	30%	27%	16%
Amputation of index finger at metacarpophalangeal joint or with resection of metacarpal bone	100%	25%	23%	14%
At proximal interphalangeal joint	80%	20%	18%	11%
At distal interphalangeal joint	45%	11%	10%	6%
Amputation of middle finger at metacarpophalangeal joint or with resection of metacarpal bone	100%	20%	18%	11%
At proximal interphalangeal joint	80%	16%	14%	8%
At distal interphalangeal joint	45%	9%	8%	5%
Amputation of ring finger at metacarpophalangeal joint or with resection of metacarpal bone	100%	10%	9%	5%
At proximal interphalangeal joint	80%	8%	7%	4%
At distal interphalangeal joint	45%	5%	5%	3%
Amputation of little finger at metacarpophalangeal joint or with resection of metacarpal bone	100%	5%	5%	3%
At proximal interphalangeal joint	80%	4%	4%	2%
At distal interphalangeal joint	45%	2%	2%	1%

TABLE 2 – MULTIPLE DIGITS

All Joints	Amputated	Impairment of Hand Ankylosed in: Full Extension	Position of Function	Full Flexion
Thumb	40%	30%	25%	38%
Thumb, Index	65%	53%	45%	63%
Thumb, Index, Middle	85%	71%	61%	83%
Thumb, Index, Ring	75%	62%	53%	73%
Thumb, Index, Little	70%	58%	49%	68%
Thumb, Index, Middle, Ring	95%	80%	69%	93%
Thumb, Index, Middle, Little	90%	76%	65%	88%
Thumb, Index, Ring, Little	80%	67%	57%	78%
Thumb, Index, Middle, Ring, Little	100%	85%	73%	98%
Thumb, Middle	60%	48%	41%	58%
Thumb, Middle, Ring	70%	57%	49%	68%
Thumb, Middle, Little	65%	53%	45%	63%
Thumb, Middle, Ring, Little	75%	62%	53%	73%
Thumb, Ring	50%	39%	33%	48%
Thumb, Ring, Little	55%	44%	37%	53%
Thumb, Little	45%	35%	29%	43%

All Joints	Amputated	Impairment of Hand Ankylosed in: Full Extension	Position of Function	Full Flexion
Index	25%	23%	20%	25%
Index, Middle	45%	41%	36%	45%
Index, Middle, Ring	55%	50%	44%	55%
Index, Middle, Little	50%	46%	40%	50%
Index, Middle, Ring, Little	60%	55%	48%	60%
Index, Ring	35%	32%	28%	35%
Index, Ring, Little	40%	37%	32%	40%
Index, Little	30%	28%	24%	30%
Middle	20%	18%	16%	20%
Middle, Ring	30%	27%	24%	30%
Middle, Ring, Little	35%	32%	28%	35%
Middle, Little	25%	23%	20%	25%
Ring	10%	9%	8%	10%
Ring, Little	15%	14%	12%	15%
Little	5%	5%	4%	5%

SHOULDER JOINT

When Two or More Ranges of Motion are Involved

Restricted Motion:

1. Calculate *separately* and record impairment of upper extremity contributed by each range of motion.

2. ADD impairment of upper extremity values contributed by ALL ranges of motion. The sum of these values is impairment of upper extremity contributed by shoulder joint.

Example–Two Ranges of Motion	*Impairment of Upper Extremity*
30 degrees active *FORWARD ELEVATION*	= 13%
30 degrees active *BACKWARD ELEVATION*	= 1
20 degrees active *ABDUCTION*	= 14
20 degrees active *ADDUCTION*	= 1
(13 + 1 + 14 + 1 = 29)	29%
Example–Three Ranges of Motion	
20 degrees active *INTERNAL ROTATION*	= 3%
20 degrees active *EXTERNAL ROTATION*	= 11
FORWARD ELEVATION, BACKWARD ELEVATION, ABDUCTION, and *ADDUCTION* restricted as above	= 29
(3 + 11 + 29 = 43)	43%

Ankylosis

1. Calculate *separately* and record impairment of upper extremity contributed by ankylosis in each position.

2. The *largest* ankylosis impairment value is impairment of upper extremity contributed by shoulder joint.

Example	*Impairment of Upper Extremity*
Shoulder joint ankylosed at:	
60 degrees *FORWARD ELEVATION*	= 55%
20 degrees *EXTERNAL ROTATION*	= 40

The largest ankylosis impairment value is 55%; therefore, upper extremity is 55% impaired by ankylosed shoulder joint.

UPPER EXTREMITY

When Two or More Units are Involved

1. Calculate *separately* and record impairments of upper extremity contributed by each unit (hand, wrist joint, elbow joint, and shoulder joint).

2. Combine impairment values, using combined values chart, to ascertain impairment of upper extremity contributed by two or more units.

Example–Two Units	*Impairment of Upper Extremity*
Hand	= 40%
Wrist	= 30
(40 combined with 30 = 58)	58%

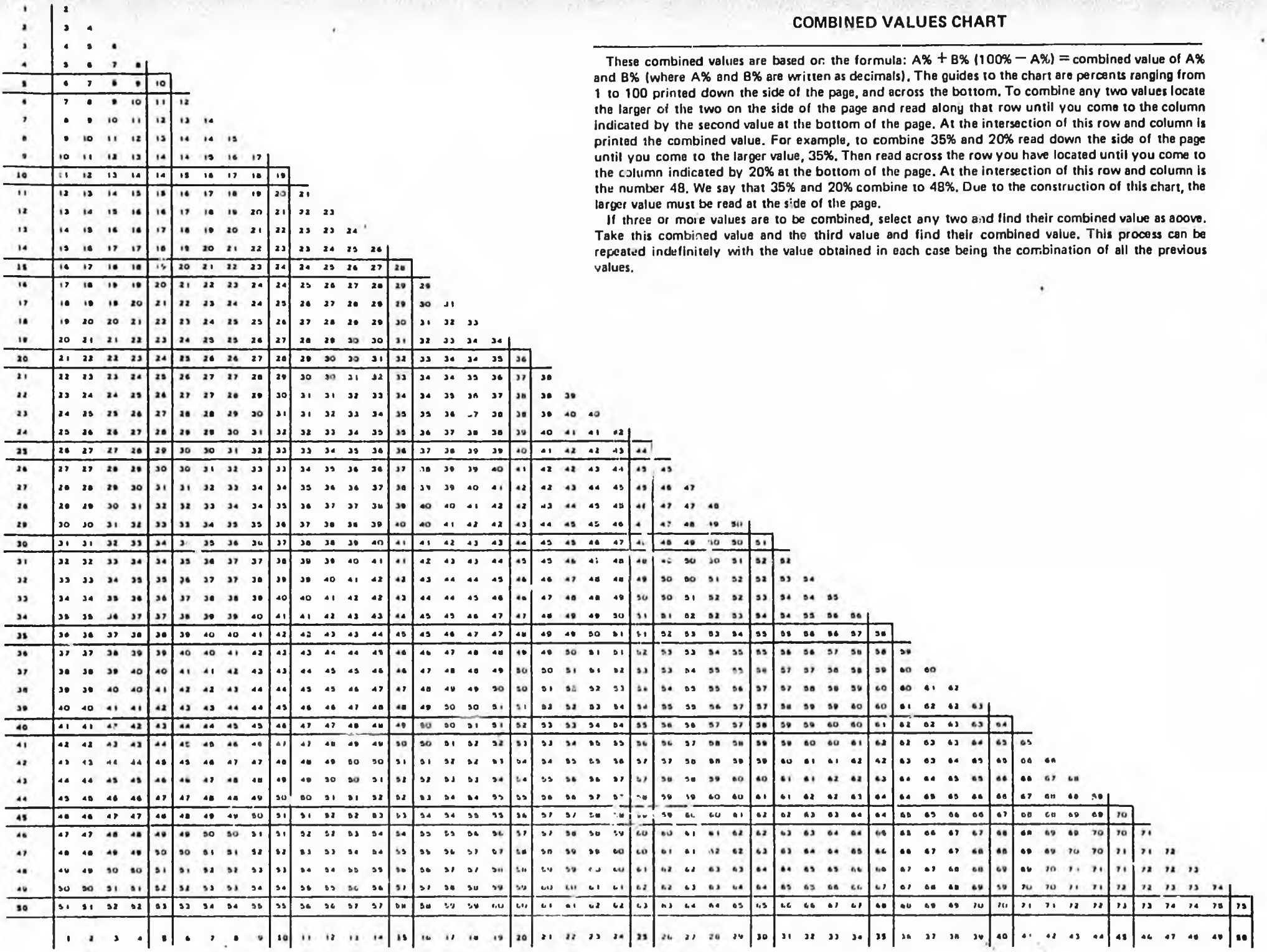
TABLE 22–AMPUTATIONS–LOWER EXTREMITY

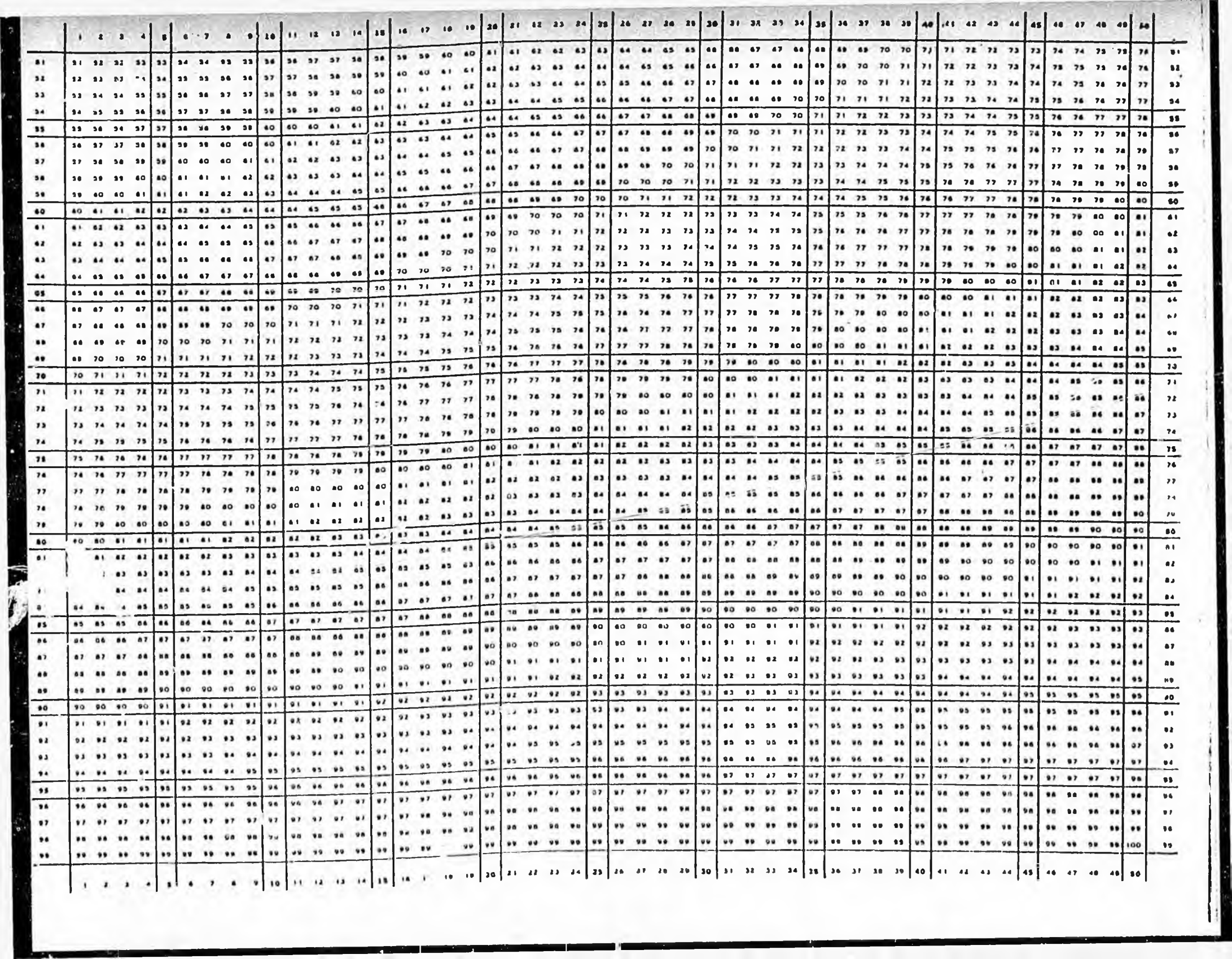
	Impairment of			
	Digit	Foot	Lower Extremity	Whole Man
Hemipelvectomy				50%
Disarticulation at hip joint			100%	40%
Amputation above knee joint with short thigh stump (3" or less below tuberosity of ischium)			100%	40%
Amputation above knee joint with functional stump			90%	36%
Disarticulation at knee joint			90%	36%
Gritti-Stokes amputation			90%	36%
Amputation below knee joint with short stump (3" or less below intercondylar notch)			90%	36%
Amputation below knee joint with functional stump			70%	28%
Amputation at ankle (Syme)		100%	70%	28%
Partial amputation of foot (Chopart's)		75%	53%	21%
Mid-metatarsal amputation		50%	35%	14%
Amputation of all toes at metatarsophalangeal joints		30%	21%	8%
Amputation of *Great Toe*				
With resection of metatarsal bone		30%	21%	8%
At metatarsophalangeal joint	100%	18%	13%	5%
At interphalangeal joint	75%	14%	10%	4%
Amputation of *Lesser Toe* (2nd-5th)				
With resection of metatarsal bone		5%	4%	2%
At metatarsophalangeal joint	100%	3%	2%	1%
At proximal interphalangeal joint	80%	2%	1%	0%
At distal interphalangeal joint	45%	1%	1%	0%

COMBINED VALUES CHART

These combined values are based on the formula: A% + B% (100% − A%) = combined value of A% and B% (where A% and B% are written as decimals). The guides to the chart are percents ranging from 1 to 100 printed down the side of the page, and across the bottom. To combine any two values locate the larger of the two on the side of the page and read along that row until you come to the column indicated by the second value at the bottom of the page. At the intersection of this row and column is printed the combined value. For example, to combine 35% and 20% read down the side of the page until you come to the larger value, 35%. Then read across the row you have located until you come to the column indicated by 20% at the bottom of the page. At the intersection of this row and column is the number 48. We say that 35% and 20% combine to 48%. Due to the construction of this chart, the larger value must be read at the side of the page.

If three or more values are to be combined, select any two and find their combined value as above. Take this combined value and the third value and find their combined value. This process can be repeated indefinitely with the value obtained in each case being the combination of all the previous values.





COMBINED VALUES CHART *(Continued)*

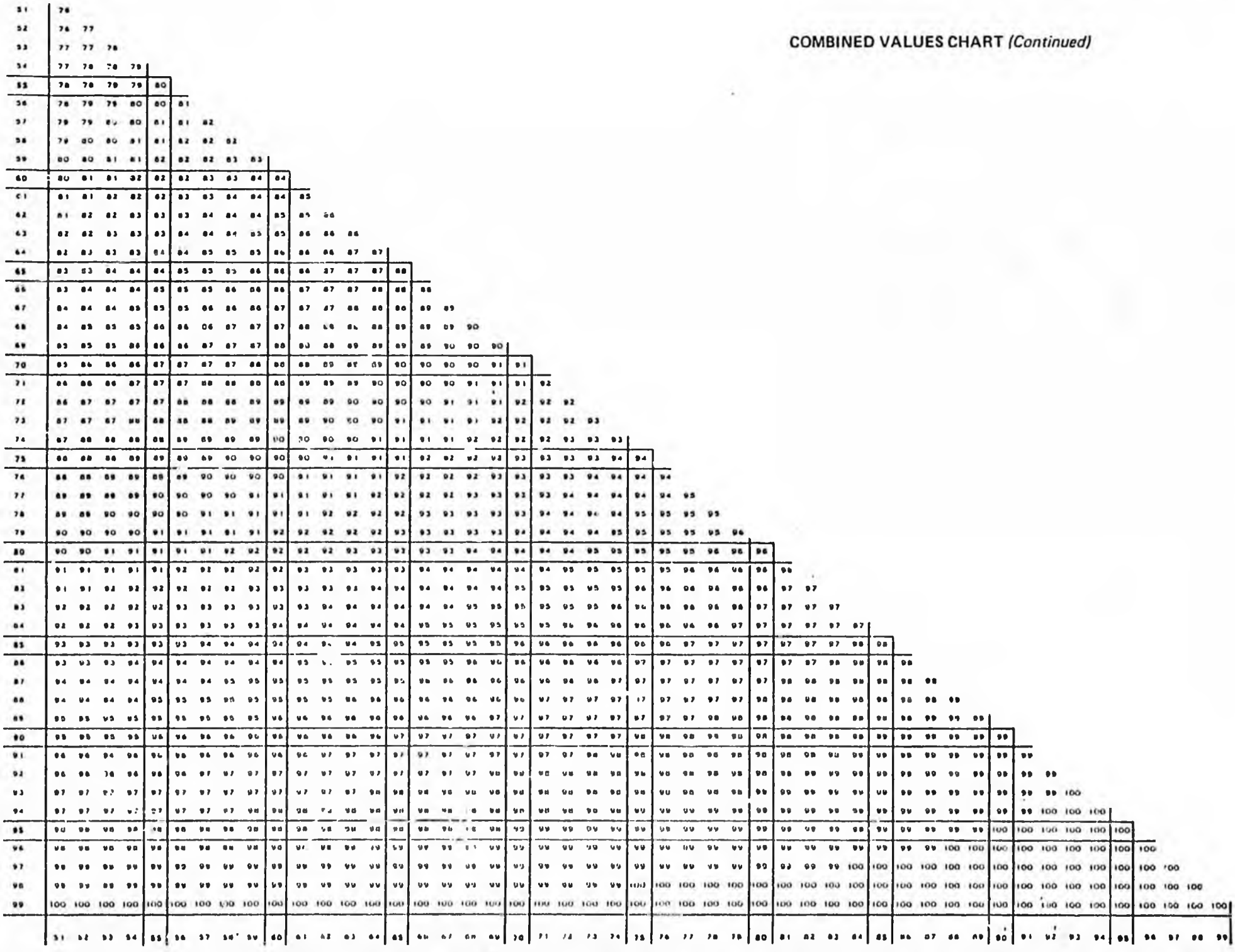


EXHIBIT VII

ALASKA

Income Replacement Levels
Worker, Non-Working Spouse
and Two Children

Worker's Gross Weekly Wage	(1) Net Pay	(2) Weekly Benefit	(3) Weekly Benefit as a Percentage of Net Pay
$200	$175	$133	76%
300	251	200	80%
400	322	267	83%
500	394	333	85%
600	463	400	87%

ALASKA

Income Replacement Levels

Worker, Working Spouse and Two Children

Worker's Gross Weekly Wage	Spouse's Gross Weekly Wage	(1) Net Income Before Injury	(2) Net Income After Injury	(2) as a Percentage of (1)
$200	$200	$322	$309	96%
300	200	394	375	95%
400	200	463	442	96%
500	200	527	509	97%
600	200	590	575	98%

EXHIBIT VIII

NATIONAL COUNCIL ON COMPENSATION INSURANCE

ALASKA

Total Disability Benefit Under Present Alaska Law*

Weeky Earnings	Weekly Benefit	Weekly Earnings	Weekly Benefit
100	66.67	575	383.35
125	83.34	600	400.02
150	100.01	625	416.69
175	116.67	650	433.36
200	133.34	675	450.02
225	150.01	700	466.69
250	166.68	725	483.36
275	183.34	750	500.03
300	200.01	775	516.69
325	216.68	800	533.36
350	233.35	825	550.03
375	250.01	850	566.70
400	266.68	875	583.36
425	283.35	900	600.03
450	300.02	925	616.70
475	316.68	950	633.37
500	333.35	975	650.03
525	350.02	1000	666.70
550	366.69	-	-

* All benefits listed are prior to Minimum and Maximum limitations and any reduction due to receiving Social Security Benefits. Benefits paid are 66 2/3% of workers gross wage.

NATIONAL COUNCIL ON COMPENSATION INSURANCE

ALASKA

Total Disability Benefits 80% of Spendable Earnings**

Weekly Earnings	Single+	Married- 2 Exemptions*	Married- 4 Exemptions++
100	68.28	72.68	74.68
125	83.59	88.55	92.87
150	98.02	104.10	108.42
175	113.65	120.53	124.85
200	127.60	135.60	140.16
225	142.43	151.71	156.59
250	155.34	166.30	171.42
275	170.17	181.77	187.53
300	182.44	195.64	201.80
325	196.47	211.11	217.27
350	208.02	224.18	231.14
375	221.57	238.85	246.53
400	232.56	251.52	259.20
425	246.11	266.19	273.87
450	256.94	278.86	286.54
475	269.69	293.53	301.21
500	279.48	305.24	313 88
525	292.23	318.95	328.47
550	302.02	330.18	339.70
575	314.98	344.10	353.62
600	326.10	356.42	366.18
625	340.18	370.98	381.22
650	351.30	382.82	393.22
675	365.42	397.38	407.78
700	378.02	408.98	419.62

NATIONAL COUNCIL ON COMPENSATION INSURANCE

ALASKA

Total Disability Benefits 80% of Spendable Earnings** (Con't.)

Weekly Earnings	Single+	Married- 2 Exemptions*	Married- 4 Exemptions++
725	390.62	423.06	434.18
750	403.22	434.18	445.54
775	415.82	448.26	459.62
800	428.42	459.38	470.74
825	441.02	473.46	484.82
850	453.62	484.58	495.94
875	466.22	498.70	510.06
900	478.82	511.30	522.66
925	491.42	523.90	535.26
950	504.02	536.50	547.86
975	516.62	549.10	560.46
1000	529.22	561.70	573.06

+Worker and no dependents.

*Worker and spouse.

++Worker, spouse, and 2 children.

**All benefits listed are prior to Minimum and Maximum limitations and any reduction due to receiving Social Security Benefits. Benefits are 80% of spendable income. Spendable income is gross wages less Federal Income Tax and FICA only. FICA tax for 1981 is 6.65% of annual wages not exceeding $29,700. Federal Income Taxes effective October 1, 1981 are used.

EXHIBIT IX

ALASCOM, INC.'s PAPER

IN SUPPORT OF THE POSITION OF

WORKER's COMPENSATION COMMITTEE OF ALASKA

Alascom management has had an opportunity to review the position paper, dated December 13, 1980, of the Worker's Compensation Committee of Alaska (WCCA). Alascom supports the position taken by the WCCA.

Perhaps, for the record, it should be explained that Alascom is Public Utility. Its chief source of revenue is long distance telephone calls. In its ten years of existence, its number of employees has tripled to approximately 1400 and the number of calls it handles increased almost six-fold to over 32,000,000 calls a year.

At Alascom, the Safety Administrator is directly involved in the administration of all worker's compensation claims. So, as Safety Administrator, I've been asked to bring to your attention four (4) different Alascom cases that illustrate excesses permitted by the current statutes and are relevant to WCCA's position. The four cases are representative. They do not constitute the total experience of Alascom. A brief description of those four cases follows:

1. Too Liberal Bunk House Rules Interpretation

An Alascom employee, assigned to a remote site, drove off the road and was injured after "bartending" at a friend's party. The employee claimed he had had only three beers and fell asleep while driving.

The Workmen's Compensation Board awarded full benefits. Their decision was based on several comparable cases and decisions. We feel the interpretation was liberal to the point of removing employee incentive to remain healthy.

In our opinion, when an employee disregards his own safety, and defies the laws of self-preservation, the employer should not be held responsible for actions committed outside his regular work assignment.

2. A Search for a Physician to Support Claim

An Alascom employee reported a hip injury, claiming his foot slipped from a step ladder. Medical examination indicated he had had hip surgery as a fourteen year old and additional surgery was again indicated because of the natural growth of the bones (and body). At the request of the employee, a second medical opinion confirmed the original diagnosis and again indicated that there was no connection between the alleged slip from the ladder and the distress the employee was suffering.

Unsatisfied with these medical opinions, the employee started his search for a doctor who would support his claim. We do not know how many doctors the employee talked to before he found one willing to support his claim, but he did find one in Southern California and brought suit against Alascom.

Alascom prevailed and the Workmen's Compensation Board made no award to the employee. Time and expenses incurred by Alascom, however, were not recoverable.

3. Unqualified Medical Opinion and Treatment

Alascom's relationship with the medical profession has been very good. It is the rare exception in which we are in disagreement with any of their decisions or recommendations for any of our employees.

Within the last year however, we had an employee who selected a chiropractor to treat a disease that was, in the opinion of qualified medical people, not related to the chiropractor's speciality. Despite qualified medical opinion to the contrary, both the employee and the chiropractor claimed the disease was the result of an industrial accident. Alascom feels that expenses incurred in incidents of this type are wasteful.

4. Double or Greater Payments

Alascom has had an employee who was collecting allowable absence (sick) pay while working at a job with similar physical requirements outside the Company. He filed for workmen's compensation payments covering the same period of time. Despite the outcome, Alascom once again suffers costs that are wasteful.

Finally, Alascom's position is virtually identical to that of the WCCA. We wish to see the legitimate entitlement of the injured Alaskan worker preserved. We do, however, question the wisdom of any act that makes it financially attractive to be injured, or levies wasteful burdens upon the employer. All of Alascom's worker's compensation expenses are passed along to the consumer. As a public utility we feel a strong obligation to the consumer to control, reasonably, all costs.

In conclusion, we ask that you review those provisions of the Worker's Compensation Act that permit injured employees to abuse a worthwhile benefit. We hope your consideration will lead to an equitable fine tuning of the law.

John Marcum
1-16-81

WORKMEN'S COMPENSATION
Accidents Covered by Barricks Rule
1980

Date	Occupation	Site	Description	Days Lost
01/02	Maint. Supt.	SP	Slipped on stairway (L) knee & foot injury	9
01/13	Site Admin	SP	Slipped in bathroom Compressed 5 & 6 toe	37
08/24/79	Cook	FY	Slipped on steps Hurt back	48
02/03	Utilityperson	TC	Playing basketball Twisted ankle	2
02/14	Fire Chief	FY	Hit bowling bag Broke (R) little finger	16
02/24	Utilityperson	FY	Playing football Sprained (L) knee	52
02/29	Log Spec	IM	Playing basketball Broken (R) ankle	252
03/12	Util Plt Op/Mech	CN	Fell from chair Injury (R) elbow	18
03/28	Pwr Plt Opr	CB	Hand caught between door and jam	0
03/30	Sta. Supv.	FY	Hit (L) wrist on table answering phone in room	3
02/28	Radar Tech	CR	Filling fell from tooth	17
03/22	Weather Observ.	CR	Lost in trackmaster Frostbite both feet	140
05/25/78	Util Plt Opr	CR	Allergic reaction to Valium	0
04/18	Medical Tech	IM	Playing basketball Torn ligament (R) foot	36
04/21	Kitchen Helper	IM	Broke lower front tooth Eating carrot	17
04/24	Admin Clerk	SP	Lost consciousness fell cut chin	1
04/23	Pwr Plt Opr	CB	Eating - filling fell out of tooth ?	10

Workmen's Compensation
Accidents Covered by Barricks Rule
1980 - Page 2

Date	Occupation	Site	Description	Days Lost
05/01	Sta. Supv.	CB	Eating breakfast Broke tooth	0
05/18	Comm Nav-Aid	TC	Riding 3 wheeled scooter Sprained (R) ankle	0
05/26	Equip Op/Mech	IM	Riding 3 wheeled scooter Injured (L) shoulder	27
06/16	EES	PHQ	Dropped trunk in Taxi Contusion (R) hand	0
06/15	Crypto Tech	TC	(R) front tooth snapped at gum line	9
06/15	Radar Tech	TA	Concussion suspect Motorcycle wreck	13
06/15	Cook	IM	Fell - walking Broken knee	48
05/18	Chef	IM	Motorcycl_ wreck Injury (R) foot	3
07/12	Admin Clerk	TA	Motorcycle wreck Trauma (R) side face	23
07/13	Radar Tech	SP	Injury head & neck Fell from truck	0
07/14	Medical Tech	CB	Motorcycle wreck Broken (R) leg	48
07/17	Maint. Supt	TA	Motorcycle wreck Injury (R) leg & ribs	0
07/09	Med. Tech	PHQ	Fell in airport Injury back, shoulder	22
07/21	Asst Cook	KO	Hit by softball (L) shoulder injury	0
07/22	Utilityperson	CR	Fell on steps Injury (R) side	2
07.	Admin Clerk	CN	Slipped on wet hallway Sprained (L) ankle	0

Workmen's Compensation
Accidents Covered by Barricks Rule
1980 - Page 3

Date	Occupation	Site	Description	Days Lost
07/31	Equip Op/Mech	TC	Accident 3 wheel vehicle Injury (R) hip/pelvis	54
07/31	Log Spec	TC	Accident 3 wheel vehicle Injury (R) side/back	28
08/04	Utilityperson	IM	Playing basketball Injury (R) eye	4
08/09	Sta. Supv.	IM	Eating evening meal Bridge facing broke	0
08/12	Radar Tech	SP	Broke-up fight. Fracture (R) ring finger	9
08/17	Baker	KO	Motorcycle wreck Rib injury	18
08/21	Bldg Mech	FY	Playing volleyball Injured (R) thumb	0
08/18	Comm Nav-Aid	CB	Fell over coffee table Injured (L) knee	9
08/25	Admin Clerk	CN	Eating lunch - broke tooth on hamburger	3
09/15	Radar Tech	CN	Eating dinner - fractured (L) molar on hamburger	5
08/30	Bldg Mech	CL	Struck by 3 wheel bike Sprained (R) shoulder & ankle	30
09/18	Comm Cntr Opr	IM	Playing Volleyball Twisted (R) ankle	21
10/21	Fire Chief	CR	Eating lunch Bit down on chicken bone	0
09/25	Admin Clerk	CR	Bowling - dislocated middle (R) finger	0
10/28	Medical Tech	CR	Bowling - (R) foot contusion	0
11/09	Heav Plt Op	TC	Snowmachine accident Fractured (R) ankle	48

Workmen's Compensation
Accidents Covered by Barricks Rule
1980 - Page 4

Date	Occupation	Site	Description	Days Lost
11/03	Admin Clerk	IM	Fell down steps Injured (R) foot	0
11/28	Htg Plt Opr	CR	Fell in Airport Hit upper back & head	0
12/08	Htg Plt Opr	CA	Deplaning in Bethel Fell on upper back	48
12/09	Pwr Plt Foreman	CR	Fell on ice Sprained (L) wrist	15

TOTALS:	37 Lost time claims	1145 days
	16 No lost time	
	53 Total Claims	1145 total lost days

WORKMEN'S COMPENSATION
Accidents Covered by Barricks Rule
1979

Date	Occupation	Site	Description	Days Lost
01/03	Utilityman	CL	Playing basketball Sprained (R) ankle	20
01/11	Fire Chief	FY	Stubbed foot on chair Broken (L) small toe	0
12/03	Log Spec	CR	Playing Volleyball Sprained (R) foot	25
01/24	Tel/TV Tech	CL	Indulging in horseplay Sprained (R) ankle	5
12/14	Head Chef	CN	Stepped in shower drain Bruised (R) heel	0
05/29/78	Admin Clerk	CB	Hit desk-back injury	0
02/07	Comm Cntr Opr	TC	Bowling - Toe injury	9
03/05	Asst. Cook	TC	Fell down stairway Injured tail bone	5
04/04	Util Plt Op/Mech	CB	Playing basketball Torn achilles tendon	60
05/12	Admin Clerk	CR	Crown off (L) molar	3
05/19	Head Chef	FY	Fell on dormitory steps Bruised (R) foot	0
06/11	Htg Plt Opr	CL	Wrestling in gym (R) knee strain	0
06/23	Cook	CL	Fell-cleaning room scalp laceration	2
06/30	Radar Tech	CB	Riding motorcycle Broken (R) leg	36
06/30	Admin Clerk	TA	Riding motorcycle Broken (R) arm	36
07/01	Administrator	CL	Jogging Sprained (L) ankle	0
07/05	Bldg Mech	CB	Motorcycle wreck Broken collarbone	14

Workmen's Compensation
Accidents Covered by Barricks Rule
1979 - Page 2

Date	Occupation	Site	Description	Days Lost
07/05	Utilityman	CB	Motorcycle wreck Broken (R) wrist	16
07/14	Bldg Mech	CL	Playing basketball Sprained (L) thumb	0
08/03	Weather Observ.	CN	Hit hand against wall (broken)	0
07/20	Htg Plt Opr	CN	Kicking high Sprained (L) hand	0
07/21	Bldg Mech	TA	Broke tooth on hamburger	0
07/23	Weather Observ.	CN	In bar - hit hip on table leaving room	2
08/18	Chef	SP	Motorcycle wreck Kidney/muscle strain	8
08/24	Bldg Mech	SP	Bowling - Muscle strain (R) forearm	0
09/09	Admin Clerk	TA	Motorcycle accident (L) leg injury	0
10/04	Pwr Plt Opr	CR	Slipped on gym floor (L) ankle injury	12
10/03	Telephone Tech	CA	Fell over electrical cord in room	0
11/02	Medical Tech	FY	Wrist injury Playing basketball	0
11/11	Comm Cntr Opr	SP	Playing basketball Twisted (R) ankle	2
08/14	Kitchen Helper	CR	Water burn in shower	0
11/16	Radar Tech	TA	Snowmachine accident Head & hip injured	0
12/16	Admin Clerk	CB	NAF vehicle ran off road Neck/back injury	3

Workmen's Compensation
Accidents Covered by Barricks Rule
1979 - Page 3

Date	Occupation	Site	Description	Days Lost
12/26	Comm Nav-Aid	CB	Stubbed (L) toe un-jamming bowling pin.	2

TOTALS:	18 Lost time claims	260 days
	16 No lost time	
	34 Total Claims	260 total lost days

WORKMEN'S COMPENSATION
Accidents Covered by Barrier's Rule
1978

Date	Occupation	Site	Description	Days Lost
01/23	Head Chef	TC	Climbing a rope in gym Slipped - rope burn (R) foot.	0
02/26	Pwr Plt Opr	CN	Slipped on water in hall going to work - bruised coccyx.	1
01/29	Htg Plt Opr	TC	Playing basketball Knee injury (R)	0
01/31	Asst. Cook	TC	High Blood Pressure Stress of job	3
02/26	Util Plt Op/Mech	TC	Playing basketball (R) knee injury	58
03/13	Site Admin	CB	Hyperventilation syndrome	2
05/07	Kitchen Helper	KO	Playing basketball Sprained (L) ankle	4
05/15	Equip Op/Mech	TC	Abdominal Pain and Lower Chest Pain	5
04/28	Cook	SP	Possible TB Exposure	3
05/28	Bldg Mech	CN	Coronary	Death
05/27	Asst. Cook	SP	Fall off motorcycle Back injury	1
05/28	Crypto Tech	CB	Removing boots Slipped disc lower back	26
05/29	Admin Clerk	IM	Fell from motorcycle Broken (R) wrist	4
05/28	Admin Clerk	CL	Hiking on day off - fell on ice -	2.5
05/26	Equip Op/Mech	CL	Exposed to TB	1
05/17	Htg Plt Op/Mech	SP	Hiking - (R) toe injury	17
06/10	Util Plt Op/Mech	FY	High Blood Pressure	6

Workmen's Compensation
Accidents Covered by Barricks Rule
1978 - Page 2

Date	Occupation	Site	Description	Days Lost
07/04	Weather Obsv.	IM	Hang gliding Torn ligament (R) knee	4
06/07	COMM Cntr Opr	FY	Lifting weights in gym Sprained (R) wrist	3
07/15	Equip Op/Mech	CR	Motorcycle accident Possible (L) rib fracture	3
07/18	Bldg Mech	CR	Broken 3rd molar Eating Cherry Pie	3
07/23	Maint. Supt.	SP	Playing softball Sprained (L) ankle, Broken (R) ankle	14
07/23	Kitchen Helper	SP	Playing softball Bruised (R) knee	8
01/13	Head Chef	CH	TB	90
07/04	Equip Op/Mech	TC	Twisted knee Slipped on rock - walking	12
08/06	COMM NAV-AID	CB	Slipped in shower (R) knee injury	42
08/16	Utilityman	IM	Hang gliding - running along road - twisted (R) ankle.	6
09/08	Bldg Plt Op/Mech	CH	Foreign object in (L) eye In room - woke up	1
09/09	Head Chef	SP	Observing work being done 4X4 dropped on (L) foot	22
09/08	COMM NAV-AID	FY	Gastritis	2
09/23	Administrator	TA	Playing basketball Broken (R) ankle	5
09/25	Bldg Plt Foreman	CL	Walking in high wind from bldg to bldg. Broken ankle	70
09/27	Bldg Mech	KO	Fight - hit in mouth Broken front teeth	3

Workmen's Compensation
Accidents Covered by Barricks Rule
1978 - Page 3

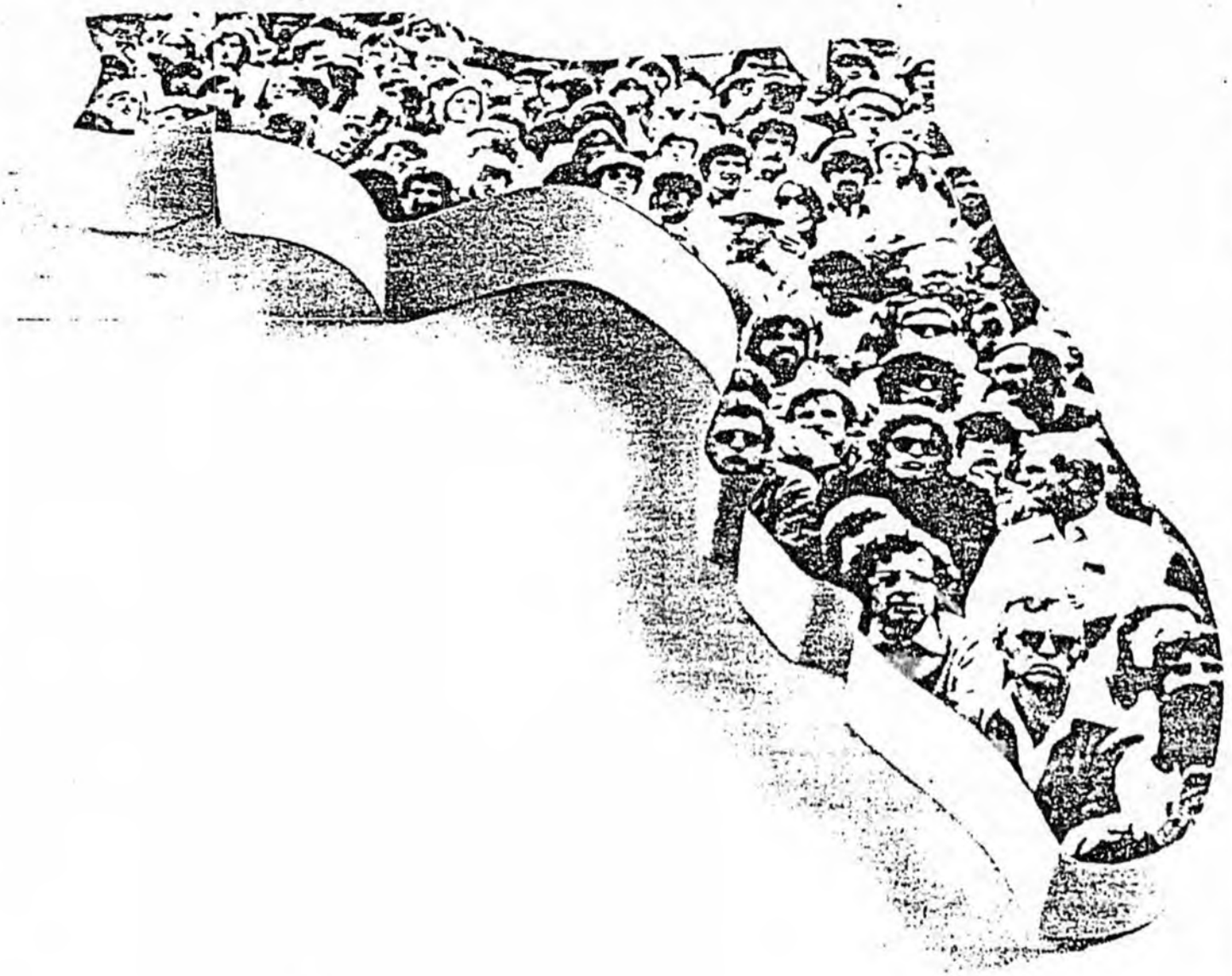
Date	Occupation	Site	Description	Days Lost
10/25	Utilityman	IM	Running across gym to movie - fell bruised lower back.	0
11/05	Bldg Mech	CA	Dizziness. low blood pressure.	5
11/26	Site Medic	MD	Playing basketball Fractured Tibia (L)	0
11/29	Weather Obsv.	TA	Plane Crash	120
11/23	COMM Cntr Opr	SP	Leaving latrine, hit by door on (R) forearm	5
12/06	Kitchen Helper	CB	Playing basketball Laceration (L) eyebrow	0
04/28	Cook	CA	Fight Broken denture	0
12/14	Bldg Mech	CA	Vehicle accident going to airport.	0
12/14	COMM Cntr Opr	CA	Vehicle accident going to airport.	0
12/11	Medical Tech	CB	Neurosis from job pressure	0
10/29	Head Chef	TC	Rib injury - hit rib on pencil sharpner reaching for medicine	3

TOTALS:
1 Death
34 Lost time claims 554.5 days
9 No lost time
44 Total Claims 554.5 total lost days

EXHIBIT VI

National
Council
on Compensation
Insurance

Preliminary Report on The Wage-Loss Law in Florida



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Preface

There has been a great deal of interest expressed concerning the effect which the August 1, 1979 wage-loss law has had on the workers' compensation system in Florida. While it is still too soon to come to any definitive conclusions about how the wage-loss law is working and will work in the future, the National Council on Compensation Insurance (NCCI) will present in this report information about the Florida workers' compensation system which we have gathered continuously since August 1, 1978. We must caution that this information is only of a preliminary nature and will be subject to change as time allows more information to become available. At the same time, the following information does allow the reader to draw some early impressions on how the new system is working.

The workers' compensation system is concerned with injuries to people. The extent of each injury cannot be immediately assessed, since each individual is unique and makes unique demands on the employer and/or its insurance company, whose job it is to protect the worker's economic and medical welfare after his or her injury has occurred. Because of these unique needs it is always difficult for an insurance company to estimate what economic and medical assistance an injured worker will require in the future. This problem is compounded in Florida since the companies have so little experience, at this time, with the wage-loss system. Therefore we must again stress that these observations about the workers' compensation system in Florida are only preliminary.

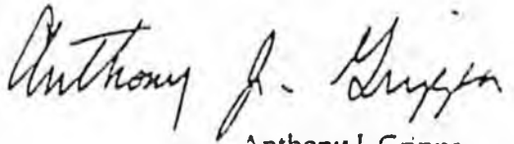
The NCCI gathers information about the workers' compensation system continuously under the Call for Detail Claim Information. As more information becomes available and as the insurance companies have a longer time in which to evaluate each individual claim, the NCCI will be able to make more definitive observations about how the Florida wage-loss law is working. While everyone would like to know what is happening under the wage-loss law it is not possible at this time for anyone to make more than preliminary observations.

Even outside Florida there is interest in the effect of the wage-loss law on the workers' compensation system. Interested parties in other states would like to know how wage-loss would effect the workers' compensation system in their state. However, even these preliminary observations which we have made concerning the effect of the August 1, 1979 Florida wage-loss law cannot be assumed to apply to other states. Each state's workers' compensation system has statutory and administrative differences. Also the economic, political, and social conditions in each state have an immeasurable effect on the workers' compensation system. Thus, another state could adopt exactly the same law as is currently in effect in Florida and have an entirely different experience.

When viewing individual claim characteristics of wage-loss and/or impairment cases, one must remember that both the immaturity of such cases, as well as the relatively small number of cases to date, means that such observations cannot be regarded as conclusive.

We believe that one goal of the new legislation governing the workers' compensation system which became effective August 1, 1979 was to increase benefits to the more seriously injured worker while decreasing other system costs through more efficient administration. While it is too early to be conclusive, based on our observations, which follow, it appears that the Florida workers' compensation system has significantly moved in that direction.

Finally we would like to express our appreciation to all the insurance company claims people who have devoted substantial time and effort to supplying the NCCI with complete and accurate information under the NCCI Call for Detailed Claim Information.



Anthony J. Grippa
Senior Vice President,
Actuarial Operations

June 10, 1981

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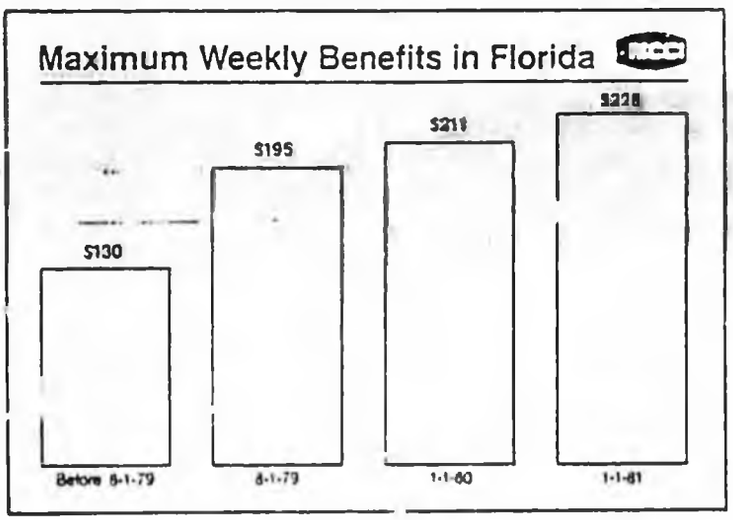
General Background

Florida and the Wage-Loss Law

This is a preliminary report on the use of the Detailed Claim Call in Florida to monitor the effects of the new legislation governing the workers' compensation insurance system which became effective August 1, 1979. This law change was intended to improve an existing situation in which a number of workers with relatively minor injuries were receiving large awards under the permanent partial award provisions of the law. Under the old statute, additional doctor visits and attorney litigation were encouraged since the worker could receive greatly increased benefits with a higher disability rating. These problems had been identified in various studies including the 1977 NCCI Closed Claim study in Florida. Anyone interested in an in-depth review of the Florida workers' compensation system prior to the August 1, 1979 law will find the summary of this study by the Florida Association of Insurance Agents to be extremely helpful. We believe that one goal of the new law is to increase benefits to the truly injured employee while cutting overall costs by decreasing excessive litigation and administrative costs. In this connection the maximum weekly benefit, for example, was increased from $130 to $195 August 1, 1979, and has continued to be further increased each January 1.

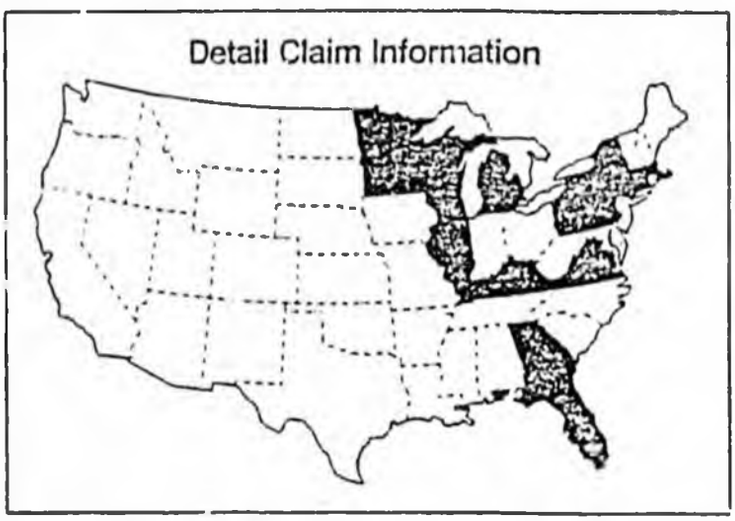


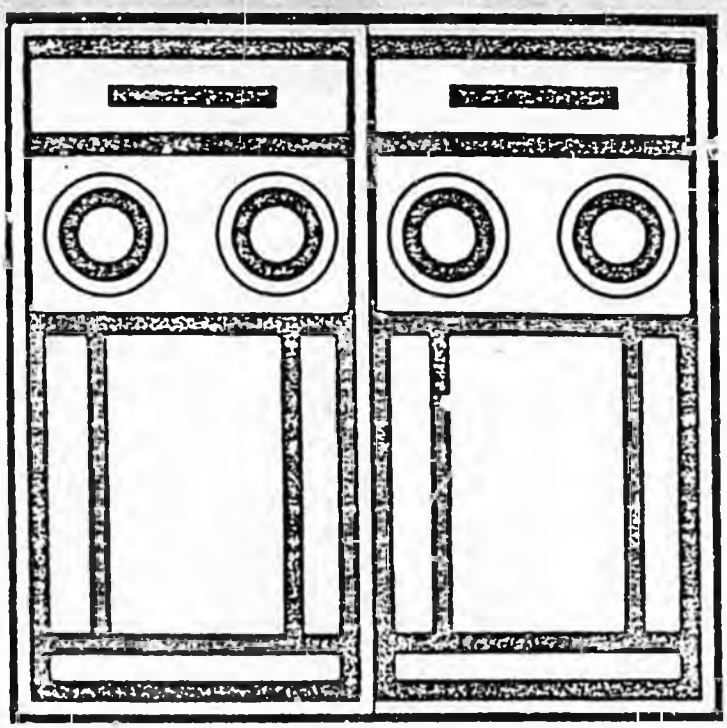
Availability of Data

Traditional Data Systems The traditional statistical data used for ratemaking purposes is primarily designed to accumulate information covering the costs and premiums of the workers' compensation system. This ratemaking data does not explain the social aspects which affect costs.

National Council on Compensation Insurance Detail Claim Information System With the Detailed Claim Information, derived from the call, we are concerned with cost factors, but we are also able to look beyond pure statistics to an analysis of causative factors.

Background A "call" is a request for specific information which the NCCI directs to its member and subscriber companies also known as carriers. The Call for Detailed Claim Information, which began April 1, 1979, is a continuous random sampling of workers' compensation lost time claims. Twelve states—Connecticut, Florida, Georgia, Illinois, Kentucky, Massachusetts, Michigan, Minnesota, New York, Pennsylvania, Virginia and Wisconsin—were chosen for the survey. To provide sufficient data for a meaningful analysis of the Florida workers' compensation system prior to the August 1, 1979 law, the Call for Detailed Claim Information began, in Florida, on August 1, 1978. In order to achieve a representative bias free scientific random sampling and lend credibility to statistical tests which were to be used on the data, all insurance companies whose contributions added up to 99.5% of the premium volume for all those employers whose workers are covered by insurance companies in each state were required to participate. To reduce costs the Call for Detailed Claim Information utilizes a mathematical technique known as sampling. Information about the entire population of claims is extracted from a representative sample of all claims. The sample is scientifically constructed to insure that the sample will be truly representative of the population as a whole. Presently in Florida companies are required to select at random 10% of their indemnity claims to be included in the Call for Detailed Claim Information. The procedure for insuring random scientific sampling is monitored by the NCCI.





Modifications to Call for Detailed Claim Information In order to gather data which will enable a meaningful analysis of the working of the new Florida law, modifications were made in Florida to the Call for Detailed Claim Information. First, an additional retroactive call was made for claims reported between August 1978 and March 1979. This retroactive call was necessary to provide a meaningful base of information about the claims experience in Florida under the provisions of the old law.

Second, the rules for completing the standard call applicable to Florida claims occurring after August 1, 1979 were changed. The classification of benefits as permanent partial was removed. The new benefit classifications which became effective August 1, 1979, namely wage-loss and no impairment benefit, wage-loss and impairment benefit, and impairment and no wage-loss benefit were added. To qualify for a wage-loss benefit a worker must suffer a permanent impairment which results in a loss of at least 15% of his preinjury wages, after the worker has reached the point of maximum medical improvement. In the case of a permanent impairment due to amputation, loss of 80% or more of vision, after correction, or serious facial or head disfigurement the injured worker will receive a lump sum benefit determined by the percentage of permanent bodily impairment which the worker suffers after he has reached the point of maximum medical improvement. An injured worker is eligible to receive either or both of these benefits. Of course, for all three catagories, the injured worker will also receive temporary total disability benefits during his healing period as well as full medical benefits. Thus there are three benefit classifications for injured workers receiving one or both of these benefits. An injured worker with a loss in wages and no lump sum permanent impairment award is a wage-loss only case. An injured worker who receives a lump sum award but has no loss in wages is an impairment only case. Finally an injured worker who has a loss in wages and receives a lump sum impairment award is a wage-loss and impairment case.

Third, each case with wage-loss and/or impairment benefits and each temporary partial case which occurred in Florida after August 1, 1979 must carry a supplementary form. This supplementary form asks for specific information about wage-loss and impairment benefits for each sampled claim.

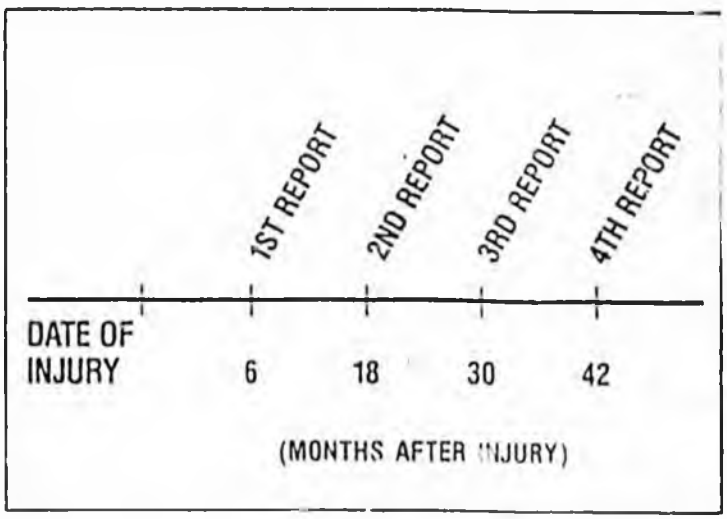
Attached as exhibits are the forms used in the Florida Call for Detailed Claim Information. Form C19940F is used for all sampled claims with injuries occurring after August 1 1979. Form C19945F is the Florida Supplementary Call for Detailed Claim Information.

Timeliness and Validation of Data Sampled claims are evaluated six months after the date of report of the injury, and then reevaluated at 18, 30 and 42 months unless closed beforehand. The claims included in this study were for workers injured between August 1978 and August 1980.

A meaningful comparison from one claim to the next can only be made for claims which are evaluated at the same length of time after the claim is reported. Since only six month evaluations are available for workers injured under the new law, we have confined our observations to a comparison of claims evaluated six months after the report, when looking at the conditions prior to August 1, 1979, as compared to after August 1, 1979.

In further analyses, to be done in the future, we will be able to make comparisons based upon 18, 30, and 42 month evaluations.

All sampled claim reports are subjected to intensive editing at NCCI. Claims are tested for completeness of information, logical relationships between claim elements, and reconciliation with statutory requirements. Claim reports which are rejected by the editing process are returned to the carrier for correction.



Highlights

Participation by Insurance Companies

There are 76 insurance companies included in the NCCI Detailed Claim Information report on Florida wage-loss. This considerable number of participating carriers provides a broad basis of experience for our observations on the workers' compensation system in Florida.

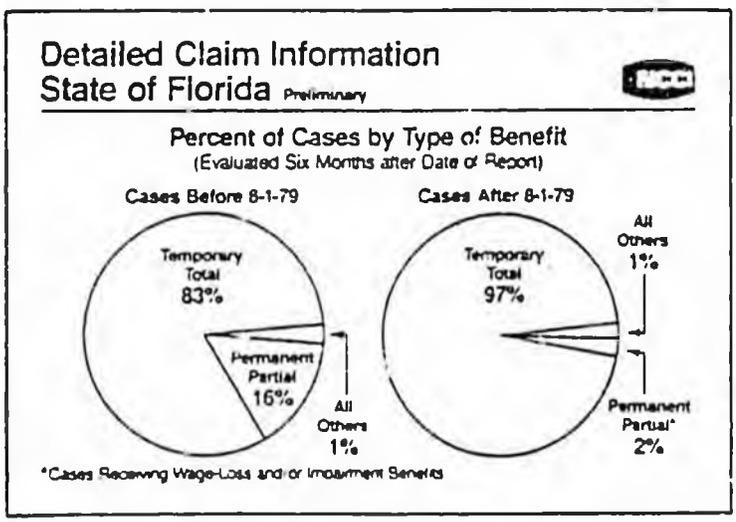
Preliminary Nature of Detailed Claim Information

As previously stated, this report is based on claims evaluated by the insurance companies six months after the injuries were first reported to each company. At that time some details may have not yet been known about the claimants' injuries, such as the number of times the injured workers had visited a doctor. Only a rough estimate of the eventual cost of the workers' injuries could be made at such an early date.

The lack of experience of insurance companies with the wage-loss system has created uncertainty for these companies regarding which injured workers will eventually be entitled to wage-loss payments. Because of this inexperience a number of insurance companies may not always be able to classify an injured worker as a wage-loss case until the worker actually begins to receive wage-loss benefits (for example, while claimants are receiving temporary total benefits). Therefore there is a corresponding delay in the recognition of the eventual costs associated with these claims.

Changes in Patterns of Claims by Type of Benefit

There appears to be a trend toward the reduction of the system-wide costs of benefits associated with partially injured workers. This savings results from a reduction in benefits paid to those who have suffered only a very minor injury which more than offsets the increased benefits paid to those significantly injured workers who suffer an injury qualifying for wage-loss payment or who receive a permanent impairment award due to their injury.



Distribution of Injured Workers by Benefit Type It appears that under the new Florida workers' compensation insurance law an increased number of injured workers will receive only temporary total benefits as their lost tim benefits. Only those workers injured seriously enough to qualify for wage-loss, impairment, or permanent total awards will receive additional lost time benefits. A worke with a relatively minor injury, who, under the provisions of the previous workers' compensation law would have received a permanent partial award, even though he could return to work, is no longer eligible for additional benefits after he has fully recovered from his injury.

As previously stated, because of a lack of experience with the wage-loss system the number of reported injuries qualifying for wage-loss benefits is undoubtedly too conservative and will be revised upward at a future date. This distorts the reported ratio of wage-loss and/or impairment cases to permanent partial cases under the old law.

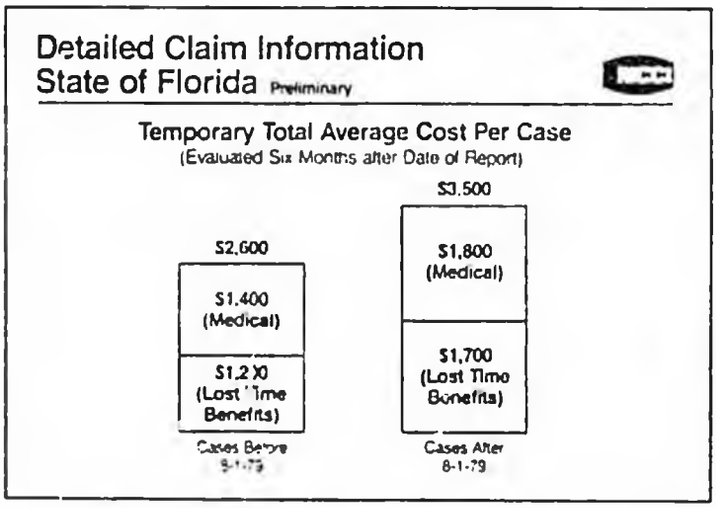
Under the provisions of the new law which was introduced on August 1, 1979 wage-loss benefits are not payable until after an injured worker has reached maximum medical improvement, which averages 31 weeks. In view of the fact that the NCCI Detailed Claim Information available at the present time has been calculated from the initial six month injury report, it is logical to anticipate that subsequent reports will reveal some additional wage-loss cases.

Currently our analysis of wage-loss and impairment cases is based on a relatively small volume of claims. This small sample size necessitates a cautious approach to any inferences about the typical wage-loss or impairment case. As time goes on two things will happen to enable more conclusive observations to be drawn. First we will have subsequent valuations of the already sampled claims (i.e., at 18, 30, and 42 months after the date of report, rather than just six months). Second, there will be more claims involved in the study.

Benefit Dollars

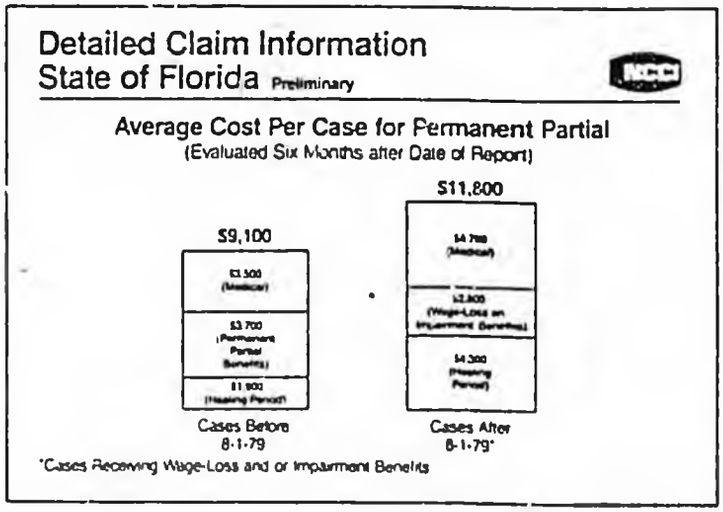
Temporary Total Cases A temporary total injury is one in which a worker suffers a complete inability to work for a period of time but is expected to regain full productivity. An injured worker is considered a temporary total case only if there appears to be no likelihood that in the future the worker will receive any permanent total, wage-loss, or impairment benefits. The average cost per case for temporary total cases has increased approximately 35% since August 1, 1979. One reason for this increase is that the maximum weekly benefit payable to a worker who has sustained an injury classified as temporary total increased by 50% and the percentage rate of compensation also increased on August 1, 1979. Another reason for the increase is that a worker with a relatively minor injury, who would have been classified as a permanent partial disability case before the new wage-loss concept became effective on August 1, 1979, will now receive only temporary total lost time benefits. The inclusion of these [illegible] the temporary total category, some of which may be more serious than the previously typical temporary total case, results in an increase in the average cost per temporary total case.

The average medical cost for a worker with a temporary total disability has increased by approximately $400 since August 1, 1979. The Florida Medical Fee Schedule, which is determined by the Department of Labor and Employment Security, sets the permissible fee which may be paid for medical procedures for an injured worker covered by the Florida workers' compensation law. On July 1, 1980 the Department of Labor and Employment Security approved a new medical fee schedule which, on the average, increased permissible medical fees approximately 30%. A change in the medical fee schedule affects all injured workers who receive medical treatment after the change is effective, regardless of the date of the injury. Since an injured worker is more likely to receive medical treatment soon after the injury has occurred, this increase in the medical fee schedule has probably affected those workers injured after August 1, 1979 to a greater extent than those workers injured before August 1, 1979. Thus this may be one reason that the cost of medical benefits has increased, on the average, for temporary total cases.



Permanent Partial Cases The average permanent partial cost per case has increased about 30% subsequent to August 1979. Obviously, it is generally only those workers who are significantly injured who are receiving these increased benefits. Many fewer workers suffer wage-loss or a permanent impairment injury under the new law than received a permanent partial award under the old law. Thus while the benefit paid to the individual significantly injured worker has increased there has been an overall reduction in cost associated with permanent partial injuries.

Workers qualifying for wage-loss and/or impairment benefits, on the average receive more lost time benefit dollars during their healing period, at which time the worker receives lost time benefits based on the benefits applicable for a temporary total disability, than did workers classified as permanent partial cases prior to the introduction of the new workers' compensation system on August 1, 1979. This may be the result of the more serious nature of injuries for those workers who qualify for wage-loss benefits or who suffer a permanent impairment. There also may be a tendency for an injured worker to prolong the period for which he or she may receive temporary total benefits rather than benefits based on his lost wages.

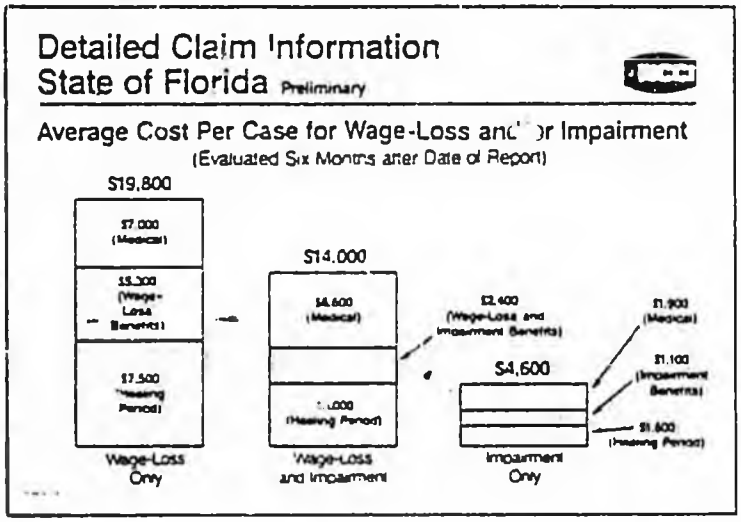


Wage-Loss and Impairment Cases When a claim is evaluated six months after it is first reported it appears that cases which involve only wage-loss injury and which do not involve a permanent impairment, on the average, have greater lost time and medical costs than cases with both wage-loss and impairment injuries or impairment only cases. One reason for this may be that wage-loss only claims often involve serious injuries to the back, neck and head and are not eligible to receive impairment benefits. The high cost of these injuries tends to increase the average cost of wage-loss only cases.

The impairment benefit only cases, on the average, are the least costly, probably because these workers are less seriously injured than workers who suffer wage-loss injuries.

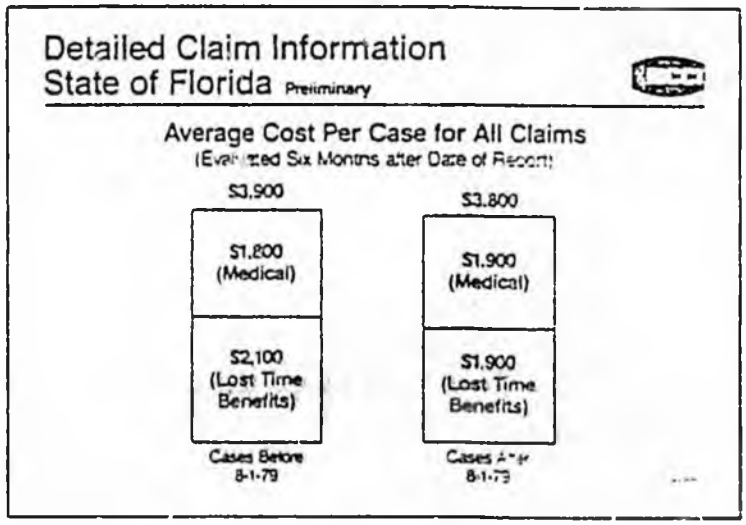
The small sample size of wage-loss and impairment cases deters any general conclusions covering all workers who suffer wage-loss or a permanent impairment injury.

It should be noted tnat during the healing period the injured worker receives lost time benefits based on the benefits applicable for a temporary total disability.



All Lost Time Cases The average cost per case for all claims has decreased 3% since the new Florida workers' compensation insurance legislation became effective August 1, 1979. This occurred despite the 50% increase in the maximum weekly lost time benefit and an increase in the rate of compensation for a weekly lost time benefit mandated by the law, effective August 1, 1979. Thus the decrease in the average lost time benefits may indicate that workers are returning to employment sooner. As with other estimates of costs which are made six months after each claim is reported, it can only be an approximation of the final cost which will be incurred in connection with a reported injury.

While the average cost per case for both temporary total cases and permanent partial cases increased, the average cost per case for all cases decreased. This reduction occurred because of the shift of cases with minor injuries, which would have received permanent partial benefits prior to August 1, 1979, into the category of temporary total cases.

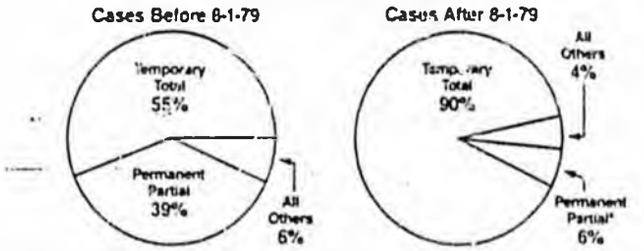


Percentage of Total Lost Time and Medical Benefit Dollars by Benefit Type The portion of lost time and medical benefit cost attributable to wage-loss and impairment cases under the new law has decreased drastically from the percentage attributable to permanent partial injuries under the old law. This shift indicates that total benefit costs for partially injured workers have decreased, while benefits for significantly injured workers have increased, because workers with only minor injuries are no longer able to receive permanent partial benefits.

When later evaluations are conducted we expect to see an increase in the percentage of total costs attributable to wage-loss cases as more cases are recognized by the insurance company. As mentioned previously a number of carriers may not be able to classify a worker as a wage-loss case until he has actually begun to receive wage-loss benefits. Also at later evaluations we expect we may see an increase in costs for wage-loss and impairment cases since there will be an opportunity for a more accurate evaluation of costs after carriers have gained more experience with wage-loss cases.

Detailed Claim Information
State of Florida Preliminary

Percentage of Lost Time and
Medical Benefit Dollars by Benefit Type
(Evaluated Six Months after Date of Report)



*Cases Receiving Wage-Loss and or Impairment Benefits

Administration of Claims

Attorney Representation The percentage of injured worker represented by an attorney has decreased about 50% since August 1, 1979. This appears to indicate that one intent of the law, to decrease excessive litigation to obta undeserved permanent partial benefits, has been met.

One thing which must be kept in mind when considering the percentage of cases represented by an attorney at the time of the initial six month evaluation o claim is the likelihood that a claimant will choose to see attorney representation sometime in the future. A NCC study in Florida found that the number of claimants represented by an attorney increased more than 50% in the period subsequent to the initial six months from the date of injury. Consequently we expect to see some increase in attorney representation when these claims ai evaluated in a later report. This is true for claims occurring both before and after August 1, 1979.

Detailed Claim Information
State of Florida Preliminary

Percentage of Claims With Attorney Involvement
(Evaluated Six Months after Date of Report)

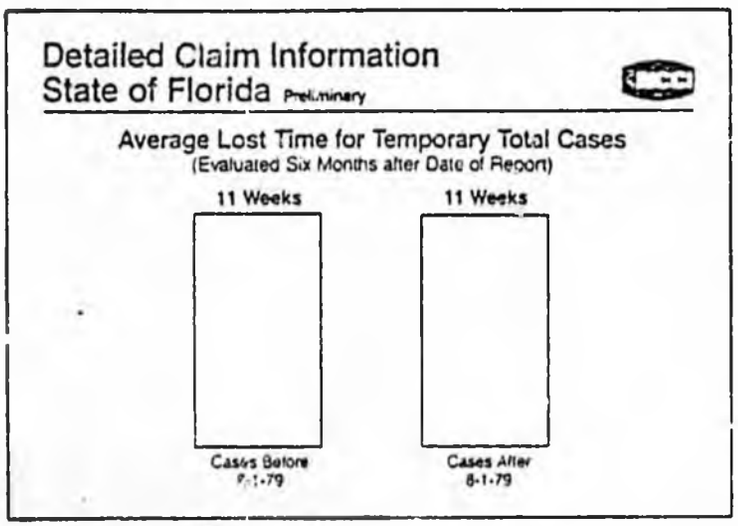
Benefit Type	Cases Before 8-1-79	Cases After 8-1-79
Permanent Partial	34%	20%*
Temporary Total	9%	6%
All Claims	13%	6%

*Cases Receiving Wage-Loss and/or Impairment Benefits

Additional Observations

Further Changes In Patterns of Claims by Benefit Type

Time Lost from Employment by Temporary Total Cases There has been no significant change in the duration of temporary total cases since the August 1, 1979 law change. Since more serious injuries are included among the temporary total cases after August 1, 1979 it may be that for equivalent injuries employees are actually returning to work sooner. As previously noted an injured worker is considered a temporary total case if there appears to be no likelihood that in the future the worker will receive any permanent total, wage-loss, or impairment lost time benefits.

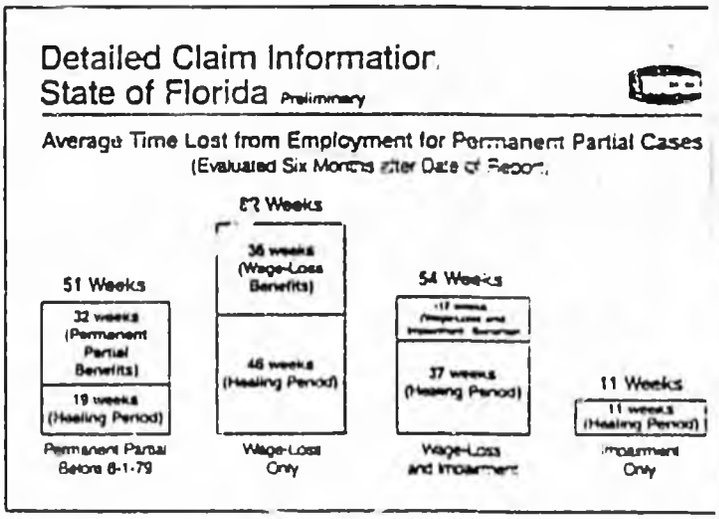


Time Lost for Permanent Partial Cases The average time lo from employment for wage-loss cases is greater, on the average, than time lost by permanent partial cases prio to the August 1, 1979 law change. These wage-loss case are more serious, on the average, and require benefits a longer period of time.

On the average, at the time of the six month evaluation, a wage-loss case has not begun to receive wage-loss benefits. Because of this, claims people can only make a rough estimate of the time lost from employment as a result of an injury classified as one subject to wage-loss benefits.

The impairment only cases receive lost time benefi during the healing period, based on the benefits applicable for a temporary total disability, on the avera for 11 weeks. However, after this period of time the injured worker receives an additional lump sum benefi based on the nature of his or her permanent impairmer On the average, it appears that impairment only cases a returning to work relatively soon.

The sample size of wage-loss and impairment case too small to allow us to make any conclusive observations.



Doctor Visits On the average, workers with wage-loss or permanent impairment injuries, visit the doctor less frequently than workers who suffered an injury which was classified as a permanent partial disability under the old law. This decrease in the frequency of doctor visits is striking since, on the average, it seems that wage-loss and impairment cases involve more seriously injured workers than those with permanent partial injuries under the old law.

At the initial six month evaluation period of claims a number of injured workers have not yet submitted any doctor or medical bills. Prior to receiving a bill the insurance company is not aware of the number of doctor visits made by the injured worker. In order to reach a better estimate of the average number of visits to a doctor we have excluded from the average all claimants who have not yet reported any doctor visits.

Detailed Claim Information
State of Florida Preliminary

Average Number of Doctor Visits
(Evaluated Six Months after Date of Report)

Benefit Type	Cases Before 8-1-79	Cases After 8-1-79
Permanent Partial	16	13*
Temporary Total	9	10
All Claims	10	10

*Cases Receiving Wage-Loss and or Impairment Benefits

Hospital Confinement Since the August 1, 1979 law change there has not been a significant change, on the average, in the time spent in the hospital by injured workers. This is not surprising since the change in the law should not have any effect on the severity of injuries which occur in Florida.

On the average, a wage-loss or impairment case is more likely to be confined in a hospital than a permanent partial case under the old law. This has probably occurred because, on the average, a wage-loss or impairment case, involves a more seriously injured worker than a permanent partial case under the old law.

Detailed Claim Information
State of Florida Preliminary

Average Number of Days Confined in Hospital
(Evaluated Six Months after Date of Report)

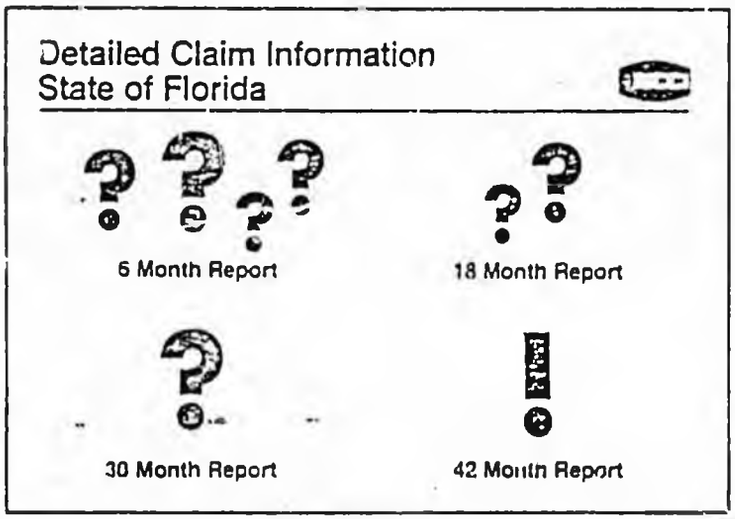
Benefit Type	Cases Before 8-1-79		Cases After 8-1-79	
	Percentage of Cases Confined in Hospital	Average Number of Days	Percentage of Cases Confined in Hospital	Average Number of Days
Permanent Partial	50%	10	65%	9*
Temporary Total	25%	7	30%	8
All Claims	30%	8	30%	8

*Cases Receiving Wage-Loss and or Impairment Benefits

Future Development of NCCI Detailed Claim Information

The information contained in this report gives a preliminary overview of the changes in the Florida workers' compensation system due to the law changes of August 1, 1979. As a result, these findings may be different when the claim of each injured worker is reevaluated at a later date. As previously stated, each claim will be reevaluated 18 months, 30 months, and 42 months after the date the injury is reported to the insurance company. These later reports will allow time for the companies to make a much more informed judgment of individual claim features such as the type of benefit the injured worker will eventually receive, the total lost time costs, total medical costs, and the time lost from employment.

These claim features will be judged with increasing precision at each later evaluation date.



Importance of Consistent and Appropriate Claims Evaluation

There are several important factors which must be considered when choosing a method for gathering workers' compensation claims information. Three of these are particularly significant. First, it is necessary that reasonable and appropriate comparisons may be made concerning the gathered information. Second, the absolutely highest integrity of information must be maintained through the intensive validation of all submitted information. Third, information must be gathered from a broad base so that it is representative of experience in the entire state.

In order to insure that reasonable and appropriate comparisons could be made of our gathered information the NCCI Call for Detailed Claim Information requires that each claim is initially evaluated at six months after the claim is reported to the insurance company. Then each claim is reevaluated 18, 30, and 42 months after the report of injury. By initially evaluating each claim six months after the report of the injury we allow time for a equivalent amount of knowledge to be gathered by the insurance company about each claim. This is essential, since the initial estimates of benefit costs can be modifie after the claimant's medical condition has had additiona time to stabilize. With each claim evaluated at the same period of time after the accident we obtain a basis of information about which meaningful comparisons can be made.

There is an alternative method for gathering claim information which does not result in this comparison of corresponding information. An example of this method would be to evaluate workers' compensation claims for workers injured between July 1 and December 31 based on the information available on December 31. Howe er this method results in an attempt to evaluate some claim the day the injury occurs and other claims up to 6 montl after the injury occurs. The result of evaluating each clai on the same calendar date is to compare claims about which we have an unequal depth of knowledge. In fact, since there is a time lag before an injury is reported, the insurance company will not even be aware yet of all the injuries which occurred in the six month period.

NCCI ensures the highest integrity of its Detail Claim Information by a system of intensive editing and validation procedures. When a compilation of informatio is not intensively edited, there is no guarantee that human error, such as adding a zero to the end of a number incorrectly, will not cause incorrect observations to be made about the Florida workers' compensation system.

In order to ensure a broad basis for our observations of the Florida workers' compensation system, the Call for Detailed Claim Information has gathered information from virtually all of the insurance companies writing workers' compensation in Florida. This provides an appropriate representation of large, small, local and national insurance companies in our gathered information. If information is gathered from a small number of companies it would be possible for any one insurance company, whose experience is not typical for Florida as a whole, to disproportionately affect observations of the Florida workers' compensation system. By using a large number of carriers we get a picture of how the system is functioning for all regions and industries in Florida where workers are insured by their employer through an insurance company.

POLICYHOLDER NAME

NO.

National Council On Compensation Insurance

FLORIDA CALL FOR DETAILED CLAIM INFORMATION

COMMON INFORMATION

INSURER:

1. CARRIER CODE

2. POLICY NUMBER

3. CLAIM NUMBER

4. REPORT TYPE *(Circle Below)*
[1] 6 Months [3] 30 Months
[2] 18 Months [4] 42 Months

5. TRANSACTION CODE *(Circle Below)*
[1] Original Reporting
[2] Revised Reporting

CLAIMANT DESCRIPTION

6. POLICY EFF. DATE — MO. DAY YEAR

7. EMPLOYEE SOC. SEC. NO.

8. DATE OF INJURY — MO. DAY YEAR

9. DATE REPORTED — MO. YEAR

10. STATE OF ACCIDENT

11. STATE OF JURISDICTION

12. CLASS CODE

13. INJ. DESCR. CODE

14. LOSS COVER. CODE

15. AGE AT DATE OF INJURY

16. SEX *(Circle Below)*
[1] Male [3] Unknown
[2] Female

17. MARITAL STATUS *(Circle Below)*
[1] Single or Divorced or Widowed [3] Separated
[2] Married [4] Unknown

18. EMPLOYMENT STATUS WHEN CLAIM REPORTED *(Circle Below)*
[1] Regular Employee [3] Unemployed [5] Disabled Employee [7] Former Employee—All Other
[2] Unemployed Due to Plant Shutdown [4] Employee on Strike [6] Retired Employee [8] Unknown

19. PREINJURY WAGE

20. METHOD OF DETERMINING PREINJURY WAGE *(Circle Below)*
[1] Actual Wage [3] Wage required for Minimum Weekly Benefit
[2] Estimated Wage [4] Wage required for Maximum Weekly Benefit

21. STATUS *(Circle Below)*
[1] Claim Open and not Resolved
[2] Claim Open and Resolved
[3] Claim Closed

22. DATE RESOLVED — MO. DAY YEAR

23. REOPENED INDICATOR *(Circle Below)*
[1] Yes [2] No
[3] Initially Recorded as Medical Only

INDEMNITY BENEFITS & PAYMENTS (Excluding Vocational Rehabilitation) (Express in Whole Weeks and Whole Dollars)

24. INCURRED (INC.) DURATION OF BENEFITS (TEMP. TOTAL WEEKS)

25. TEMPORARY TOTAL INCOME BENEFITS INCURRED

26. TYPE OF BENEFITS *(Circle Below)*
[1] Only Temporary Total
[2] Permanent Total (with or without Temp. Total Benefits)
[3] Wage-Loss Benefit and no Impairment Benefit
[4] Wage-Loss Benefit and Impairment Benefit
[5] Temporary Partial
[6] Death (with or without Temp. Total Benefits)
[7] Impairment Ben. and no Wage-Loss Benefit
[8] Other (including combination of the Above)

27. LATEST WEEKLY BENEFIT

28. INC. DURATION (NON TT BENS.) (WEEKS)

29. TOT. INC. (NON TT BENS.)

30. OTHER INDEMNITY BENS. INC

31. TOTAL INDEMNITY BENS. PAID

VOCATIONAL REHABILITATION BENEFITS (Express in Whole Dollars)

32. TOTAL VOC. REHAB. INC. COSTS

33. TOTAL VOC. REHAB. PAID COSTS

34. VOCATION REHAB. EVALUATION EXPENSE INCURRED

35. VOCATIONAL REHAB. INCURRED INDEMNITY

36. VOCATION REHAB. EDUCATIONAL EXPENSES (INCURRED)

MEDICAL BENEFITS (Express in Whole Dollars)

37. PAID TO DATE, HOSPITAL COSTS

38. PAID TO DATE OTHER MED. COSTS

39. TOTAL INCURRED MEDICAL COSTS

40. NUMBER OF DAYS CONFINED IN HOSPITAL – TO DATE

41. NUMBER OF DOCTOR VISITS – TO DATE

CLAIM ADMINISTRATION DETAILS

42. APPORTIONMENT BETWEEN CARRIERS
[1] Yes [2] No

43. APPORTIONMENT FOR PRE-EXISTING CONDITIONS
[1] Yes [2] No

44. CLAIMANT'S ATT'Y. OR AUTHORIZED REPRESENTATIVE
[1] Yes [2] No

45. AMOUNT OF CLAIMANT'S ATT'Y FEES INCL. IN AWARD

46. AMOUNT OF CLAIMANT'S ATT'Y FEES IN ADDITION TO AWARD

47. CONTROVERTED CLAIM *(Circle Below)*
[1] No [3] Disability
[2] Compensability [4] Multiple Reasons

48. METHOD OF DISPOSITION *(Circle Below)*
[1] Closed By Agreement [4] Award for Employee
[2] Withdrawal of Claim by Claimant [5] Award for Carrier
[3] Withdrawal of Controversy by Insurer [6] None

49. METHOD OF PAYMENT *(Circle Below)*
[1] Lump Sum [3] Both
[2] Periodic [4] None

50. PRODUCT LIABILITY SUBROGATION *(Circle Below)*
[1] Yes [2] No

51. AUTOMOBILE LIABILITY SUBROGATION *(Circle Below)*
[1] Yes [2] No

52. OTHER SUBROGATION *(Circle Below)*
[1] Yes [2] No

53. ALLOCATED LOSS EXPENSE *Paid*

54. DATE OF CLOSING — MO. DAY YEAR

FORM #C19940F

POLICYHOLDER NAME

National Council
On Compensation Insurance

ADM. NO.

FLORIDA SUPPLEMENTARY CALL FOR DETAILED CLAIM INFORMATION

COMMON INFORMATION

INSURER:

1. CARRIER CODE

2. POLICY NUMBER

3. CLAIM NUMBER

4. REPORT TYPE *(Circle Below)*
1 6 Months
2 18 Months
3 30 Months
4 42 Months

5. TRANSACTION CODE *(Circle Below)*
1 Original Reporting
2 Revised Reporting

MEDICAL IMPROVEMENT

55. Expected Date of Max. Medical Imp.
Mo. | Day | Yr.

56. Was Date of Maximum Medical Improvement Contested?
1 Yes 2 No

57. Actual Date of Maximum Medical Improvement
Mo. | Day | Yr.

IMPAIRMENT BENEFITS

58. Did Claimant Suffer Permanent Impairment Due to Amputation, Loss of 80% or More of Vision after Correction, or Serious Facial or Head Disfigurement? *(Circle Below)*
1 Yes 2 No

59. If the Answer to (53), above, is Yes, Enter Impairment Rating
%

60. If the Answer to (58) is Yes, Enter Impairment Award
$

61. Was the Impairment Rating Contested?
1 Yes 2 No

62. Did Claimant Suffer Permanent Impairment Other than Due to Amputation, Loss of 80% or More of Vision after Correction, or Serious Facial or Head Disfigurement?
1 Yes 2 No

63. If the Answer to (62) is Yes, was the Existence of Permanent Impairment Contested?
1 Yes 2 No

64. If the Answer to (62) is Yes If Percentage Impairment Rating is Known, Enter here
%

WAGE-LOSS BENEFITS

65. Enter Date Wage Loss Benefit Starts
Mo. | Day | Yr.

66. Has Right to Wage Loss Benefit Terminated?
1 Yes 2 No

67. If the Answer to (66) is Yes, Enter Date. If the Answer to (66) is No, Enter Date it is Expected that Right to Wage Loss Benefits Will Terminate
Mo. | Day | Yr.

68. Circle Reason for Actual or Expected Termination of Right to Wage Loss Benefit (Circle one box only)
1 — A Two Year Period Without Three Consecutive Months for which a Wage Loss Benefit is Payable
2 — Maximum Duration Runs out (350 weeks for injuries occurring on or before July 1, 1980 and 525 weeks for injuries after July 1, 1980 — or 5 years for temporary partial)
3 — Injured Employee Reaches Age 65
4 — There is no Wage Loss Based on the Formula
1 2 3 4

69. Enter Total Incurred Wage Loss Benefit
$

70. Enter Total Wage Loss Benefit Paid to Date
$

71. Enter Monthly Amount of Most Recently Paid Wage Loss Benefit
$

72. Enter Date of Most Rec. Paid Wage Loss Benefit
Mo. | Day | Yr.

73. Enter Current Average Monthly Wage
$

74. Were Wage Loss Benefits Ever Discontinued and Subsequently Reinstated to Claimant?
1 Yes 2 No

75. If the Answer to (74), above, is Yes, Enter How Many Times this has Occurred

ADDITIONAL INFORMATION

76. Is Claimant Working for Same Employer as when Injured?
1 Yes 2 No

77. If Claiment is Age 62 or over, is Claimant Receiving Social Security Retirement Benefits?
1 Yes 2 No

78. Has this claim been selected by the standard sampling procedure of the detailed claim call?
1 Yes 2 No

C19945F

NCCI Locations

NCCI National Office, *New York City*

NCCI Rating Division and Data Processing Center, *New Jersey*

NCCI Midwest Regional Office
P.O. Box 1666, 2715 W. Monroe Street, Springfield, Illinois 62705—Monitors NCCI Offices Servicing Illinois, Indiana, Iowa, Kansas, Missouri, Nebraska, Oklahoma and South Dakota

Illinois Council on Compensation Insurance, *P.O. Box 1666, 2715 W. Monroe Street, Springfield, Illinois 62705*—Services Illinois

Indiana Compensation Rating Bureau, *5920 Castleway, West Drive, Suite 121, P.O. Box 50940, Indianapolis, Indiana 46250*—Services Indiana

Kansas Council on Compensation Insurance, *P.O. Box 1577, 3601 West 29th Street, Topeka, Kansas 66601*—Services Kansas

Missouri Council on Compensation Insurance, *10825 Watson Road, St. Louis, Missouri 63127*--Services Missouri

North Central Council on Compensation Insurance, *4685 Merle Hay Road, OakMoor II, Suite 101, Des Moines, Iowa 50323*—Services Iowa, Nebraska and South Dakota

Oklahoma Council on Compensation Insurance, *3555 N.W. 58th Street, Suite 730, Oklahoma City, Oklahoma 73112*—Services Oklahoma

Coal Mine Council on Compensation Insurance, *10825 Watson Road, St. Louis, Missouri 63127*—Services Coal Mines

NCCI Southern Regional Office, *2 Office Park Circle, Box C-40, Birmingham, Alabama 35283*—Monitors NCCI Offices Servicing Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, South Carolina and Tennesse

Arkansas Council on Compensation Insurance, *307 Donaghey Building, 7th & Main, Little Rock, Arkansas 72201*—Services Arkansas

Florida Council on Compensation Insurance, *7960 Arlington Expressway, 4th Floor, P.O. Box 8899, Jacksonville, Florida 32239*—Services Florida

Louisiana Council on Compensation Insurance, *3501 North Causeway Boulevard, Suite 600, Metairie, Louisiana 70002*—Services Louisiana

South Carolina Council on Compensation Insurance, *3710 Landmark Drive, Suite 109, P.O. Box 4383, Columbia, South Carolina 29240*—Services South Carolina

Southeastern Council on Compensation Insurance, *2 Office Park Circle, Box C-40, Birmingham, Alabama 35283*—Services Alabama, Georgia, Kentucky, Mississippi and Tennessee

NCCI Western Regional Office, *One Tamarac Square, Suite 500, 7555 E. Hampden Avenue, Denver, Colorado 80231*—Monitors NCCI Offices Servicing Alaska, Arizona, Colorado, Idaho, Montana, New Mexico, Oregon and Utah

Alaska Council on Compensation Insurance, *620 S.W. 5th Avenue, Suite 1110, Portland, Oregon 97204*—Services Alaska

Montana Council on Compensation Insurance, *620 S.W. 5th Avenue, Suite 1110, Portland, Oregon 97204*—Services Montana

Mountain States Council on Compensation Insurance, *One Tamarac Square, Suite 504, 7555 E. Hampden Avenue, Denver, Colorado 80231*—Services Arizona, Colorado, Idaho, New Mexico and Utah

Oregon Council on Compensation Insurance, *620 S.W. 5th Avenue, Suite 1110, Portland, Oregon 97204*—Services Oregon

NCCI Eastern Regional Office, Pennsylvania, Services Connecticut, District of Columbia, Maine, Maryland, New Hampshire, Rhode Island and Vermont

Mid-Atlantic Council on Compensation Insurance, *305 W. Chesapeake Avenue, Baltimore, Maryland 21204*—Services District of Columbia and Maryland

Northeastern Council on Compensation Insurance, *P.O. Box 60, 21 Wintonbury Mall, Bloomfield, Connecticut 06002*—Services Connecticut, Maine, New Hampshire, Rhode Island and Vermont

Additional Copies May Be Obtained From:
National Council on Compensation Insurance,
Public Affairs Office, One Penn Plaza, New York, N.Y. 10119

or

Florida Council on Compensation Insurance, 7960 Arlington Expressway, 4th Floor, P.O. Box 8899, Jacksonville, Florida 32239

Presentation of Preliminary Findings of a Comprehensive Study of Vocational Rehabilitation in the Alaska Workers' Compensation Program

Presented by

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(907) 264-2460

January 26, 1982

Abstract, Summary of Recommendations, Overview

ABSTRACT

This study was conducted to determine the effectiveness of the delivery system for rehabilitation benefits to injured workers covered by the Alaska Workers' Compensation Act. Factors examined in evaluating the system included the average time from the date of injury to the date of referral to rehabilitation, the percentage of lost-time cases receiving rehabilitation benefits, the percentage successfully rehabilitated, the average time spent in rehabilitation programs, and the average cost of such programs. The primary sources of information and data were the state Division of Vocational Rehabilitation and one of the private rehabilitation firms doing business in Alaska. Another source of data was a survey of injured workers who had previously participated in rehabilitation programs, and of workers who had signed compromise and release agreements in which the right to participate in such programs as part of the compensation system was waived. The rehabilitation programs used in two other state workers' compensation systems were evaluated, in order to show examples of the potential savings to be derived from a properly structured and managed system, and to examine procedures to be considered in developing an effective delivery system for rehabilitation. Gathering quantifiable data from all sources was difficult, due to the incomplete nature of the available records.

The study found that the delivery system is not providing timely and adequate rehabilitation services to a substantial number of those workers who could benefit from them, for two primary reasons. First, the system does not afford prompt referral of appropriate cases to rehabilitation facilities. Second, the Division of Workers' Compensation is not consistently advising workers of their potential entitlement to these services, nor is it monitoring the services being provided, primarily due to a lack of resources and trained personnel, as well as the absence of established guidelines and procedures for monitoring the system.

RECOMMENDATION 1

That insurers/employers report to the Division of Workers' Compensation:

a. All injured workers who experience continuous time loss of 90 to 120 days from the date of injury, depending on the staffing level of the Division, and

b. All acutely injured workers where an immediate determination can be made that the worker will not likely be able to return to the job held at the time of injury.

RECOMMENDATION 2

That the Workers' Compensation Division screen reports no later than 5 working days from the date each report is received.

RECOMMENDATION 3

That subsequent to, or during the screening process, the Workers' Compensation Division contact each reported worker. The purpose for contact is to explain the benefits to which the worker may be entitled, and to set the tone for a positive rehabilitation outcome by explaining the objective of rehabilitation, the worker's rights and responsibilities in the rehabilitation effort.

RECOMMENDATION 4

That the Workers' Compensation Division establish and publish the procedural mechanism to support the reporting, screening and contact activities.

RECOMMENDATION 5a

That pursuant to the adoption of regulations on vocational rehabilitation, (See Exhibit 1) the Workers' Compensation Division establish, publish and distribute guidelines for providers of rehabilitation services in accordance with recommendation 5b through 5e, and the following time frames:

- Completion of Vocational Evaluation and Plan Recommendation - 6 weeks
- Complete Development of Plan - 6 weeks
- Direct Placement Program - 3 months
- On-The-Job Training - 3 to 6 months, depending on the skills to be acquired coupled with the skill level of the injured worker.
- Vocational Training - 52 weeks (extensions subject to prior approval by the Board)

RECOMMENDATION 5b

That rehabilitation providers issue a report within 30 days of initial contact with an injured worker. Background information regarding the worker's age, education, work history, and general medical condition, as well as a summary of activities conducted during the 30 day period should be included in the report. Information regarding the next immediate plan of action should also be included.

RECOMMENDATION 5c

That plans submitted for approval contain pertinent information as outlined in proposed regulations on Vocational Rehabilitation 8 AAC 47.040(b)(1) through (9).

RECOMMENDATION 5d

That subsequent to implementing plans, rehabilitation providers issue monthly progress reports sufficient in content and scope to inform all interested parties of the progress being made toward achieving the vocational goal of the plan.

RECOMMENDATION 5e

That approval by the Board must be obtained prior to amendment, suspension or termination of an approved rehabilitation plan.

RECOMMENDATION 6

That insurers provide assistance to employers in developing programs for re-employment of injured workers.

RECOMMENDATION 7

That insurers/employers arrange for counselor services to include on-site-job analyses and assistance in modification of jobs to enhance reemployment opportunities of an employer's injured employees.

RECOMMENDATION 8

That the Workers' Compensation Division encourage the development and implementation of reemployment programs by providing positive monitoring/ endorsement of the efforts of parties.

RECOMMENDATION 9

That contractual agreements be negotiated for reemployment/rehabilitation of injured union members.

RECOMMENDATION 10

That insurers/employers increase their efforts to effectively and timely communicate with injured workers by contacting them as soon after the injury as possible to explain their entitlement to benefits and the procedure for securing these benefits.

RECOMMENDATION 11a

That in the case of workers experiencing time loss, who may need rehabilitation services, insurers/employers assign a counselor to contact the worker as soon as this determination can reasonably be made.

RECOMMENDATION 11b

That insurers/employers consider hiring a rehabilitation professional to enhance their ability to effectively communicate with, and timely provide services for injured workers.

RECOMMENDATION 12a

That insurers assist employers by providing loss control services to assure appropriate rating consistent with their safety record and reemployment practices.

RECOMMENDATION 12b

That to supplement the loss control services provided by insurers, employers seek the assistance of the States Division of Insurance in rating matters and methods.

RECOMMENDATION 13

That counselors enhance their efforts to place injured workers by informing employers of Targeted Jobs Tax Credit provisions and by providing assistance necessary to facilitate employer participation in the program.

RECOMMENDATION 14

That language in AS 23.30.040(e) be changed to remove the dollar amount and provide for necessary costs of rehabilitation services subject to Board approval.

RECOMMENDATION 15

That the Workers' Compensation Division increase employer awareness and encourage employer use of the Second Injury Fund in employment of industrially injured workers. Increased publicity and eligibility interpretation will enhance this effort.

RECOMMENDATION 16

That cooperative agreements involving transfer of Second Injury Fund monies to the Division of Vocational Rehabilitation be discontinued.

RECOMMENDATION 17

That criteria for development, recommendation and implementation of rehabilitation plans, in accordance with recommendations 5a through 5e, be applied to all providers of vocational rehabilitation services to injured workers covered by the state compensation laws.

RECOMMENDATION 18

That as a general policy, the Board deny settlement of claims, prior to an injured worker's completion of a supervised rehabilitation program.

RECOMMENDATION 19

That the Division of Workers' Compensation acquire the necessary staff to develop and implement a workers' compensation rehabilitation program designed to administer and monitor the rehabilitation benefits of industrially injured workers covered by the Alaska Workers' Compensation Act.

OVERVIEW OF REHABILITATION IN WORKERS' COMPENSATION

A. HISTORY OF REHABILITATION PROVISIONS FOR INDUSTRIALLY INJURED WORKERS.

Rehabilitation in workers' compensation programs in the United States has been paid increasing attention over the past 10 years following publication of the 1972 Report of the National Commission on State Workmen's Compensation Laws. However, the realization that workers' compensation laws should include provisions of rehabilitating industrially injured workers was manifested by the Massachusetts Industrial Accident Board as early as 1914, when a member of that board went to study the German program. Pursuant to that study, and a meeting in 1916 of the International Association of Industrial Accident Boards and Commissions (IAIABC), during which the delegates were advised that a primary goal of workers' compensation programs would be the rehabilitation of disabled workers, the first state vocational rehabilitation law was enacted in 1918 in Massachusetts. The law, administered by the Industrial Accident Board, covered only those persons disabled by industrial accidents and occupational diseases. Following Massachusetts' lead, other states enacted laws with similar rehabilitation provisions. Congress, through the passage of Public Law 236 in 1920, created the State/Federal Vocational Rehabiliation Program. Its statement of purpose provided for the promotion of vocational rehabilitation of industrially disabled workers. Thus, persons with occupational disability were the prime target for vocational rehabilitation services. Subsequent Congressional mandates, however, shifted the attention to other specific disability groups and resulted in obscuring the focus on industrially injured workers. This shift in focus, coupled with the existence of the common law tort liability in the compensation system with its inherent litigation, resulted in the failure of both systems to adequately provide rehabilitation services to the industrially disabled: a condition which still exists today, according to the report of the National Commission (National Commission on State Workmen's Compensation Laws, 1972) and Larson, who suggests that one-half of 1% of industrially injured workers are rehabilitated under the federal/state programs. Larson further suggests that 10% of workers currently being injured could benefit from vocational rehabilitation services. (Larson, 1980).

B. REHABILITATION DEFINED.

The increased emphasis on the inclusion of rehabilitation benefits in a modern workers' compensation system has prompted attempts by those in the system to define rehabilitation. A noteworthy observation is made by Sawyer in this regard, wherein he makes a distinction between the philosophical differences in rehabilitation of the workers' compensation system and the state/federal program. He observes that the objective of workers' compensation rehabilitation is to restore the industrially injured worker to a state of employability equal to, or as near as possible to that of his pre-injury status, through the provision of only those services necessary to achieve this objective. On the other hand, Sawyer notes, the state vocational program seeks to rehabilitate disabled persons to their maximum potential through the provision of

educational and other services deemed necessary by the disabled worker to achieve a chosen vocational objective. (Sawyer, 1978).

A further distinction can be made through examination of the primary funding source of each program. The state vocational rehabilitation program is supported by federal and state funds, while the cost of rehabilitation in a workers' compensation system is borne by private industry through contributions to a special or second injury fund and direct payment to private rehabilitation providers. The employer further contributes to the rehabilitation of industrially injured workers through payment of compensation benefits during the period of rehabilitation.

A third distinction, perhaps more revealing than the first two, is the difference in population served by each system. As was previously discussed, Congressional mandates have directed the focus of the state/federal program to give priority to specific disability groups classified as severely disabled. These include developmental disabilities, congenital, orthopedic and neurological conditions, and catostrophic injuries resulting in paraplegia and quadriplegia. The bulk of individuals in these disability categories are adolescents and young adults, most of whom have never participated in the world of work. Therefore, the process employed in making them work ready is habilitation, as opposed to rehabilitation. Since their backgrounds do not include significant work experience which would have imparted marketable skills, their plans usually include long-term pre-vocational and vocational preparation centered around academic training toward a specific career goal chosen by the individual. Contrast this to the industrially injured group, who for the most part, have not been severely disabled by their injuries according to state/federal guidelines, and whose pre-injured work experiences have imparted skills which can usually be marketed in the workplace. On the whole, their natural orientation is not likely to be toward academic or classroom training, as they did not choose this method to enter the world of work to begin with, and they have not usually chosen to engage in academic pursuits at any point in their work life prior to the injury and subsequent visits to the state vocational rehabilitation office. It is reasonable to conclude that the approach taken in assisting them to return to the workplace will differ considerably from that taken for the other group.

The socially underlying concept of rehabilitation embraced by rehabilitation professionals is the intrinsic dignity of man, his feeling of self-worth and his right to life, liberty and the pursuit of happiness. In a workers' compensation system, this concept cannot realistically exist independent of economic wisdom. The timely return of an industrially injured worker to a safe employment status, commensurate with that held at the time of injury, through the investment of necessary resources, is a logical goal in a workers' compensation system. The end result is an economic as well as a social asset to the injured worker, the compensation system and society. Well-managed, cost-effective rehabilitation will enable many disabled workers to return to productive jobs and thus reduce compensation costs.

C. THE APPROPRIATENESS OF REHABILITATION IN A WORKERS' COMPENSATION SYSTEM.

In 1976, the Rehabilitation Committee of the International Association of Industrial Accident Boards and Commissions conducted research on rehabilitation in state compensation agencies. The Committee called for the inclusion of rehabilitation services in all state workers' compensation programs and went

on to submit a model program of medical care and rehabilitation which was adopted by the IAIABC in 1977. The stated purpose of the model program was the assurance and coordination of efficient and timely delivery of services necessary to restore the industrially disabled employee to optimum physical and vocational well-being. (Ross, 1976).

The need for rehabilitating injured workers was stressed in the 1977 report of the President's Interdepartmental Workers' Compensation Task Force. The report which stressed reemployment, advocated increased private rehabilitation efforts by employers and insurance companies. (Interdepartmental Workers' Compensation Task Force, 1977).

The Insurance Rehabilitation Study Group is an organization whose purpose is to provide a forum for members of the insurance industry to explore and develop concepts and programs of rehabilitation and medical administration applicable to all phases of insurance. The group undertook a project to develop guidelines and language dealing with rehabilitation and subsequently published a report which in part stated:

> While insurance losses and benefits are usually stated in monetary terms, the full consequences of human disability cannot be measured by money alone. Earnings lost due to accident or sickness can be replaced and medical expenses can be reimbursed, but there is no meaningful way to financially translate the value of an arm or a leg, or the personal dignity of being able to contribute to society as a useful member rather than merely existing disabled and dependent.
>
> The study group went on to state that:
>
> If insurance is to protect against these human losses, it must do more than provide financial compensation alone. It must also strive to restore such losses. Insurance should provide the means for disabled workers to return to gainful employment whenever possible, and to regain as much functional independence as they can, even if they cannot return to work. Compensation cannot accomplish these goals without rehabilitation. (Insurance Rehabilitation Study Group, 1975).

The Study Groups' report included its model rehabilitation program.

Based on the cited research and studies conducted by recognized authorities in workers' compensation, it is clear that the consensus among those in the compensation system supports the premise that rehabilitation is an effective tool which should be included in workers' compensation if the system is to fulfill its total responsibility to the industrially injured worker and to society within the economy.

D. WHO SHOULD FUND REHABILITATION IN WORKERS' COMPENSATION

Leading insurance companies, employers and other members of the workers' compensation community support the belief that all costs of the system should

be borne by the employer and not by the general public. Sawyer suggests:

> While some individual insurers and self-insured employers still approach the subject of rehabilitation with varying degrees of acceptance, the matter of involvement is no longer an option. Through a tion of either basic legislative changes or administrative regulation, the responsibilities of carriers and employers to provide rehabilitation services specifically directed toward returning injured workers to suitable gainful employment are spreading to all jurisdictions. (Sawyer, 1981.)

E. THE ROLE OF THE STATE WORKERS' COMPENSATION AGENCY IN REHABILITATION.

The National Commission on State Workers' Compensation Laws suggested that a state agency has six primary obligations in a workers' compensation program. Those obligations are applicable to rehabilitation and will be used for the purpose of this discussion.

First, the agency must ensure that the basic objective of rehabilitation is met by taking the initiative to administer the laws relative to rehabilitation.

Second, the agency must continually review the performance of the rehabilitation program and make procedural changes to improve the program when change is indicated.

Third, the workers' compensation agency is obliged to advise workers of their rights and obligations under the law and to assure that they receive the rehabilitation benefits to which they are entitled.

Fourth, the agency should apprise employers and carriers of their responsibilities and rights under the law. Physicians and attorneys must also be informed of their obligations in the rehabilitation process.

Fifth, the agency should assist in voluntary and informal resolution of rehabilitation issues and assure that such resolutions are consistent with the law.

Sixth, in the absence of voluntary resolutions, the workers' compensation agency must make adjudicatory decisions to resolve issues affecting rehabilitation.

The compensation agency must have sufficient authority and staff to fulfill these six obligations. Moreover, the skills and background of the staff must be consistent with the functions to be served and the tasks to be performed.

PART ONE

Five Specific Goals of Rehabilitation

in a

Workers' Compensation Program

PART ONE

Five Goals of Rehabilitation in a Workers' Compensation Program

I. Early Identification of Injured Workers Who Potentially Need Rehabilitation

Workers who may not be able to return to regular employment after suffering job related injuries should be referred to rehabilitation as soon as this determination has been made or can be reasonably predicted. Proponents of the early involvement theory share the common realization that time can be a deadly enemy to successful rehabilitation. Benign neglect of what originally may be a minor disability can result in a protraction of the condition to the point where an unwholesome outlook regarding return to work becomes permanent and fixed, and the psychological hurdle required to overcome this is extremely difficult if not impossible to achieve.

Needs:

1. A funding source (employer/insurer)
2. A non-adversary approach (employer/carrier)
3. Effective administration by workers' compensation
   a. Screen reports
   b. Contact workers
   c. Monitor services
   d. Settle disputes

II. Use of Competent Rehabilitation Providers

The unusual characteristics of workers compensation and the different approach required for successful rehabilitation, as this report has previously elaborated, are strong arguments for the use of counselors trained in industrial rehabilitation. While this training does not require an intimate knowledge of the law, it should include the ability to recognize the needs of the industrially injured population and the compensation community alike. The backgrounds of most rehabilitation professionals include formal training in rehabilitation or a behavioral science. However, institutions have traditionally failed to include substantial courses on workers' compensation in rehabilitation programs. Thus, the degree of competence required to achieve success in a workers' compensation rehabilitation program has generally been acquired through well designed, in-service programs and practical hands on training.

Critical Elements Needed:

1. Sound background in basic rehabilitation principles

2. Ability to work with multiple parties

3. Willingness to deliver according to needs of the system

   - direct placement approach
   - on-the-job training
   - appropriate evaluation (timely and limited)
   - timely developed training (as needed only)
   - timely issued reports (information)

4. Respect for, and responsive to Board authority

III. Provide Opportunities for Return to Direct Employment

The success of rehabilitation in a workers' compensation program rests on the attainment of one of its most critical goals: the earliest possible return of workers to direct employment. Members of the workers' compensation community share the widely held belief that the fewer changes made in the life of an injured worker in the rehabilitation process, the more successful that process is likely to be. Conversely, a more complex rehabilitation plan requiring numerous changes in the life of the injured worker, and requiring a proportionate period of time to implement, diminishes the chance of a successful outcome.

Needs:

1. Employer Responsibility

   - modify old job
   - offer new job
     (Use on-site job analysis)

2. Employee Responsibility

   - cooperate w/employer efforts
   - timely accept job offer
   - maintain flexibility

3. Union Support and Involvement

   - go to bat for member (negotiate)
   - negotiate contract agreements to support light duty and rehabilitation

4. Counselor Role

   - consult physician for sound work restrictions
   - perform on-site job analysis
   - counsel worker toward accepting job
   - keep all interested parties informed

5. Attorney Obligation (for both parties)

   - remain on side line and advise respective clients to cooperate

6. Workers' Compensation Agency

   - advise, assist, monitor

7. Board

   - settle disputes

IV. Maintenance of Atmosphere Conducive to Rehabilitation

Rehabilitation is a process which does not occur in isolation. The conditions and atmosphere surrounding this process are primary determinants of its eventual outcome. The screening and early identification of injured workers who potentially need rehabilitation services will not necessarily result in a successful outcome if the process is fraught with hostilities, mistrust and excessive litigation. Certain elements which may be conveniently termed the "Four C's" must be present to ensure successful rehabilitation.

1. Concern - employer/carrier for worker
2. Communication - employer/carrier - worker - workers' compensation agency - counselor - physician - attorney
3. Coordination - counselor
4. Commitment/Cooperation -- all parties

V. Provide Incentives, Remove Disincentives to Rehabilitation

A rehabilitation program which makes early identification of workers needing rehabilitation, provides for early return to direct employment, uses competent rehabilitation providers and maintains an atmosphere conducive to rehabilitation, may fall short of fully achieving the primary objective of a workers' compensation system unless it maintains sufficient incentives and removes disincentives in its rehabilitation program. Caution must be exercised so that expectations regarding rehabilitation are not solely based on the premise that good faith efforts will spontaneously occur. There must be a realization that basic human nature usually requires the existence or application of stimuli necessary to create sufficient incentives before actions are taken to achieve a desired goal.

A. Incentives

1. Proper Rating of Employers.

Authorities in workers' compensation have suggested that internalizing the costs of workers' compensation by properly rating small, as well as large employers would provide an incentive for reemploying injured workers.

a. Experience Rating - provides for a before tne fact look at safety and reemployment record for recent years. A good record results in credit toward future premium.

b. Retro Rating - employer pays advance premium based on classification rate times estimated payroll. Losses are assessed after period of months (pre-determined). Depending on experience, employer may get reimbursed.

2. Targeted Jobs Tax Credit

- Incentive for private employers who hire certain targeted groups (vocational rehabilitation clients included)

  50% of first $6000 wages for first year

  25% of first $6000 wages for second year

3. Second Injury Fund

- Widely publicized
- Adequate eligibility interpretation
- Effectively managed - guard against abuse

4. Additional maintenance for extra expense during rehabilitation

5. Monitoring by workers' compensation agency

B. Removal of Disincentives

1. Prevention of premature and inappropriate compromise and release settlements

2. Eliminate excessive litigation

C. Other Stimuli

1. Penalty for non-cooperation (Both Parties)

2. PPD determination should reflect non-cooperation

PART TWO

Findings, Conclusions, Recommendations

SUMMARY AND INTERPRETATION OF DATA

The primary providers of vocational rehabilitation services to injured workers in Alaska are the state vocational rehabilitation agency and two private rehabilitation firms. The state agency and one of the private firms, offered data retrieved from their automated data systems. Collection of data from the other private firm was precluded due to incomplete records which lacked essential information pertinent to the study. Limitations do exist for the purpose of comparing data collected from the two sources.

First, data for the state rehabilitation program reflects a three year period from FY 78 through FY 81. Data supplied by the private rehabilitation firm is for the FY 81 period.

Second, terms common to rehabilitation of disabled persons have several definitions for the purposes of statistics, depending on who collects the data. For example, a workers' compensation rehabilitation program, for purposes of closure statistics, defines a successfully rehabilitated worker as one who has 1) maintained paid employment for at least sixty days; 2) in a job consistent with the restrictions imposed by the disabling condition. The state rehabilitation program defines a successfully rehabilitation person as one who has completed a rehabilitation program and has 1) maintained paid employment for at least 60 days in a job which may or may not be consistent with restrictions imposed by the disabling condition; or 2) has not returned to work, but has been restored to an optimum level of function as an unpaid home maker. In this case, the private rehabilitation firm describes a successful case as one in which the injured worker 1) returned to paid employment in a job which may or may not be consistent with restrictions imposed by the disabling condition; or 2) whose claim was closed or denied as a result of the involvement of the rehabilitation firm. Again, it is important to keep these limitations in mind when making comparisons between data presented for the two sources.

Tables 1 and 2 present data received from the state vocational rehabilitation program. Tables 3 and 4 present data received from the private rehabilitation firm.

Although data limitations do not allow us to make any unequivocal conclusions concerning workers' compensation rehabilitation in Alaska, several widely accepted ideas are supported by the figures presented here. For both the state/federal program and the private sector rehabilitation firm, the earliest referrals become, on average, the least expensive cases. While there is an anomaly in the trend at 19-24 months (where both providers experienced an unexplainable dip in cost), the general direction is one of increased costs as the time between date of injury and date of referral increases. There do appear to be differences between the state program and the private firm in terms of average cost. In Table 3a, the private rehabilitation firms shows 75% of the sample cases with costs below $2500. The comparable figure for the state is 64% below $2500, seen in Table 2a. This difference can be explained several ways. First, as seen in Table 1, the average time between date of injury and date of referral for the state/federal program is 16.8 months. A similar figure for the private firm is 11.8 months. Given the relationships expressed in Tables 2b and 3b, one would then expect the state program's average costs to be higher. A second factor affecting costs is the average time spent in the rehabilitation

process. Table 1 shows the state program's clients spending 27 months, on average, in rehabilitation in FY 80. A similar figure from the private firms was 7.4 months, on average, between referral and closure. A third explanation for cost differences between the State program and the private firm is found in Table 1 which shows a significant percentage of the state/federal program's cases received college training in FY 80. While no similar figure exists for the private rehabilitation firm, meetings and discussions revealed that very few of their clients received college training. Given rising tuition costs, this would clearly add significant expense to the State program's services.

Table 1 shows that as the percent of clients receiving college training has decreased since FY 78, the percent of clients successfully rehabilitated has increased. This inverse relationship supports studies which have been conducted outside Alaska and concluded that shorter, less expensive programs tend to be more successful than longer and more expensive rehabilitation plans.

Table 1 also shows 54% of DVR's eligible referrals experienced successful outcomes in FY 80, although it is not known how many unpaid homemakers, or workers whose jobs were not consistent with restrictions imposed by the disabling condition, were included in this figure. A similar figure in the private firm's survey, seen in Table 4, is 55%. However, it is important to note that in the private firm survey, 34 cases were closed "via cash settlement/account denies coverage," and were classified as "successful" even though it was not known whether these persons returned to productive employment consistent with restrictions imposed by the disability. Subtracting these cases from the total number of successful cases then, reduces the success factor to 20.7%.

While many inferences and suggestions can be drawn from the data presented in Tables 1-4, one must remember that the percentage of clients involved in rehabilitation with respect to the total number of time-loss cases is quite small. For FY 81, the Second Injury Fund officer estimated 200-250 cases were determined eligible for second injury rehabilitation funds. From FY 78 - FY 80, the Workers' Compensation Division processed an average of 6838 time-loss cases. Because of the referral time lag mentioned earlier, it cannot be stated that a certain percentage of time-loss cases from a given year will receive rehabilitation. However, an estimated 3 to 4 percent of time-loss cases in a given year, eventually become eligible for rehabilitation. The Second Injury Fund officer has also reported that in a recent purge of 45 active rehabilitation files, only 17 (38%) had completed a program and returned to work. He cited the signing of compromise and release agreements as a major reason for workers dropping out of a program. In fact, the survey of 142 workers eligible for rehabilitation found almost 70% of them had signed compromise and release agreements, and most of these were after rehabilitation had begun.

What conclusions do these figures suggest? Because they represent such a small number of injured workers, a pure statistician could take any one piece of data mentioned here and find it is not statistically valid. But when all pieces are considered together, the data begins to support itself. Early referrals should cost less, and they do in Alaska. A longer period between injury and referral should raise costs, and it appears to do so for both programs.

GOAL I

Early Identification of Injured Workers Potentially Needing Rehabilitation.

CONCLUSION

There is no universally accepted, hard and fast rule regarding the point at which an injured worker should be referred to rehabilitation. Among the workers compensation agencies with organized rehabilitation units, the range is 60 to 120 days of continuous time loss from the date of injury. Immediate reporting is encouraged for workers with acute or catostrophic injuries.

Based on available data, it appears that the average time from the date of injury to referral of injured workers to rehabilitation is 14.3 months in Alaska. (See Tables 1 & 3) In light of the existing trends among those agencies with organized rehabilitation units, coupled with the results of two of the units discussed in the main report, it appears that the Alaska system could benefit from changes which would enhance its efforts to achieve the early identification goal.

RECOMMENDATION 1

That insurers/employers report to the Division of Workers' Compensation:

a. All injured workers who experience continuous time loss of 90 to 120 days from the date of injury, depending on the staffing level of the Division, and

b. All acutely injured workers where an immediate determination can be made that the worker will not likely be able to return to the job held at the time of injury.

RECOMMENDATION 2

That the Workers' Compensation Division screen reports no later than 5 working days from the date each report is received.

RECOMMENDATION 3

That subsequent to, or during the screening process, the Workers' Compensation Division contact each reported worker. The purpose for contact is to explain the benefits to which the worker may be entitled, and to set the tone for a positive rehabilitation outcome by explaining the objective of rehabilitation, the worker's rights and responsibilities in the rehabilitation effort.

RECOMMENDATION 4

That the Workers' Compensation Division establish and publish the procedural mechanism to support the reporting, screening and contact activities.

GOAL II

Provision of Rehabilitation Services by Competent Counselors

CONCLUSION

Counselors presently providing rehabilitation services to injured workers covered by the Act are presumed to have sound backgrounds in basic rehabilitation principles. However, a review of rehabilitation plans, reports and correspondence, as well as views expressed by these counselors, raises questions regarding whether the remaining three critical elements are sufficiently present to meet the objective of a workers' compensation rehabilitation program. (See discussion of Critical Elements Needed Under Goal II in Part One). First, some counselors appear not to understand tneir roles as they attempt to interpret laws regarding a worker's entitlement to rehabilitation benefits to the Board and they inappropriately make recommendations to the Board regarding settlement of workers' claims.

Second, it appears that some counselors are unable/unwilling to deliver services in a manner consistent with supporting the objective of the system. Services are not timely delivered (six months to complete a vocational evaluation and make recommendations). Training plans are developed prior to pursuing opportunities for direct return to employment. Some plans do not clearly define the vocational objective of the worker, or provide information regarding the type, scope and time frames within which services are to be provided. In cases where the vocational goal is defined, subsequent reports do not reflect specifically what has been accomplished toward achieving the goal.

Third, some counselors believe the system should afford a "pure" environment within which rehabilitation services can be provided to workers: They should not be required to interact with insurance adjusters, attorneys or the Board, as this interferes with their ability to effectively deliver services.

Finally, some counselors seem unprepared/unwilling to accept the Board's authority to make decisions regarding the rehabilitation of injured workers covered by the Act. Board requests for information in support of recommended plans are questioned and in some cases ignored. In some instances, attempts to coerce Board approval of second injury fund expenditures are made simultaneous to the counselor's overt resistance to Board requests for information needed to support a plan recommended by the counselor.

Clearly, the lack of regulations, definitive procedures and guidelines for vocational rehabilitation, has affected the performance of counselors providing services to injured workers covered by the Act.

RECOMMENDATION 5a

That pursuant to the adoption of regulations on vocational rehabilitation, (See Exhibit 1) the Workers' Compensation Division establish, publish and distribute guidelines for providers of rehabilitation services in accordance with recommendation 5b through 5e, and the following time frames:

- Completion of Vocational Evaluation and Plan Recommendation - 6 weeks

TABLE 1

DVR[1/]

	Eligible Cases Closed	Avg. Time in Rehab. Process	% College Training	Successful Rehabs.	Avg. Cost Per Eligible Case	Avg. Cost/ Successful Case
FY80	61	27(mos.)	21%	33 (54%)	$2280	$3505
FY79	50	23	36%	22 (44%)	1615	2821
FY78	48	32	38%	20 (42%)	1468	3021

* Through 7/1/81 -
Average time between date of injury and date of referral (includes cases still open) 16.8 Months.

1/Table 1 is data received from DVR off the R-300 form.

TABLE 2

DVR[2/]

For 72 Eligible Closed Cases Referred through 7/1/80:

a. Cost	#
0-500	18
500-1000	9
1000-1500	9
1500-2000	7
2000-2500	3
2500-3000	3
3000-3500	2
3500-4000	7
4000-4500	1
4500-5000	3
5000-and over	10

64% below $2500

b. Referral Period	#	Avg. Cost/Case
0-6 Months after inj.	14	$2168
7-12	26	2391
13-18	10	2494
19-24	7	975
25-30	10	2532
30-36	4	2492
36 and over	1	8258

The average time between injury and referral was derived from DVR data and injury dates produced from AK Workers' Comp. files.

2/ Since these figures reflect only closed rehabilitation files, an average referral period derived from Table 2b will not correlate with the corresponding figure presented in Table 1 of 16.8 months.

TABLE 3

PRIVATE REHAB.

For 188 case files closed between 7/1/80 and 7/31/81

a. Cost	#		b. Referral Period	#	Avg. Cost/File
0-500	40		0-6 Months after inj.	NA	$1414
500-1000	36		7-12	"	1670
1000-1500	28	75% below $2500	13-18	"	2003
1500-2000	25		19-24	"	1875
2000-2500	13		25-30	"	1926
2500-3000	12		30-36	"	2198
3000-3500	11		36 and over	"	-
3500-4000	10				
4000-4500	4				
4500-5000	2				
5000 and over	7				

* The average length of time between date of injury and date of referral: 11.8 months.

TABLE 4

PRIVATE REHAB.

	Cases	%
Total	188	100.0
Successful Rehabilitation	91	48.4
(Due to Company Involvement)		
Return to Work	39	20.7
Case Closed via Cash Settlement/ Account Denies Coverage	34	18.1
Other	18	9.6
General Success	13	6.9
Other	84	44.6
Evaluation Only Requested	15	8.0
Lack of Cooperation by One of the Involved Parties	11	6.0
Company Requests Closure - Costs Not Warranted	38	20.0
Other	20	10.0

- Complete Development of Plan - 6 weeks
- Direct Placement Program - 3 months
- On-the-Job Training - 3 to 6 months, depending on the skills to be acquired coupled with the skill level of the injured worker.
- Vocational Training - 52 weeks (extensions subject to prior approval by the Board)

RECOMMENDATION 5b

That rehabilitation providers issue a report within 30 days of initial contact with an injured worker. Background information regarding the worker's age, education, work history, and general medical condition, as well as a summary of activities conducted during the 30 day period should be included in the report. Information regarding the next immediate plan of action should also be included.

RECOMMENDATION 5c

That plans submitted for approval contain pertinent information as outlined in proposed regulations on Vocational Rehabilitation 8 AAC 47.040(b)(1) through (9).

RECOMMENDATION 5d

That subsequent to implementing plans, rehabilitation providers issue monthly progress reports sufficient in content and scope to inform all interested parties of the progress being made toward achieving the vocational goal of the p n.

RECOMMENDATION 5e

That approval by the Board must be obtained prior to amendment, suspension or termination of an approved rehabilitation plan.

GOAL III

Provide for Early Return to Direct Employment

The extent to which injured workers are provided opportunities for return to direct employment is a primary determinant of the ultimate success of rehabilitation in a workers' compensation program. Administrators of rehabilitation programs for the Idaho Industrial Commission and the Office of Workers' Compensation Programs (OWCP) as well as others in the industrial rehabilitation community, support this premise. The Idaho program states as its primary goal: the earliest possible return of the injured worker to meaningful safe work. (See Exhibit 2). The OWCP, in an effort to improve its rehabilitation program has developed/endorsed return to work programs for injured workers covered by the Longshoremen's and Harbor Worker's (LHCA) and the Federal Employee's Compensation Acts (FECA). According to information received from the OWCP, 763 injured workers were successfully rehabilitated under the FECA for FY 81. Sixty eight percent of these workers were reemployed by their previous employers. Savings in compensation payments alone totaled 7½ million dollars. During the same fiscal year, 368 workers were successfully

rehabilitated under the LHCA, resulting in actual savings of 3½ million dollars in compensation payments. Twenty-three percent of these rehabilitated workers were reemployed by their previous employers. (See Table 5 for comparative figures on the rehabilitation programs of the Federal Acts, the States of Idaho and Alaska Compensation Acts)

Insurance companies can be exceedingly instrumental in helping their insureds develop reemployment programs. A carrier for a large employer covered under the LHCA reports services provided the employer in establishing a reemployment program approved by the OWCP, resulted in the employer rehiring 18 injured workers over a nine month period during FY 82. A 1¼ million dollar savings in projected compensation payments resulted from this effort. Additionally, the employer reported higher morale and reduction in suspected fraudulent claims as additional payoffs. That tremendous benefits are derived by the reemployment of injured workers by employers at the time of injury is too obvious for further elaboration.

CONCLUSIONS

There is little evidence in support of Alaska employers providing measurable opportunities for reemployment of injured workers. Only one self-insured reported having an organized return-to-work program. Figures to substantiate this effort were not afforded. The risk manager of a major employer indicated an extensive feasibility study has been conducted over the past year in preparation for developing a comprehensive reemployment program. A precious few employers reported a limited effort of temporarily assigning employees to light duty. On the whole, employers readily proclaimed the nature of their business precludes rehiring their injured employees: Their operations simply cannot accommodate workers with less than full body integrity. Insurer's comments contributed little to modify or change the complexion of this proclamation. Neither party admitted to having particular knowledge on how to improve this present state of affairs, although the suggestion of some insurers regarding performance of on-site-job analyses in cases of reemployment, dispells the notion of complete unawareness in this matter.

RECOMMENDATION 6

That insurers provide assistance to employers in developing programs for reemployment of injured workers.

RECOMMENDATION 7

That insurers/employers arrange for counselor services to include on-site-job analyses and assistance in modification of jobs to enhance reemployment opportunities of an employer's injured employees.

RECOMMENDATION 8

That the Workers' Compensation Division encourage the development and implementation of reemployment programs by providing positive monitoring/endorsement of the efforts of parties.

A few union representative claimed favorable dispositions to contractual agreements providing for reemployment of injured workers. However, previous

TABLE 5

Comparison Data for Four Workers' Compensation Acts with Provisions for Rehabilitation Benefits

Program	No. of Time Loss Workers	Received Rehabilitation Services		Worker's Successfully Rehabilitated			
		No.	% of Time Loss	No.	% of Workers Received Services	% of Time Loss Workers	% of Return to Work w/previous employer
1/ Alaska	6,356	249	3.9	72	28.9	1.1	Unknown
2/ Idaho	7,800	1431	18	344	24	4.4	38
3/ OWCP - 4/ FECA	47,982	7608	16	763	10	1.6	68
OWCP - 5/ LHCA	19,082	4947	26	386	7.8	2.0	23

Remarks:
1/ Figures based on information collected for FY 80 and 81.
2/ Figures obtained from FY 81 statistics of Idaho Industrial Commission
3/ Office of Workers' Compensation Programs
4/ Federal Employees' Compensation Act
5/ Longshoremens Harbor Workers' Compensation Act

efforts in this regard were reportedly rebuffed by management and were thus abandoned by labor. Trust fund sponsored, on-the-job training programs are provided for injured union members by at least two locals.

RECOMMENDATION 9

That contractual agreements be negotiated for reemployment/rehabilitation of injured union members.

GOAL IV

Maintenance of Atmosphere Conducive to Rehabilitation

CONCLUSIONS

The element of concern is sufficiently intangible to render itself unmeasurable in a quantifiable way. It is therefore difficult to present an elaborate discussion on the extent to which insurers/employers are concerned about their injured employees during the course of their claims. This would require a detailed examination of randomly selected files maintained by carriers, with particular notations made of such items as timeliness of first and subsequent compensation payments, timely and adequate provision of medical and rehabilitation services, the extent to which claimants were advised of their entitlement to benefits, etc. Moreover, the quality of contacts between the injured worker and the insurer/ employer would be difficult if not impossible to capture. The elements of communication, coordination and commitment lend themselves to more discussion, particularly in regards to rehabilitation.

In general, the extent and timeliness of communication with injured workers seem inadequate for the purpose of supporting a successful rehabilitation program. First, the lag between date of injury to date of referral as previously noted, supports the conclusion that injured workers are not timely contacted and advised of their entitlement or potential need for rehabilitation services. Second, rehabilitation reports and other correspondence reflect communication is sporadic and generally inadequate to ensure the rehabilitation effort of a successful and cost effective outcome. Progress in rehabilitation plans is not timely monitored or timely reported. Concurrently, coordination of activities necessary to develop realistic return to work plans is insufficient, so that inordinate delays and interruptions occur to the detriment of injured workers, the rehabilitation program and the compensation system alike.

As to the extent of commitment to rehabilitation in the Alaska system, the time lag from date of injury to referral for services, and the percent of time-loss workers provided services, (approximately 5.4), coupled with the percent of time-loss workers successfully rehabilitated, (approximately 1.1%) indicate this element too, is woefully inadequate to support a rehabilitation program.

RECOMMENDATION 10

That insurers/employers increase their efforts to effectively and timely communicate with injured workers by contacting them as soon after the injury as possible to explain their entitlement to benefits and the procedure for securing these benefits.

RECOMMENDATION 11a

That in the case of workers experiencing time loss, who may need rehabilitation services, insurers/employers assign a counselor to contact the worker as soon as this determination can reasonably be made.

There is a developing trend among leading insurance companies to hire a rehabilitation staff member who serves as a communication link between the injured worker and insurance company, as well as other appropriate parties in the system. This staff member assists in creating an atmosphere conducive to an early return to work and facilitates coordination and development of rehabilitation plans for those workers who may not be able to return to direct employment.

RECOMMENDATION 11b

That insurers/employers consider hiring a rehabilitation professional to enhance their ability to effectively communicate with, and timely provide services for injured workers.

GOAL V

Provision of Incentives, Removal of Disincentives

CONCLUSIONS

Incentives

A. Experience and Retro Rating

The extent to which these methods are used in rating Alaska employers is unknown and is beyond the presentation of this report. Their suggested use by authorities in workers' compensation has been sufficient to present them as incentives for employers to reemploy their injured workers.

RECOMMENDATION 12a

That insurers assist employers by providing loss control services to assure appropriate rating consistent with their safety record and reemployment practices.

RECOMMENDATION 12b

That to supplement the loss control services provided by insurers, employers seek the assistance of the States Division of Insurance in rating matters and methods.

B. Targeted Jobs Tax Credits

According to the Division of Employment Security, Alaska employers rarely take advantage of this tax credit when employing the industrially injured worker. Several factors, such as eligibility criteria and employer awareness may be influencing this. Whether counselors adequately advise employers of this incentive when attempting to place injured workers is unknown.

RECOMMENDATION 13

That counselors enhance their efforts to place injured workers by informing employers of Targeted Jobs Tax Credit provisions and by providing assistance necessary to facilitate employer participation in the program.

C. Additional Maintenance

Injured workers undertaking a rehabilitation program can receive up to two hundred dollars in additional maintenance to defray extra expenses incurred during their rehabilitation program. This provision appears to be adequately serving the purpose for which it was established.

D. Second Injury Fund

The Alaska Workers' Compensation Act has provisions for a Second Injury Fund to be administered in accordance with orders and awards of the Board. AS 23.30.040(a). Subsection (e) authorizes expenditures for rehabilitation expenses and maintenance during the period of rehabilitation which may not exceed $10,000 for one person. When it comes to placing limitations on rehabilitation benefits in a workers' compensation system, there is an inherent problem in stating these limitations in monetary terms: Expectations and rehabilitation plans are designed around the upper limits of the dollar amount, rather than around what services are actually needed to make the injured worker employable. The worker believes his is an undeniable right to a program which costs $10,000, even though a less expensive program may be more appropriate to restore his employability. The counselor views the $10,000 as the worker's personal account which he has a right to exhaust by charging the costs of items and services superfluous to his rehabilitation program. In settlement negotiations, the attorney seeks to include $10,000 in the total figure for rehabilitation benefits, which he argues is his client's right.

All parties appear to have forgotten a basic tenet in a workers' compensation rehabilitation program: An injured worker's <u>right</u> to rehabilitation services coexists with the <u>need</u> of the worker for such services. The type, scope and duration of a rehabilitation program will vary with each injured worker, depending on such factors as skill level, education, age and extent of disability. It is therefore, a reasonalbe assumption, that the costs of services will vary for individual programs. Provisions for rehabilitation should be made with this in mind which is the current practice in most state compensation programs.

RECOMMENDATION 14

That language in AS 23.30.040(e) be changed to remove the dollar amount and provide for necessary costs of rehabilitation services subject to Board approval.

This provision would enhance continual efforts of the Board to provide necessary expenditures for workers seeking to rehabilitate themselves back to the work place and at the same time, protect the investment of insurers/employers who support the Fund.

There appears to be a lack of employer awareness regarding the existence or purpose of the Second Injury Fund and its provision for pre-existing conditions, under AS 23.30.205. This incentive will not realize its basic purpose if employers are not aware of its nature or not encouraged to use it.

RECOMMENDATION 15

That the Workers' Compensation Division increase employer awareness and encourage employer use of the Second Injury Fund in employment of industrially injured workers. Increase publicity and eligibility interpretation will enhance this effort.

Provisions also exist for the Board to make cooperative arrangements with insurance companies, private organizations and institutions, and state or federal agencies to provide rehabilitation services to injured workers covered by the Act. Through the end of FY 81, the Board maintained a cooperative agreement with the Alaska Division of Vocational Rehabilitation. The agreement permitted transfer of lump sum funds from the Second Injury Fund on a fiscal year basis, to the Division of Vocational Rehabilitation, for the provision of rehabilitation services to injured workers in the compensation system. Currently, a cooperative agreement does not exist between the two agencies due to unresolved differences surrounding the Board's authority to approve rehabilitation plans submitted by counselors of the Division of Vocational Rehabilitation requiring Second Injury Fund expenditure. The wisdom of transferring lump sum Second Injury Funds to the agency, and attempting to renew a cooperative agreement between the two agencies is questionable for at least three reasons.

First, the traditional basis for forming cooperative agreements between a compensation and state rehabilitation agency may no longer exist. During the formative years of no fault workers' compensation, the sole provider of vocational rehabilitation services to the disabled population was the state vocational rehabilitation agency. However, the National Commission, as well as other authorities in workers' compensation, has detailed the past failures of state programs in general, to meet the needs of the workers' compensation system due to the philosophical differences of the two agencies. Additionally, there has been an emergence of private rehabilitation providers, who appear more able to gear their services to the needs of the compensation system. In view of these factors, cooperative agreements between the two agencies may well be obsolete.

Second, removal of Second Injury Fund monies from the administration of the Commissioner of Labor, by transferring them to another agency which has no administrative oversight in the workers' compensation system, undermines the commissioner's ability to effectively administer the Fund in accordance with the orders and awards of the Board.

The last reason has legal implications. As the law clearly assigns the administrative responsibility of the Fund to the commissioner, and transfer of monies from the Fund undermines the commissioner's ability to discharge that responsibility, it would appear that meeting the requirement of the law is precluded by a cooperative agreement. This issue is of particular

importance in view of the reluctance of the Division of Vocational Rehabilitation to respect the Board's authority to approve rehabilitation plans submitted by its counselors requiring expenditure of Second Injury Fund monies.

RECOMMENDATION 16

That cooperative agreements involving transfer of Second Injury Fund monies to the Division of Vocational Rehabilitation be discontinued.

RECOMMENDATION 17

That criteria for development, recommendation and implementation of rehabilitation plans, in accordance with recommendations 5a through 5e, be applied to all providers of vocational rehabilitation services to injured workers covered by the state compensation laws.

Disincentives

A. Premature Compromise and Release Settlements

Larson and other authorities in workers' compensation, are strong opponents to settlements which prematurely preclude an injured worker's participation in a supervised rehabilitation program. There is real concern for the worker who settles his claim and releases his rehabilitation benefits. He may quickly exhaust his settlement funds and find himself with inadequate skills to earn a living.

That workers submit applications for settlements to fund proposed self employment ventures, in lieu of participation in a supervised rehabilitation program, is common knowledge. Almost equally as common, and particularly disturbing in the Alaska system, and probably elsewhere, is the recommendation for such plans, without adequate documentation to support the soundness or feasibility of the proposals. The parties involved have varying motivations for this unfounded recommendation.

The injured worker views it as an opportunity to do what he has always wanted to do: Besides, he will not have to work as hard if he can work at his own pace.

The insurer/employer suggests it as a mutual agreement which affords an equitable solution toward the disposition of the claim: It will also relieve the insurer/employer of any future liability related to compensation and rehabilitation benefits.

Claimant's attorney argues it will allow his client to get on with resuming a normal life: It will also afford the attorney an immediate appreciable fee.

The rehabilitation counselor opines that: Given the workers vocational evaluation results, his interests and motivation to succeed, the proposed venture will afford him a realistic vocational goal: It will also provide the counselor with much needed relief from the task of developing a sound

rehabilitation plan, which has been difficult if not impossible to achieve in light of the worker's resistence to any plan other than the self employment venture.

In instances such as this, all parties seem to lose sight of the end goal of rehabilitation: The return of the injured worker to productive employment by restoring his ability to earn a living. The injured worker's desire to start his own business is inappropriately equated with the goal of rehabilitation. A self employment plan may restore the worker to productive employment which will afford him a livable wage, and thus is a means to an end. However, an unsound plan may not afford him a sufficient income and thereby fails to achieve the end goal of rehabilitation.

This is not to suggest that all self employment plans are unsound and thus should not be considered, or that all workers must participate in an approved rehabilitation plan before a claim can be settled. It is suggested however, that each plan must be carefully evaluated for its soundness and potential for successfully returning the worker to productive employment. In cases not involving self employment plans, claims should be settled only after a determination has been made that to do so is in the best interest of justice.

RECOMMENDATION 18

That as a general policy, the Board deny settlement of claims, prior to an injured worker's completion of a supervised rehabilitation program.

B. Excessive Litigation

Rehabilitation professionals providing services to inured workers in Alaska, readily attest to the activities of both the plaintiffs' bar and defense attorneys, as interfering in the rehabilitation process. Indeed this seems to be borne out by testimony during public hearings on Workers' Compensation and in the claims files of injured workers. Excessive litigation serves little if any useful purpose in the rehabilitation process and if allowed to exist, will undermine the primary objective of rehabilitation. It causes the focus to shift from restoring the worker's competative earning ability to highlighting his disability. In the ensuing process, rehabilitation is not used as an effective, productive tool for the long range benefit of the injured worker. It becomes a bargaining stick employed by the claimant's attorney in his quest to obtain his client's pot of gold, and it is simultaneously used as a trade-off carrot by the defense attorney to limit the employer's/insurer's future liability. To an appreciable extent, the Board can provide a remedial solution to this problem. Regulations, guidelines and well defined procedures regarding rehabilitation, will remove much of the need and opportunity to litigate issues surrounding the rehabilitation process. (See recommendations 1 through 5e).

C. Other Stimuli

Parties who refuse to cooperate or who sabotage the rehabilitation effort by passive-aggressive means, should be encouraged to cooperate through the application of remedial penalties acting upon both the insurer/employer and

the injured worker similarly. The Board has the authority to apply such remedies. A review of its more recent decisions and orders reflects an increased effort to make sufficient applications in support of the rehabilitation objective.

Delivery of Rehabilitation in Alaska's Workers' Compensation System

The Alaska Workers' Compensation program must have an effective rehabilitation delivery system if it is to meet its six obligations as outlined in the overview section of this report, and achieve the five specific goals of rehabilitation. Administrative monitoring and positive assistance to injured workers and all other members of the workers' compensation community, require the adoption of the recommendations set forth in this report. Despite the on-going efforts of the Division of Workers' Compensation to improve its delivery system to the workers' compensation community, it continues to lack the resources and staff necessary to achieve a successful rehabilitation program which will ultimately reduce the cost of the compensation system.

The savings experienced in other compensation programs cited in this report, resulted from the delivery of well managed, cost effective rehabilitation benefits. These results did not occur independent of the economic wisdom of administrators for those programs, who realized that a relatively small investment of resources would yield tremendous gains in the reduction of compensation costs to employers, injured workers and society.

RECOMMENDATION 19

That the Division of Workers' Compensation acquire the necessary staff to develop and implement a workers' compensation rehabilitation program designed to administer and monitor the rehabilitation benefits of industrially injured workers covered by the Alaska Workers' Compensation Act.

PHYSICIANS' CONCERNS

1. Rehabilitation counselors should consult with treating physician before contacting injured worker. The counselor often gives advise which conflicts with physician's planned course. Physician can pave the way and make the prospects of rehabilitation less threatening if he is aware of the counselor's contact in advance.

2. Workers should be advised of benefits from day one of injury. Rights and responsibilities of worker should be spelled out. This would reduce adversary atmosphere.

3. Employers engage in inappropriate hiring practices to begin with. Thorough pre-hiring physical exam should be conducted. Conditions incompatible with physical demands of certain jobs would be detected at that time.

4. Workers' compensation should take natural aging process into account. Wear and tear process should not be financed by workers' compensation system.

5. Remedies should be more vigorously applied to workers who fail to follow doctor's orders.

6. Attorneys are too involved in the rehabilitation process. Counselor, physician and injured worker should be primary parties involved.

7. Rehabilitation benefits should be consistent and uniformly delivered. There is no control in the present system. Physician and patient need rules to play by.

8. Employer must assume more responsibility to provide light duty work until worker can resume regular job.

9. Union dispatch precludes loyalty to the employer - Union regarded as the "employer".

10. Union rules should be more flexible to support rehabilitation.

11. Unions must assure worker's who are dispatched are physically able to perform the duties of the job.

12. Professional rehabilitation providers inadequate. A more clearly defined system would encourage more providers to practice in Alaska's system.

13. Services provided by DVR are not particularly geared to industrial workers - more effective with catostrophically disabled population.

14. Insurance adjusters have inadequate backgrounds in medicine and human behavior. Inappropriate actions against claimants result in adversary behavior by claimant; (foot dragging and going against doctor's recommendations.) Adjusters must use more amiable approach.

REHABILITATION COUNSELORS' CONCERNS

1. Attorneys often interfere with rehabilitation. Some attorneys forbid their clients to see counselors, insist on being present at every counseling session, attempt to dictate what program should be developed for the injured worker, and often advise their clients not to cooperate with the counselor by using passive aggressive tactics. Counselors would like to see guidelines or regulations developed which forbid attorneys to interfere or attempt to run the rehabilitation process.

2. The workers' compensation system expects counselors to be miracle workers. Successfull rehabilitation of injured workers in the compensation system is difficult if not impossible in light of the following:

   a. Inadequate requirements of workers to cooperate with the counselor.

   b. Ineffective enforcement of the vague rules presently existing in the system when evidence clearly shows the worker has been uncooperative.

   c. Some insurance companies act in good faith in attempting to arrange rehabilitation services for workers who need them. Other companies fail to make such arrangements and may even interfere when workers seek services on their own.

   d. Those companies that support the rehabilitation effort are often penalized as the Board allows uncooperative workers too many chances to cooperate. Limitations should be placed on these chances.

3. The Workers' Compensation agency should be staffed with rehabilitation professionals who determine which agency will provide services to injured workers in disputed cases. This would reduce the level of excessive "rehabilitation shopping" by all parties which presently exists, and it would eliminate dual assignment of rehabilitation providers by both sides.

4. Counselors have too little time as it is to provide adequate services to the disabled population. Requiring counselors to appear in hearings and other judicial processes further reduces the time counselors should be devoting to rehabilitating the disabled population.

INJURED WORKERS' CONCERNS AND REACTIONS

1. The system has gotten so complex that an attorney is absolutely necessary in proceeding with many cases. Yet, some injured workers were not advised that they needed an attorney until it was too late.

2. Injured workers have reported receiving "high pressure" from carriers to settle for smaller settlements than required by law. This included threats of holding up final settlement unless the injured worker agrees to carrier's terms.

3. Injured workers who realized later that they needed rehabilitation assistance, were not given any indication that the option was available, at the time of injury.

4. Benefits are either cut-off without notice or held up as part of pressure tactics. In cases of jobs which pay by commission, an injured worker reported that benefits stopped immediately upon taking the job, although it was 4 months before he received his first commission check.

5. There were positive reactions to some insurance companies' case management, in addition to positive feelings about some injured workers' rehabilitation experience.

6. There is concern expressed that DVR does not cooperate with the injured worker's interest in rehabilitation. This point was expressed in a case where the injured worker reported the counselor stalled 6 months in getting the program started and took 2 months in getting the purchase of a calculator approved.

7. Concern has been expressed over the proper medical treatment. The use of chiropractors is more helpful in some cases, yet is discouraged by some doctors.

8. Injured workers are frustrated that some of the jobs they are retrained for are not available on the job market when the rehabilitation program is completed. They wind up returning to their old job or taking a position which has a high probability of reinjury.

INSURER/EMPLOYER CONCERNS

1. The Act requires insurers/employers to provide rehabilitation services to injured workers. Thus, the insurer/employer should be able to determine which rehabilitation agency the worker will be referred to for these services. This would eliminate the current practice of workers/attorneys shopping around to find the counselor who will recommend the longest training program.

2. Claimants' attorneys should be restricted from practicing "rehabilitation" and submitting training/rehabilitation plans for their clients.

3. Insurers/employers should not be required to provide rehabilitation services to workers who refuse reemployment offers by employers. There should be a limit placed on the time an injured worker has to accept the offer.

4. When training plans are presented for approval, the Board should make every effort to ensure the need for training before approving the plan and requiring the insurer to continue total compensation payments. Training should be approved on the basis of <u>need</u> as opposed to the <u>desire</u> of workers who merely want a new career.

5. Counselors should be used to perform on-site-job analysis to determine if the job is compatible with the worker's restrictions. Presently, the physician, who does not have sufficient knowledge of the world of work, makes this decision based on the whims of the patient, who often misrepresents physical demands of a given job.

ATTORNEYS' CONCERNS

1. Alaska has an inadequate number of competent rehabilitation counselors. Often, workers do not have a choice and must use DVR.

2. Particular counselors are inconsistent in serving injured workers; engage in power playing to control worker's life; dabble in claims and legal matters; incorrect information given worker, sometimes intentionally, if worker has not followed the counselor's "rules".

3. Present system does not have mechanism to make rehabilitation work. No one to monitor system and keep parties in line, particularly counselors who behave in questionable manner.

4. Disputes regarding rehabilitation should be promptly heard and decisions timely issued. Delays destroy motivation for rehabilitation.

5. Artifical rehabilitation hurts workers with serious injuries.
   EX: Sixty-one year old worker w/65% rating. Has fifth grade education and no work skills other than heavy labor. Ineligible for retirement by 4 years. Placed in pie shop as a part-time wrapper. Paid $4.00/hr = $60/week = approx. $200/month. Counselor issued a report of "successful rehabilitation" so worker was found PPD, thus $60,000 limit applied. Questionable whether worker will be able to continue in work force due to severity of injury, age, and limited skills. If unable to continue working, $60,000 inadequate source of income for worker's remaining lifetime. If PTD, rating is precluded by "successful rehabilitation" stamp.

6. Board should penalize insurers/employers who misrepresent the law. Failure to advise worker of entitlement to rehabilitation is misrepresentation.

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APPENDIX OF EXHIBITS

CHAPTER 47
VOCATIONAL REHABILITATION

Section

10. Goal of vocational rehabilitation
20. Duties of the parties
30. Evaluation analysis
40. Vocational plans
50. Modification, suspension, or termination of vocational plans
60. Vocational rehabilitation definitions

CHAPTER 47

VOCATIONAL REHABILITATION

8 AAC 47.010. GOAL OF VOCATIONAL REHABILITATION. The board shall direct and provide for the vocational rehabilitation of employees entitled under the Act. Vocational plans formulated under the Act and this chapter must be designed to restore the injured employee to gainful employment. (Eff. / / , Register).

Authority: AS 23.30.005
AS 23.30.040

8 AAC 47.020. DUTIES OF THE PARTIES. (a) The employer, the self-insurer, the insurance carrier, and the employee shall promptly recognize the need for the evaluation of vocational rehabilitation and shall initiate necessary action to restore the injured employee to gainful employment as expeditiously as possible.

(b) The employee shall cooperate in all phases of vocational rehabilitation. The employee shall promptly and responsibly participate in a board-approved vocational plan when ordered to do so by the board. If the employee does not choose to enroll in a vocational plan, nothing in this chapter is to be interpreted so as to require the employee to do so. However, in cases where the employee chooses not to enroll in a vocational plan, or unreasonably refuses to complete a vocational plan, the degree of permanent partial disability will be determined as though the employee had enrolled in, and successfully completed, the vocational plan. The employee shall notify the board and the employer within 14 days of the first consultation with a vocational rehabilitation representative.

(c) The vocational rehabilitation representative shall notify the board and all interested parties within 14 days of the first consultation with an employee. Thereafter, the vocational rehabilitation representative shall file regular monthly reports with the board during the consultation period. Within 14 days of the final consultation, the vocational rehabilitation representative shall file a report of consultation which must contain the findings, conclusions and recommendations regarding vocational rehabilitation. (Eff. / / , Register).

Authority: AS 23.30.005
AS 23.30.040

8 AAC 47.030. EVALUATION ANALYSIS. (a) No vocational plan may be initiated until board approval has been secured. Board approval may be secured by any party by filing a petition for initiation of a vocational plan, accompanied by a written evaluation analysis. Copies of the petition and the evaluation analysis must be served upon all parties and the administrator of the Alas'a Second Injury Fund, in accordance with 8 AAC 45.060.

(b) A written evaluation analysis must be accompanied by copies of all medical reports referred to in the analysis and must, in addition, include

(1) an assessment of the employee's employable skills, including a synopsis of his work history and educational background;

(2) a summary of the disabilities limiting the employee's employment opportunities; and

(3) a specific accounting of the employee's pre-injury wage and an assessment of his post-injury wage-earning capacity.

(c) After the complete, written evaluation analysis has been filed the board will review the factors discussed in the analysis and will determine whether the employee is able to return to his previous employment or to modified employment or whether, instead, direct job placement, on-the-job training or formal retraining is necessary in order to return the employee to gainful employment.

(d) If the board determines that formal retraining is necessary, it shall direct the employer or the employee, or both, to initiate a vocational plan in accordance with 8 AAC 47.040. The board will give preference to direct job placement and on-the-job training over a formal retraining program. (Eff. / / , Register).

Authority: AS 23.30.005

8 AAC 47.040. VOCATIONAL PLANS. (a) Following evaluation in accordance with 8 AAC 47.030, a vocational plan may be initiated by direction of the board or by any person. Vocational plans must be developed by a qualified rehabilitation representative designated by either the employer, the carrier, the self-insurer, the employee, or the board.

(b) Proposed vocational plans must be submitted to the board in the form of a petition by the person responsible for initiating the vocational plan. The petition must be in writing and must include

(1) the gainful employment objectives of the vocational plan, including estimated earnings and reasonable availability of gainful employment;

(2) the name and location of the educational institution, public or private vocational training agency, or company or business involved in the vocational plan;

(3) the nature, extent, and duration of services to be provided during the period of rehabilitation;

(4) the dates of commencement and expected completion of the vocational plan;

make a determination by means of a hearing or hearings of the services necessary to restore the employee to gainful employment. (Eff. / / , Register).

Authority: AS 23.30.005
AS 23.30.040

8 AAC 47.050. MODIFICATION, SUSPENSION, OR TERMINATION OF VOCATIONAL PLANS. Any party may petition the board for modification, suspension, or termination of a plan. The petition shall be treated as any other petition under § 050 of this chapter. The board shall order the modification, suspension, or termination if it finds

(1) satisfactory progress is not being made in the approved plan; or

(2) the plan is not likely to prepare the employee for gainful employment due to unexpected contingencies; or

(3) the employee refuses to complete the vocational plan approved by the board; or

(4) a more suitable plan becomes available. (Eff. / / , Register).

Authority: AS 23.30.005

8 AAC 47.060. VOCATIONAL REHABILITATION DEFINITIONS. As used in this chapter

(1) "Gainful employment" means employment which is reasonably attainable and which offers an opportunity to restore the employee as soon as possible to maximum self-support, due consideration being given to the employee's qualifications, physical and mental condition, interests, motivation and incentives, pre-injury earnings and future earning capacity, and the present and future labor market.

(2) "Implementation of a plan" means commencement by the employee of an actual return-to-work plan of direct job placement, on-the-job training or vocational training in accordance with an approved vocational rehabilitation plan.

(3) "Initiation of a plan" means the creation and drafting of a written vocational rehabilitation plan.

(4) "Vocational rehabilitation" means a program of services, not limited to medical services, designed to restore an injured or disabled employee to gainful employment.

(5) "Vocational rehabilitation representative" means a person who possesses the special skills, knowledge, education, training, and experience necessary to develop and implement vocational rehabilitation plans.

(6) "Vocational rehabilitation plan" means the planning and providing of services, not limited to medical services, reasonably necessary to restore an employee to gainful employment. Such services include, but are not limited to, vocational evaluation, counseling, retraining, on-the-job training, and job placement assistance. (Eff. / / , Register).

Authority: AS 23.30.005
AS 23.30.040

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COMMISSIONERS
Gerald A. Geddes - Lawrence G. Sirhall - Will S. Defenbach

Worker Rehabilitation

Idaho
Industrial Commission
Rehabilitation Division

Exhibit 2

The Rehabilitation Division was established by the 1978 Legislature in an effort to reduce the period of temporary disability resulting from industrial injury or disease and to aid in restoring the disabled employee to gainful employment with the least possible physical impairment.

Who Benefits From Our Services?

- Disabled workers
- Employers
- Attorneys
- Physicians
- Society

What Are Our Goals?

- To provide for the earliest possible return of the injured worker to meaningful, safe work
- To return the injured worker to as near his pre-injury status as possible
- To reduce the period of temporary benefits paid injured workers

What Services Are Provided?

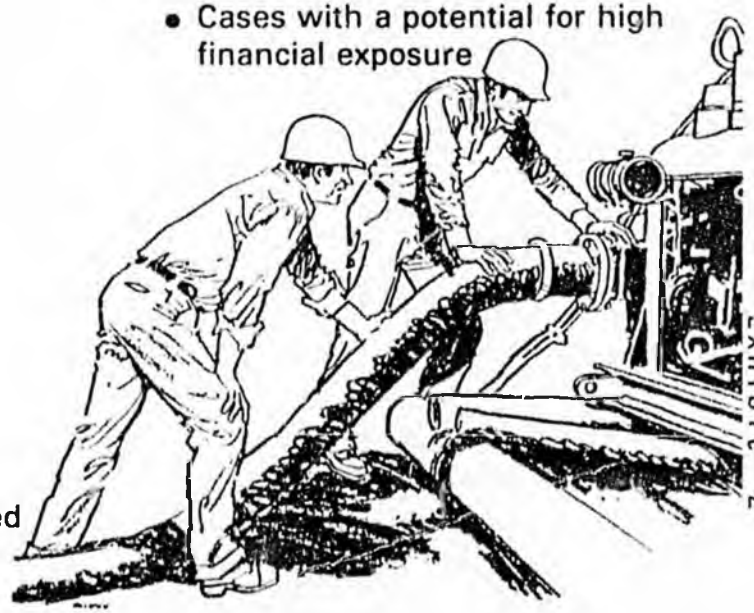
Services provided are those necessary to return the worker to a job with his former employer, or to a job similar to the one held prior to becoming injured.

Services available include:

- Vocational evaluation
- Job site evaluation
- Vocational counseling
- Assistance in job modification
- Training in job seeking skills
- Placement
- Follow-up
- Reporting system to those involved in the rehabilitation process

Who Should Be Referred?

- Workers requiring a change of occupation
- Cases with long periods of disability
- Injuries resulting in restrictions of function
- Cases with a potential for high financial exposure



Who Is Eligible For Our Services?

Workers receiving Idaho Workmen's Compensation benefits for whom the Rehabilitation Division can be of assistance in reducing the period of temporary disability or aiding the worker in a return to employment compatible with his disability.

Exhibit 2

House Labor + Commerce - Staff copy.

AN INTERIM REPORT ON THE ALASKA WORKERS' COMPENSATION SYSTEM

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January 27, 1982

INTRODUCTION

The purpose of this document is to analyze the major areas of concern within the Alaska workers' compensation system. The items discussed were chosen because of their economic significance, and in some instances because of existing controversies as to their proper role in the compensation system. Although many issues remain for additional discussion, those contained in this report represent the critical questions which must be resolved in order to develop an appropriate legislative response to the current workers' compensation controversy.

THE BUNKHOUSE RULE

The major criteria for determining the compensability of an accidental injury is whether it arose out of and in the course of the employment (AOE/COE). This phrase is contained in the Alaska Workers' Compensation Act as well as 48 others. Obviously this test must be interpreted in those instances in which compensability is disputed, and as a result, there is a huge volume of case decisions from across the country, providing additional and more specific guidelines for determining when the AOE/COE test has been met. Since the Alaska Workers' Compensation Act is relatively new, it did not go through the developmental period in which these rules were structured, and simply adopted existing guidelines, in many cases selecting the most far-reaching of available options. The bunkhouse rule is one of these guidelines.

Normally an injury must occur during the hours of employment and be caused by some incident of the work to meet the AOE/COE test. However, years ago the courts determined that when a worker is required to live away from home, particularly for extended periods of time, the test should be broader. This gave rise to the bunkhouse rule. The rule has many variations, all of which to one extent or another make the point that under these circumstances, injuries outside of normal working hours can still be deemed compensable, since the requirements of the job "forced" the employee to be in the circumstances which led to the injury. Despite some very unusual results, the bunkhouse rule has never been considered enough of a threat to the integrity of the workers' compensation system in any state to justify legislative intervention. In Alaska, due to the large number of remote work sites, the relatively high number of bunkhouse rule cases and the cost of even a minor injury, some question has been raised as to the continued application of the rule in its present form. However, any attempt at statutory modification of the rule should be undertaken with caution and something less than extreme optimism, because new language means new court tests, with unpredictable results. It may well be the fear of the unknown that has led other states to accept the certainty of existing case law rather than embark on the uncertain path of legislative action and subsequent court decisions.

A major consideration is whether the magnitude of the problem is worth the legislative effort. To date it appears that bunkhouse cases, at least those that raise questions about their propriety, do not constitute a significant expense when compared to the compensation system as a whole. However, they may very well constitute a significant portion of compensation expense for a number of employers.

Another consideration is the implications of modification of the rule. Assuming that a legitimate injury occurs at a remote site, but is not compensable due to the operation of a modified bunkhouse rule, the injured party will almost certainly incur considerable expense in returning to an area where medical treatment is available. There are a number of obvious solutions to this problem, but it cannot be ignored. One should also consider the impact on employers of a modification of the bunkhouse rule. The obligation to provide workers' compensation coverage grants the employer immunity from civil action by an employee only when an injury is compensable. A significant narrowing of the bunkhouse rule will increase the possibility of civil suits, which tend to be more expensive than workers' compensation cases. Given the standards which presently govern the question of liability in civil cases, many "minor" compensation cases could become "major" civil cases. Even the lowly broken tooth suffered during mealtime could find its way to the courts, if caused by a foreign or improper object in the employee's food.

A final consideration is a virtually unverifiable opinion expressed by a number of individuals familiar with the problem that most "abuses" of the bunkhouse rule result from a desire to return to civilization for various purposes and that any solution other than a better leave policy on the part of employers will simply lead to either "abuses" of the new rule or the development of other, equally expensive ways of getting back home.

The list of alternatives is practically endless. The following is a limited range of alternatives all of which can be modified and combined with others to reach the desired conclusion.

1. Limit compensable injuries at remote sites to accidents occurring during actual working hours.

2. Limit compensable injuries to those accidents occurring on the premises of the camp, regardless of the hour of occurrence or the activity engaged in.

3. Limit compensable injuries to those accidents occurring during working hours and those resulting from a special hazard directly related to the conditions of remote site living, such as a fire or weather related incident.

4. Eliminate from the range of compensable accidents those resulting from personal activities such as eating, and/or recreational activities.

MEDICAL BENEFITS

A number of concerns have been expressed, primarily by those on the employer/carrier side, over the impact on costs of the current physician selection mechanism, which leaves the choice of treating physician to the employee. On its face this is a totally appropriate method, but there are a number of competing interests which at least deserve consideration. A factor weighing most heavily in favor of employee choice, a method used by approximately half the states, is that it is the employee who is being treated, and who should be given the opportunity to select physicians he trusts. On the other hand it is the employer who is paying the bills, which leads to legitimate concerns over paying for doctors who may not be the best available, or whose primary reason for selection may be a willingness to give a high disability rating, which in turn may lead to increased compensation benefits. Obviously the employee may have reason to be equally as concerned about an employer/carrier choosing a physician primarily on the basis of a willingness to testify "properly."

Perhaps the most effective solution to this dilemma lies with the Board. Given the small number of health care providers in Alaska, the Board should be well aware of the abilities of each. If a party feels improper treatment is being provided, an expedited hearing will give the Board the opportunity to order a change in treating physician, if necessary. If a physician is consistently one-sided in his testimony, the Board should be able to take this factor into consideration in reaching decisions on questions such as causation and extent of disability. The only potential problem here is with the appellate courts, which in their decisions tend to limit the Board's authority to accept or reject testimony based upon evaluation of a witness's credibility. If the Board is to be encouraged to take steps to minimize problems in medical care, it may be necessary to provide specific legislative direction to the courts, to insure that the Board's authority is not diluted.

The use of physicians in contested cases simply because of their extreme views can also be limited by encouraging the Board to select impartial examining physicians to help resolve medical disputes, and by explicitly relying on experts in whom the Board has a high degree of faith. Once again some legislative direction may have to be given to the courts to permit the Board to accept such testimony in appropriate cases rather than that presented by the litigants. This type of action can send a message to litigants that it does not pay to use medical testimony from witnesses who are biased, and can also result in a moderation of positions taken by medical experts.

In conjunction with the foregoing, there are a number of methods of physician selection in use in various states which can be considered.

1. Pure employee selection, as presently exists in Alaska.

2. Pure employer/carrier selection, tempered by the ability of the employee to apply to the Board on an expedited basis for change.

3. Initial employee selection for a limited period of time, such as ten days, with the employer having the right to change at the end of the period.

4. Initial employer/carrier selection for a limited period, with the employee having the right to change at the end of the period.

5. Employee selection from a panel selected by the employer/carrier.

6 Employer/carrier or employee selection from a panel designated by the Board. This typically involves initial inclusion of all practitioners in the state, with removal from the panel by the Board for cause.

SECOND INJURY FUND

The sole purpose of a second injury fund is to encourage the employment of physically impaired persons, or perhaps more accurately, to minimize the disincentives to their employment. A simple example will clearly explain the theory behind the operation of second injury funds. If an employer hires a worker with no physical impairment, who then loses an eye in a compensable accident, the compensation payable in Alaska for that loss will be for a period of 140 weeks. However, if that individual had suffered the loss of one eye prior to employment, the result of loss of the remaining eye would be permanent total disability, with benefit payments continuing for life rather than 140 weeks. In order to eliminate this financial disincentive to hiring, the Second Injury Fund, as it is used in Alaska, would pay all compensation payments subsequent to the first 104 weeks of disability.

Unfortunately, attempts have been made, sometimes successfully, to use funds as tools to reduce an employer/carrier's liability after the fact, when the preexisting impairment was questionable, or the employer's knowledge of its existence doubtful. This type of improper fund use typically leads to stringent controls which in turn lead employers to question whether the fund will work in their favor even when they act properly. In the face of such uncertainty, it is doubtful that even the best intentioned employer will rely on a fund and consider its benefits when contemplating the hiring of a physically impaired worker. Alaska has suffered from this syndrome and now appears to be in the phase which makes it more difficult to obtain reimbursement from its Second Injury Fund.

If the Second Injury Fund is to serve its purpose, two elements must exist. First, benefits from the Fund must flow only to those employers who hire or retain in employment individuals with significant permanent impairments which would otherwise be an obstacle to employment. Secondly, employers must at the time of hiring be as secure as possible in the knowledge that should an injury occur they will be financially protected by the Fund. Presently, uncertainty exists in Alaska as to both elements, and as a result there is considerable doubt as to whether the existence of the Fund provides much incentive for hiring physically impaired workers.

A relatively simple change in procedure may provide the certainty needed in both areas to make the Fund an effective tool. In order to establish knowledge of the impairment at the time of hiring, the employer of a permanently impaired worker could be required to file a simple form with the Fund, settling that question without a doubt, and precluding "after the fact" attempts to prove the requisite knowledge at the time of hiring. To simplify the filing process, each individual who sustained a permanent impairment in a compensable accident could, when ready to reenter the job market, be given a simple two-part form to present to prospective employers. The form would educate the employer as to the protection offered him by the Fund and would also provide the documentation of employment to be forwarded to the Fund. In such cases the employer would be guaranteed the protection of the Fund, should a subsequent injury occur, and would thus be given the incentive to hire. If necessary, a similar mechanism could be used to provide documentation for employees whose injuries would qualify them for Fund protection in the future but were not the result of a compensable accident.

AVERAGE WEEKLY WAGE

For a number of reasons related primarily to the pipeline, Alaska uses a method of computing average weekly wage which is different than those used in the other 49 states. In determining average weekly wage, and in turn the weekly benefit, the injured employee is permitted to pick the calendar year out of the three calendar years immediately preceding the injury in which total wages were the highest, and then divide by 52 to arrive at an average weekly wage. In some cases, this can result in unfairness to one side or the other. For example, an employer with an injured worker may find himself paying weekly benefits in excess of actual wages because of a high paying job with another employer three years prior to the accident. Similarly, an employee with a new but permanent high paying job may find his weekly benefit a small fraction of wages being earned at the time of injury, because of low earnings in the prior three years. Even for those with consistent annual earnings the rule can work a hardship. For example, a worker in extremely seasonal employment who earns a substantial income while working half the year, and nothing the remainder of the year, will have his earnings based upon a 52 week average. If he is injured and is totally disabled during a portion of the season his actual income loss will be twice as high as the average weekly wage on which the benefit is based.

Due to the impact of seasonality, no solution which is even remotely equitable for all concerned can be found unless the various segments of the benefit system, such as temporary total disability and permanent partial disability, are dealt with separately. Therefore, most of the average weekly wage question will be dealt with in those sections of the report which deal with benefits.

There is one aspect of average weekly wage which can be considered independently of benefits. That is, what elements of remuneration should be considered in determining the amount of pre-injury earnings. In Alaska the major concerns in this category are room and board, and fringe benefits. Conceptually, room and board are to be considered as part of average weekly wage only to the extent that they reduce the amount an employee would have expended for these items if he was not working. For example, with regard to room, if an employee is away from home for a few days, and the employer provides living facilities, there is no reason for the value of the facility to be included in average weekly wage computations. This is because the employee was still paying for his own home or rental while away, and did not experience an increase in net income because of the employer's payments. In the case of the worker who may be at a remote site for many months, and live in a facility provided by the employer, resolution of the question is not so simple. Theoretically, the value of living facilities should be included in the wage calculation only if the employee does not maintain another residence while at the remote site, since if he continued to make mortgage or rent payments at home, there would be no net economic benefit derived from living at the employer's facility. Whether a dual system of this type is acceptable, with employees being treated somewhat differently based upon their living arrangements at home, is a matter that is of purely legislative concern, with each of the alternatives somewhat arbitrary in its application.

The question of board is much easier to deal with, at least as to the initial determination as to whether it should be included in the weekly wage at all. Since a meal provided by the employer means a meal that the employee does not have to pay for, the provision of board will always result in a net economic benefit to the employee, and thereby justifies its inclusion in the wage computation. The value of the meal, as well as the value of living facilities, is another matter.

If it is an accurate assumption that room and board cost more to provide on the North Slope than in Anchorage, the valuation of these items presents a real question. Once again on a conceptual basis, the value to the employee is not what it costs the employer to provide room and board, but rather the amount of net economic to the employee. This requires valuation on the basis of how much would have been spent for these items had the employee remained at home. Obviously theory is of little help in this instance, since applying as esoteric an economic theory as this would create an administrative nightmare. Unless the legislature is willing to leave the question of valuation to contractual agreement or litigation on a case by case basis, legislative action is required. The most efficient mechanism may be to give the Board rule making authority to establish room and board values on a statewide or regional basis, to be included in the average weekly wage computation in appropriate cases. This authority provides a great deal of flexibility, in that changes in economic conditions can be quickly reflected in the rules, and adjustments made without the need for additional legislative or court action.

A much more difficult question is how to treat fringe benefits such as hospitalization insurance and employer-funded pension plans. At the present time, almost by practice rather than case decision, these items are not included in the computation of average weekly wage in Alaska. This occurs despite the fact that a reasonable argument can be made for the proposition that the statute is broad enough to permit their inclusion. The issue is of more than academic interest. If at some point a court holds that fringe benefits must be included in the wage computation, many open cases from past years will be entitled to have the weekly benefit increased retroactively, which would result in an enormous economic impact on employers and carriers. This is in addition to the financial impact such a ruling would have on new cases, particularly in view of the high level of fringes in some employments.

From the standpoint of the worker, fringes which are not continued after injury represent an economic loss, and therefore, a basis exists for the inclusion of their value in weekly wage computation. From the standpoint of the compensation system, their inclusion creates administrative problems (which are not entirely insurmountable) and more importantly would provide most workers with weekly compensation benefits substantially in excess of their take home pay, a situation which may be considered something less than optimum in view of the disincentives which it creates. The arguments on both sides are endless, and if the legislature decides to deal with this question it will hear each and every one. Suffice it to say that virtually every other state has avoided including this type of fringe benefit in the wage computation, except on an isolated basis, and Alaska has managed to operate its compensation system without their inclusion. Unless the state is willing to take on the economic and social problems which would be created by fringe benefit inclusion, the legislature should act to clarify the law and avoid the potential for court decision.

TEMPORARY TOTAL DISABILITY

The purpose of temporary total disability benefits is quite simple. They are intended to replace lost income during the time that the injured worker is recovering and unable to return to work. In most states this is also the easiest type of loss to deal with, by simply replacing a portion of the income lost during the period of total disability, with duration measured primarily from a medical standpoint. However, the impact of seasonality on a substantial portion of the Alaska work force creates a situation which cannot be dealt with by traditional means. Therefore, the following analysis and proposed solution may very well be viewed as radical within the context of existing workers' compensation systems. It may also be the only way to establish equity for those receiving and those paying temporary total disability benefits in Alaska.

As previously discussed, the "best of three" method for determining average weekly wage, and thereby temporary total disability benefits, creates problems for all concerned. If one accepts the proposition that temporary total disability benefits are intended to replace lost income during the period of recovery, then the wage basis used to compute these benefits must reflect the income which would have been earned during this period, rather than the level of income earned three years previously. This can be accomplished more accurately by applying the traditional average weekly wage formula used in a significant number of states. The period of comparision, rather than one of the preceding three years, would be the 13 weeks immediately prior to the injury. If the injured employee was not employed for substantially the whole of 13 weeks, the wages of a similar employee who was so employed are used, and if no similar worker is available, then the average weekly wage would be based upon the contemplated full-time wages of the injured worker. Since workers in seasonal employment tend to be highly paid, use of this mechanism may also require an increase in the maximum weekly benefit, so that the higher paid worker is not deprived of adequate income replacement due to the application of an inappropriate weekly maximum.

Of course there is another side to the coin. For the seasonal worker, this level of income replacement is only proper during the period of time that income would actually have been earned. To take the extreme case, is it correct to provide temporary total disability benefits when the injury occurs on the last day of the job, and recovery takes place during a period of time when the employee would have been receiving unemployment benefits? If the answer is no, then temporary total disability benefits in Alaska should be more closely matched to periods of gainful employment, rather than merely relying on the employee's physical condition, with unemployment benefits replacing workers' compensation benefits during what normally would be a period of unemployment. Obviously this method creates new opportunities for litigation, which may make it unacceptable. The only way to determine if the cure is worth the price is through an open discussion involving those primarily concerned, employees and employers. The answer depends upon the extent to which employees are currently being deprived of proper benefits due to the operation of the existing law, the extent to which employers are currently paying what may be considered excessive benefits during periods of seasonal unemployment, and the difficulties which will have to be overcome if "income matching" is to be accomplished in a significant number of cases.

PERMANENT PARTIAL DISABILITY

In every workers' compensation system the most expensive element, and the most controversial, is that of permanent partial disability benefits. Much can and has been written about the history, development and philosophy of permanent partial disability benefits, and some of it is quite interesting. However, what is necessary at this time is simply an understanding of the various benefit alternatives available for compensating permanent partial disability, a philosophical decision as to the reasons for which Alaska wishes to provide such benefits and, based upon that decision, the development of a mechanism and formula to distribute those benefits appropriately.

Permanent partial disability results when an individual is injured and having recovered to the greatest extent possible is left with a physical problem which did not exist prior to injury. If the condition is severe enough to totally destroy the individual's ability to obtain and retain gainful employment, the result is classified as permanent total disability. What we are concerned with here is that class of cases in which a permanent physical problem exists, but the ability to earn has not been totally destroyed. At this point there are three basic criteria which can be used to determine who is to receive permanent partial disability benefits, and in what amount.

The first theory is based upon permanent physical impairment, and is often referred to as the "whole man theory." Pursuant to this theory, the amount of benefits payable for permanency is determined on the basis of the degree of permanent physical impairment suffered, a purely medical determination, without reference to its effect upon the individual's life, employment or economic status. Assuming equal average weekly wages, a lawyer and a machinist who both suffered equally serious hand injuries would receive the same amount of money for their injuries, despite the probable difference in economic impact.

The second theory deals with loss of wage earning capacity, which takes into consideration not only the degree of physical injury, but also its probable impact on the ability of the individual to earn a living. This requires that in the event of a dispute, the fact finder must predict, usually quite soon after release from active medical care, what effect the injury will have on the individual's ability to compete in the open labor market. The test does not require any economic loss to occur and in fact, because the concern is with loss of capacity, a substantial award for partial loss of that capacity is in no way inconsistent with a factual situation in which the employee remains with the same employer and on the same job track until normal retirement, with no economic loss resulting from the injury. Typically, if this prediction, which usually takes the form of an award, proves wrong, nothing can be done to modify it in the absence of a change in the employee's actual physical condition.

The final alternative for paying permanent partial disability benefits is what is commonly known as the "wage loss" method. This system involves paying benefits based solely upon actual loss of income resulting from the effects of an injury, with the amount of the loss determined as it actually occurs, rather than on a "prediction" basis as would take place under the earning capacity loss theory described above.

Alaska follows a pattern used in well over half the states, with a few unique twists, starting with a combination of the impairment theory and the earning capacity loss theory. If a permanent injury is limited to a[illegible] of the extremi-

ties (fingers, toes, hand, leg, etc.) or the eye or hearing, the amount of the benefit paid is based solely upon the physical impairment sustained, which in turn is based almost solely upon medical evaluation of the loss. The actual benefit calculation is accomplished by first determining the workers' weekly benefit rate, which is 66 2/3% of his average weekly wage, subject to a maximum of $942 per week. Sec. 23.30.190 of the Act is then consulted, which contains a schedule indicating the weeks of benefits, at the rate just described, for total loss or total loss of use of the particular bodily member involved. For example, total loss of an arm results in benefits being paid for 280 weeks, at the individual's weekly benefit rate. If the loss is less than total, the worker is paid benefits for the proportionate number of weeks. For example, a 50% loss of use of the arm would result in benefits paid for 50% of 280 weeks or 140 weeks. This method of benefit computation, known as "the schedule", is used to one extent or another in most states in the manner just described, but Alaska has complicated the picture to some extent by adding another limitation, that of a maximum dollar amount. For example, while the loss of an arm is theoretically 280 weeks of compensation, it is also subject to a dollar maximum of $43,680.00. This means that anyone whose weekly benefit is in excess of $156 (over 75% of injured Alaskan workers) will not receive the full 280 weeks provided initially by the statute. In fact, the average injured worker will only receive 136.5 weeks of compensation for total loss or loss of use of an arm. The same result holds true, within a few dollars and a few percentage points, for all of the other injuries covered by the schedule.

For those injuries not covered by the schedule, primarily back and head injuries, the benefit is based upon loss of wage-earning capacity, which is determined by computing the difference between earning capacity prior to injury and after injury, and replacing 66 2/3% of the difference, on a weekly basis. Theoretically these benefits are payable for life, but in reality are subject to a maximum dollar amount of $60,000.00. Although, as previously mentioned, earning capacity loss does not require actual loss of earnings, the Alaska statute does require that determination of the amount of loss in the first instance be accomplished by considering actual post injury earnings, but if actual earnings are found not to "fairly and reasonably" represent earning capacity, other factors can be considered, and an award made which is at variance with the actual economic loss sustained. Application of this "adjustment factor" varies from time to time, primarily due to changes in the philosophy of the Board, which must determine the degree of loss in contested cases. At the present time, the Board appears to place heavy reliance on actual earnings, and in many instances applies the law in a manner approaching that of a wage loss system, with benefits determined on a weekly basis as actual loss of income occurs.

Each of these methods contains a number of flaws, in both the amount of benefits which may be paid to an individual worker, and in the problems inherent in determining the amount to be paid. From the standpoint of getting the money to the people who need it, the impairment method is the weakest of the three. Historically, workers' compensation has placed major emphasis on paying benefits to replace economic loss, and since the schedule or impairment method does not consider economic loss at all, it misses the mark in most cases. Its primary justification is ease of application, since there is supposedly very little to argue about when determining the extent of physical impairment. However, it has been found that it is relatively easy to locate doctors who will be 20 to 30 percentage points apart when evaluating the same injury, and as a result use of a schedule does not guarantee an absence of litigation.

It is possible to minimize these shortcomings in two ways. First, if guidelines are adopted for the determination of the extent of impairment, such as those published by the American Medical Association, it is relatively easy to avoid significant disagreement among medical experts. Secondly, some degree of economic reality can be incorporated in the schedule, as is done in California, by modifying the weeks to be paid in a number of ways. On the assumption that the economic impact of an injury increases geometrically, rather than proportionately as severity increases, the schedule can be "stepped" so that one week of benefits may be payable for each of the first 10 points of impairment (1-10% impairment), two weeks paid for each of the next 10 points, three weeks for each of the next 10, and so on. In this manner an individual with a 10% loss of use of the arm would receive 10 weeks of compensation and someone with a 20% loss would receive 30 weeks, reflecting an assumption, of limited validity, that the economic impact of a 20% loss is more than twice as severe as that from a 10% loss.

The weeks payable can also be modified to take into consideration other factors such as age, type of occupation (physical vs. sedentary), and amount of education, with a percentage increase or decrease in the rating depending upon the answers given to relevant questions contained in a rating formula. Obviously this significantly increases the liklihood of litigation, so that a price is paid for attempting to make the schedule more economically realistic.

Use of a schedule basis raises an interesting question as to the development of average weekly wage, particularly if an unmodified schedule based totally on physical impairment is used. Since economic impact is being ignored, there is no reason to tie the amount of benefit to average weekly wage. The fact that one worker makes more than another does not mean that his arm is also "worth" more, and in fact the opposite may be true. As a result, if an impairment schedule is used, the amount of benefits to be paid can be established legislatively as a specific dollar amount for each loss, to be paid in every case regardless of the individual's earnings.

Application of an earning capacity loss system also presents a number of problems, primarily on the operational side. From a philosophical standpoint, it more closely follows the basic workers' compensation premise of dealing with economic loss, although as previously described it is entirely possible to pay benefits for loss of capacity in cases in which no actual economic loss ever occurs. In fact, the few studies which have been undertaken tend to show that only a minority of cases demonstrated significant economic loss several years after injury, although in most of those cases the loss was significant.

Another finding from these studies demonstrates a more serious problem with earning capacity loss systems. For most of the cases with significant losses, the compensation paid was totally inadequate to deal with the economic loss incurred, while in the remaining cases the amount of compensation paid was far in excess of the loss. This resulted primarily from the fact that the award must by its very nature be a prediction, and an estimate, a task which is probably beyond the ability of mere mortals. There are simply too many variables determining the effect an injury may have on a given individual, and attempts to make the award fit the case are something less than accurate. Also inherent in this uncertainty is the need for lawyers and litigation in order to arrive at a "correct" decision. Since a determination of loss of earning capacity is strictly a judgment call, a claimant would be foolish to simply accept a determination made by the employer/carrier, and would be equally foolish to go before the Board without an attorney to present his case. Unfortunately there is little that can be done to eliminate these problems without virtually switching to another benefit system.

For purposes of determining loss of earning capacity, the computation of average weekly wage should simply reflect a realistic and established preinjury earning capacity. Since in this type of system we are not concerned with matching benefit payments with actual loss of income, it is possible and preferable to base the wage on average earnings for a recent but extended period of time, such as the previous twelve months. Given a willingness to accept the opportunity for additional litigation, the Board could be given the authority to modify the figure arrived at in this manner, if it can be established that because of extraordinary circumstances the figure is significantly high or low.

The third and final alternative is a wage loss system. In its purest form, it provides benefits only in the event of actual loss of income attributable to the injury. This immediately raises a question as to its fairness, since in the extreme case an individual who suffered a loss of limb but was able to return to full employment would receive nothing in the way of benefits for his injury. While this may not be inconsistent with historical workers' compensation philosophy, it does leave a great deal to be desired when applied in real life. This problem can be cured by paying an impairment award, preferably limited to serious injuries, regardless of any wage loss benefits which may also be due.

Another problem may result from comparing preinjury wages with inflated post-injury wages, an obvious inequity. This can be limited to a great extent by adjusting the comparison to take into consideration the change in wage rates through time, although given the experience under the Longshore Act, it is questionable whether an unlimited adjustment would be acceptable.

For Alaska, use of a wage loss system would raise two very significant questions. First, a wage loss system can only be successful, from a cost standpoint, if the great majority of workers can be returned to jobs which pay the same or almost the same as those held at the time of injury. If the frequently heard statement that "there is no light duty in Alaska" is true, adoption of a wage loss system would be an economic disaster. Similarly, if union rules are so strict that a worker with a permanent injury cannot be given preferential treatment in obtaining work within his capabilities, the ability to return people to gainful employment would be greatly reduced, and the benefits of a wage loss system eliminated.

Secondly, serious consideration must be given to the system's ability to determine when an income loss is "due to the injury" rather than some other factor, such as the end of the season. As in the case of temporary total disability, use of a wage loss system depends on matching benefit payments with actual economic loss, so that factors such as end of season, a return to a state with lower wage levels, and an individual's desire to reduce his workweek must all be taken into consideration in determining wage loss. If this cannot be accomplished with a fair degree of accuracy, the system would be a total disaster.

While research is continuing in an attempt to determine the ability of Alaska employers to return injured individuals to the workplace, in the final analysis a decision on these potential problems can only be reached by joint labor/management discussions. It is doubtful that anyone else can or should determine whether this type of system can be used effectively in Alaska and without their concurrence an attempt to implement a wage loss system would probably result in economic disaster.

If a wage loss system is adopted, the computation of average weekly wage would closely follow that recommended for temporary total disability. The wage base should reflect the weekly wages actually earned during the period of employment, whether it be six months or a year, so that the comparison of pre- and post-injury wages will reflect the actual loss incurred. Therefore, a 13 week average, or something in that range, would be appropriate, with the safeguards described in the temporary total disability section.

PERMANENT TOTAL DISABILITY

Statistically, permanent total disability benefits do not constitute a significant proportion of the overall cost of workers' compensation in Alaska, although the state does rank sixth nationally in frequency of permanent total cases. This does not mean that permanent total disability does not significantly impact on the compensation system. Its importance is hidden to a great extent, because its effects are felt in the area of permanent partial disability benefits. This is due to the threat of a case becoming a permanent total, with lifetime benefits and no dollar maximum, which results in cases being settled at levels approaching their maximum permanent partial disability value, $60,000.00, instead of being litigated, and possibly resulting in a finding of total disability.

As mentioned previously, permanent total disability occurs in those circumstances in which the injury is so severe as to totally destroy, for all practical purposes, the ability of an injured worker to obtain anything other than intermittent and financially insignificant employment. In cases in which the physical injury is severe, there is usually no question as to the individual's entitlement to total disability benefits. However, of concern to the Alaska compensation system is the worker who retains relatively substantial physical abilities, but claims to be or is actually unable to work because of the limited job opportunities in the area. For example, should an injured worker who cannot find employment in Eagle, where he lives, have his workers' compensation status determined on the basis of Eagle alone, or should the availability of suitable employment in other parts of the state be considered? And if there is no suitable employment in Alaska for someone injured shortly after moving to the state, or who has indicated in some manner that working in Alaska is temporary rather than permanent, should employment opportunities in the lower 48 be considered? Again there is no correct answer, only issues that are appropriate for legislative decision on a policy basis.

At the present time the statutory provision dealing with permanent total disability, Sec. 23.30.180, provides virtually no indication of the factors to be considered in determining total disability status. This is left to the courts, and results in a great deal of uncertainty as to the possible outcome of individual cases. Although no statute can eliminate the potential for court involvement, the legislature can create a great deal more certainty by enacting amendments to Sec. 23.30.180 which provide clear policy guidelines to those who must apply the law.

WCCA

Position Paper

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Prepared by

The Workers' Compensation Committee of Alaska (WCCA)

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SECTION I: LEGISLATIVE CHANGES

MAXIMUM BENEFITS:

Currently, maximum weekly benefits allowed under Alaska Law (AS 23.30.175) are based upon 66-2/3% of actual wages, but never more than 167% of the average weekly wage in the state. In 1981, the average weekly wage factor will increase to 200%.

This formula does not recognize that workers whose salaries are much higher than the state average weekly wage have considerable discretionary income.

WCCA POSITION: that the following benefit schedule be used in place of the current method of calculating benefits:

1. 66-2/3% of wages up to 150% of the average weekly wage, PLUS,
2. 40% of wages falling between 150% and 200% of the average weekly wage, PLUS,
3. 20% of wages falling between 200% and 300% of the average weekly wage.
4. No benefits for wages in excess of 300% of the average weekly wage.

The following table shows what will happen to benefit payments based upon a $393 average weekly wage under the current formula using the 200% factor to be applied in 1981. To the right is the benefit payment indicated by the recommended new formula.

WEEKLY WAGE Time of Injury	WEEKLY BENEFIT Existing	WEEKLY BENEFIT Proposed
$ 200.00	$133.00	$133.00
393.00	262.00	262.00
600.00	400.00	397.00

$ 800.00	$533.00	$475.00
1,000.00	667.00	515.00
1,179.00	786.00	550.00

PERMANENT TOTAL DISABILITY:

Based upon medical facts and the worker's occupation, an injured worker may be classified as having a permanent injury. Permanent injuries are then further distinquished as being totally disabling or partially disabling, and long term wage loss benefits are paid accordingly.

Currently a worker can be classified as totally disabled rather than partially disabled in two ways: One (1) Automatically presumes a worker to be totally disabled if he/she loses both or any mix of two hands, arms, feet, legs or eyes, and Two (2), a determination is made of the actual facts of the injury case in question.

Actual case histories show that some workers who have lost the use of two or more limbs can, and have, returned to their former employment successfully.

WCCA POSITION: that the Alaska Statue (AS 23.30.180) which automatically presumes a worker to be totally disabled be repealed and (second) that an actual case by case determination sha establish the level of disability of the injured.

PERMANENT PARTIAL BENEFITS-UNLIMITED

Currently, a worker with a permanent partial injury can collect benefits for an unlimited period of time. This results in a loss to the workforce for workers who can return to some form of work but are not encouraged to do so since benefit payments continue.

WCCA POSITION: that a worker with a permanent partial injury be entitled to benefits for a thirty-six (36) month maximum period. To receive benefits beyond thirty-six (36) months, the worker must qualify for a permanent total disability status, in which case benefits would extend for life.

AVERAGE WEEKLY WAGE CALCULATION

When calculating the wage loss benefit payable to an injured worker, an average weekly wage is determined by finding the highest annual wage earned by the worker in any one of the three years prior to injury and dividing that total by fifty-two (52). As a result, wages earned during a "boom" period over the last three years can significantly increase the wage loss benefit payable to the injured. That benefit may be even greater than the worker's wages at the time of injury.

WCCA POSITION: AS 23.30.220 One (1) be amended to read as follows, "The formula for calculating average weekly wage be the total of the injured worker's preceding years wages (including self-employment wages) divided by fifty-two (52)."

FILING TIME LIMITATIONS

The time limitation (AS 23.30.105) for filing a Workers Compensation Claim in Alaska is as follows:

A. Within one year after job-related death
B. Within two years after knowledge of a job-related disability
C. Within two years after the last compensation payment
D. No time limit for latent injuries (example-asbestos related cancer).

Those (above listed) limitation are signifcantly broader than those of other states.

WCCA POSITION:

A. No change
B. No change
C. An injured must file within one year after the last compensation payment (for a recurring/disabling injury).
D. No change

OFFSETS TO WORKER'S COMPENSATION BENEFITS

Current law allows for duplication of benefits in some instances. Although these situations are rare, the law should be amended to prevent benefit duplications.

1) If a worker is receiving unemployment benefits and files a worker's compensation claim (for an on-the-job injury), he can legally collect both benefits.

WCCA POSITION: that if worker's compensation benefits are currently being paid, then unemployment benefits should cease. It is the intent of the law that benefits are intended to pay wagge loss only for the period of time a worker is unable (due to injury) to work.

2) It is possible for an injured worker to collect both sick pay benefits and worker's compensation benefits for a short period of time.

WCCA POSITION: that the sum of these weekly payments be limited to 100% of the worker's wage, with the worker's compensation benefit being paid first.

3) An injured worker may currently collect retirement benefits to which he/she is entitled in addition to worker's compensation benefits.

WCCA POSITION: that worker's compensation benefits be reduced by the amount being paid in retirement benefits.

CHOICE OF PHYSICIAN

In order to ensure quality medical treatment and to contain costs at the same time, the treating physician should give direction to the injured worker's care. Alaska's liberal policy of free and open choice of physicians sometimes result in duplicate treatment, lack of coordination between treating physicians and specialists, or an occasional "shopping spree" by the injured for the elusive "cure" to pain. A malingering worker may search for a physician who will support his claim to injury.

With exceptions (which follow), the employer or insurer should be allowed to provide an injured worker with a list of at least two physicians in the geographic area for treatment. These physicians should be specialists (where necessary) based upon the nature of the injury. They should not be selected based upon their fees charges, but on their interest in the industrial injured and desire to provide efficient medical services to return the work to a productive life.

The exceptions to the use of physicians as described above are twofold:

1. If an injured worker has seen a family physician or a physician in the specialty required to treat his injury in the prior twelve (12) months, he may be treated by that physician.

2. If the injured worker is not responding to treatment or is otherwise dissatisfied with the first selected physician, he may choose another physician from a list of three other physicians in the geographical area. This list will also be provided by the employer or insurer.

WCCA POSITION: sufficient change in the law to reflect the preceding statement and/or policies.

PAIN CLINICS

In addition to the pain associated with an injury during treatment and healing, pain often persists after complete healing in the form of chronic or "learned" pain behavior. To the worker experiencing such "learned" pain, it is real and often prevents the worker from feeling prepared to return to work.

Pain clinics existent in Alaska have developed techniques for treating such pain. The Worker's Compensation Board and the adjustors of insurers should be encouraged to utilize pain clinics to eliminate any significant extensions of benefit payments period, and costly, time-consuming legal arguments over the preparedness of a worker to return to work.

WCCA POSITION: that the applicable Alaska Statutes be amended to reflect the above position.

HEARING REPRESENTATIVES

The role of the Worker's Compensation Board is to expedite the resolution of disputes between the injured and employers of their insurers. This system in intended to provide rapid and fair determination on the factual issues being disputed.

It is intended that the Board itself be a point of initial review of disputes and cases can later be appealed to Suprior or a higher Court. Often there is no need for either party to be represented by counsel. However, a large per cent of disputes heard by the Board involve attorney representation.

It would be determined that when appearing before the Board the injured needs to be or not to be reprensented by counsel. The insured should be encouraged not to utilize counsel but rather hearing representatives (trained claims people). In short, a fairness in adequacy of representation should be examined, and procedures at the hearing be established. Better hearing procedures can and should result in a significant expense savings due to reduced attorney costs for both employer or insurer and the injured.

WCCA POSITION: that the appropriate Alaska States be changed to reflect the preceding statements and opinions.

EXTRAORDINARY CONSTRUCTION

The development of the Trans Alaska Pipeline System resulted in a tremendous increase in the number of workers in the sate. In addition, wages paid to many workers were much higher than those previously paid. Worker's Compensation claims costs for pipeline development injuries were much higher than for other work-related injuries in Alaska during 1977 and 1978. The cost of all pipeline injuries included in loss experience data supplied to the Division of Insurance for company premium rate purposes drove the cost of all insurance for all Alaska employers to a new high.

If another extraordinary construction project (Alaska-Canada Gas Pipeline or the Capitol Relocation) occurs in the future, the Division of Insurance should segregate the actual premiums

and losses of this (these) project from other Alaska experience. This will allow other employers in the state a fair rate from which to pay benefits to the injured worker.

WCCA POSITION: that the applicable Alaska Statutes be amended to reflect the above position.

SECTION II: ADMINISTRATIVE CHANGES

COMPROMISE AND RELEASE AGREEMENTS

A permanently and totally disabled worker will receive wage loss benefits and medical expense payments on a continuing basis unless the worker and the employer or insurer agree to a compromise and release agreement in a lump sum payment in lieu of weekly wage loss benefits.

Currently, compromise and release agreements are not permitted on the future medical expense portion of benefits.

WCCA POSITION: that such agreements be allowed on medical expenses with approval of the Worker Compensation Board to ensure that the settlement amount is in the best interest of the injured worker.

PHYSICIANS' FEES

Physicians treating injured workers often incur additional costs to provide employers or insurers with written reports on the treatment given. These costs are passed on as additional fees which is appropriate and equitable. However, there are not adequate means of limitation on the many fees charged by different physicians for the identical services.

WCCA POSITION: that the Division of Worker's Compensation accumulate and publish "average or customary" fees charged for specific treatments by physicians. This publication should be used to evaluate the propriety of fees charged for worker's compensation injuries.

DELAYS IN HEARINGS AND RULINGS

The Division of Worker's Compensation has not been provided a sufficient budget to staff the Board sufficiently to expedite hearings and rulings. As a result, a worker can be without income for extended period of time until the backlog before the Board is cleared. Disputes between workers and employers or insurers over benefits must be resolved quickly to prevent any undue hardship.

WCCA POSITION: that the Division of Worker's Compensation should be funded to hire additional qualified (as needed) hear- officers to expedite decisions. It is further recommended that initial hearings should be conducted by one hearing officer and that appeals should be presented to the entire Board in a timely manner.

BROCHURE

Small employers and most workers within the state do not have a clear understanding of the benefits and responsibilities accruing from the Worker's Compensation Laws in Alaska. This is tre in almost all other states as well.

The State of California has addressed this problem by developing an easy-to-read brochure for workers describing the benefit plans, claim filing procedures, grievances and differences with insurers. Although voluntary, insurers have provided these brochures to insured employers for distribution to workers.

WCCA POSITION: developing and distributing such a brochure (voluntary) in Alaska will improve the knowledge of workers

regarding the benefits and procedures applicable under Alaska Worker's Compensation Laws. This should result in reduced hearings to resolve compensation disputes and also reduce the need for attorneys costs on behalf of injured workers unsure of certain legal rights.

SELF INSURANCE

Self-insurance is a legitimate means for a large organization to provide benefits to injured workers directly from the assets of the company or corporation rather than purchasing insurance coverage from an insurer. The Worker's Compensation Division is granted the authority to approve self-insurance plans but lacks the staff and technical knowledge necessary to evaluate the ability of a self-insured organization to absorb the cost of claims. Without appropriate evaluation, there is a substantial risk that an organization will not be able to fulfill its financial responsibilities to the injured.

WCCA POSITION: that the Worker's Compensation Division develop a unit to monitor activity and effectively regulate self-insured organization to ensure that injured workers will receive all benefits due them.

CASH FLOW PROGRAMS

A Cash Flow Program is an alternative to self-insurance enabling the large employer to reimburse the insurer for all claims costs whenever those costs are paid. Re-insurance is usually purchased for costs exceeding a specific amount, (usually $100,000.00 or more) on any one claim.

Under this concept, premiums are not paid to the insurer until after the claims payments have been made. The employer (by irrevocable bond or bank letter of credit) is generally required to guarantee payment of premiums when due.

Currently, the State of Alaska does not allow premiums receivable (under Cash Flow Programs) to be included in the assets of an insurer.

WCCA POSITION: that the Division of Insurance develop regulations which will allow Cash Flow Programs to be utilized as outlined above by large employers and insurers.

HEALTH CARE INSURERS

Large employers must administer plans for health and disability insurance through Health Care Insurers. Worker's Compensation on the other hand, is administered through Casualty Insurers. Large employers may also utilize self-insurance plans.

Employers are not presently permitted to utilize Health Care Insurance for the purchase of Worker's Compensation insurance. Although there is not assurance that cost savings may result from combining health and disability insurance and Worker's Compensation insurance into a single plan with one insurer, employers should be allowed an opportunity to pursue such combined insurance plans.

WCCA POSITION: that the Division of Insurance develop regulations permitting coverage as outlined above on a combined basis.

ACCIDENT YEAR STATISTICS

The National Council on Compensation Insurance (NCCI) is a

statistics gathering organization licensed by the Division of Insurance. NCCI computes Worker's Compensation costs in Alaska and proposes premium rate levels for each of the (approximately) five hundred (500) classifications of work activity. Each insurer is required to submit its Worker's Compensation data for Alaska to the organization on a timely schedule.

The NCCI currently uses two methods to record and analyze Worker's Compensation experience:

A. POLICY YEAR DATA: using this method, premiums and cumulative losses attributable to claims occurring during a particular policy year are then collected (over time) to provide indications of necessary rate changes.

B. CALENDAR YEAR DATA: using this method, premiums collected and claims costs incurred during a calendar year are reviewed to provide indications of necessary rate changes.

Policy year data is considered more accurate than calendar year data. Calendar year data however, requires a period of at least eighteen (18) months for an accurate picture of loss payout, (for a twelve (12) month period). Claims remaining open after eighteen (18) months must continue to be reported by insurers for each year they remain active.

In 1977, a study conducted by order of Legislative Affairs Agency recommended that a third method of analyzing experience be used, the accident year method. Experience in other states shows that the accident year method is more accurate than the calendar year data and more recent than policy year data.

WCCA POSITION: that the Division of Insurance direct the NCCI to accumulate accident year data and to utilize this data for premium rate level analysis in lieu of any other method.

SAFETY GROUPS

Employer trade associations can reduce their insurance costs through the effective use of safety groups. Under the Safety Group Concept, employers may purchase needed insurance through one insurer and receive a portion of the profit as returnable premiums or dividends should the experience warrant same. In the event the group has been unprofitable for the insurer, additional charges would result. The Trade Association would aid in monitoring and promoting safety programs for member employers to reduce costs through fewer or less serious injuries.

Safety Groups are more common in other sates, and have been a benefit to the consumer insurance market.

WCCA POSITION: that industry Trade Groups investigate and explore opportunities for Safety Group Programs more fully for use in Alaska.

ASSIGNED RISK POOL SERVICING CARRIERS

Currently, insurers who act as servicing carriers for the assigned risk pool are paid 37.5% of assigned risk premium for the expense of handling assigned risk accounts. Rates developed for voluntary risks, however, reflect an allowance of 31.6% of premiums.

WCCA POSITION: that the Division of Insurance reduce the expense allowance for assigned risk pool servicing carriers to the per cent allowed for expenses for voluntary risks; currently 31.6% of premiums.

SECTION III: SECOND INJURY FUND

SECOND INJURY FUND

The term "second injury" classifies a worker's injury as the result of a pre-existing impairment from a prior work-related injury.

A Second Injury Fund exists in Alaska to pay the benefits for second injuries after a period of one hundred four (104) weeks. The funds to pay these benefits are contributed by insurers and for each permanent partial injury benefit paid (for second injury), an additional eight per cent (8%) surcharge is paid into the Second Injury Fund.

The purpose of the Fund is to encourage the hiring of previously disabled workers by funding the long term costs of a second injury, should it occur.

Review by claims adjustment personnel and Second Injury Fund Management, indicates some question as to the ability of the fund to pay potential claims.

WCCA POSITION: that rather than increasing the surchage which in turn increases premium rates, general fund revenues should be utilized for anticipated costs which exceed current surcharge premium levels.

MEDICAL EXPENSES UNDER SECOND INJURY FUND

Currently only wage loss payments are covered by the Second Injury Fund. However, there is no clear evidence as to the reason for non-inclusion of medical expenses to be paid from the fund.

WCCA POSITION: that medical expenses be covered by the Second Injury Fund for any claims which otherwise meet the criteria for Second Injury Fund Payment.

SECOND INJURY FUND, FIRST INJURY PROOF

In order to use the Second Injury Fund, an employer or insurer is required to show written evidence of a prior injury before the second injury occurs. This results in additional costs to screen, document and preserve the medical history of all injured workers.

WCCA POSITION: that the employer or insurer not be required to prove written documentation preceding the second injury. If the above can prove the existence of a prior injury at any time before or after the second injury, then use of the Second Injury Fund shall be allowed.

LUMP SUM SETTLEMENT FROM SECOND INJURY FUND

WCCA POSITION: that the Second Injury Fund be allowed and be properly funded to make lump sum reimbursements to any carrier or employer who provides a lump sum payment to an injured worker, this to include self-insured as well.

HB 159/SB 179
Section by Section Analysis

Section 1-2. Section analysis by the Department of Commerce and Economic Development, Division of Insurance.

Section 3. This section prevents discriminatory employment practices on the part of employers towards employees who have filed a claim for workers' compensation benefits. The same prohibition is cross-referenced in AS 23.30.263 under Section 61.

Section 4-7. Section analysis by the Department of Commerce and Economic Development, Division of Insurance.

Section 8. This section adds an additional panel to the Alaska Workers' Compensation Board which may sit in any judicial district in the event regular panel members are unable to attend scheduled hearings. Members of the board, except the Chairman or his designees, are citizens appointed pursuant to AS 23.30.005 and at times have scheduling conflicts with their own occupational duties. The amendment will insure that disputed claims are heard expeditiously by a full board panel and will provide the resources to conduct additional board hearings when the workload requires.

Section 9-12. The term "benefits" is substituted for "compensation" to achieve consistency throughout AS 23.30 in conformity with court and board interpretations. The term "benefits" is defined in AS 23.30.265(28) under Section 66 to mean "compensation and medical and related benefits." The definitions for "compensation" and "medical and related benefits" already exist under AS 23.30.265(8) and (16). This amendment will clarify current misunderstandings in interpreting these terms.

Section 13-14. Section analysis by the Department of Commerce and Economic Development, Division of Insurance. Section 14 also includes substitution of "benefits" for "compensation" where applicable

Section 15. The repeal and reenactment of AS 23.30.040 is necessary if the second injury fund is to continue to meet its statutory obligations to rehabilitate the injured and disabled worker and to reimburse employers/carriers on subsequent injury claims.

This section expands the base for contributions to the second injury fund and incorporates a contribution schedule which will insure the solvency of the fund. It changes the base for payments to the fund from permanent partial disability to permanent total, permanent partial, temporary

total and temporary partial disabilities. Under Section 69, an initial contribution rate of 6 percent is established, which will build reserves before a sliding rate scale takes effect in 1983. It also allows a more realistic maintenance allowance of $200 a month and total maximum expenditures for retraining to $10,000 in order to adequately cover the inflationary rise in expenses encountered for rehabilitation or retraining. The section also transfers the administrative expenses of the state from the resources of the second injury fund to the general fund.

Section 16-17. Substitution of "benefits" for "compensation" where applicable.

Section 18. This section allows placement of disabled employees who are being rehabilitated for gainful employment into work situations where the employer is willing to pay some wages to the trainee but does not want the risk of new injury to the handicapped person and the consequent increase in employer's insurance premiums; or if no other employees, having to obtain workers' compensation insurance just for the trainee. Successful rehabilitation will result in getting the handicapped employee back to a self sustaining, tax paying citizen of the state and is worth the investment by the state in accepting the risk of his being re-injured while learning a new occupation. This amendment will also encourage employers to pay wages to the trainee and reduce costs to the rehabilitation agency sponsoring the trainee.

The section also permits the Department of Labor to place eligible persons in rehabilitation programs with an employer in the event a request is not made through the office of vocational rehabilitation.

Section 19-20. Section analysis by the Department of Commerce and Economic Development, Division of Insurance.

Section 21-26. Sections include substitution of "benefits" for "compensation" where applicable and analysis by the Department of Commerce and Economic Development, Division of Insurance.

Section 27. Adds a subsection which stiffens the penalties to employers who fail to insure or provide security for workers' compensation liability to their employees and provides the Board with the means to enforce that statutory requirement through stop order authority. Failure to enforce the requirement that all employers secure liability for workers' compensation results in a disparity to the employer who does insure and must figure the costs of insurance into his costs of doing business and forces the injured worker to rely on medical care and funds from public assistance programs.

Section 28-30. Section analysis by the Department of Commerce and Economic Development, Division of Insurance. Also includes substitution of "benefits" for "compensation" where applicable.

Section 31. This section deletes wording which makes it necessary for an injured employee to appeal to the Alaska Workers' Compensation Board if the need for medical treatment due to work injury extends beyond two years. The board has repeatedly held that if continued medical treatment is required due to the injury, the costs should be paid by the employer's insurance carrier regardless of whether the need for medical treatment has lasted for over two years, yet, some adjusters continue to stop medical costs and advise the employee that the law provides for only two years of medical coverage. The employee then either hires an attorney or petitions the board for help and often the matter must be heard and ruled on by the board before the carrier will pay additional medical costs. As a result the board is required to hold unnecessary hearings, the carrier incurs unnecessary attorney fees and the general costs of the workers' compensation program is unnecessarily increased.

The section also deletes wording that requires an employee, if he wishes to change doctors, to do so "in accordance with rules prescribed by the board." The board is adverse to setting out rules, which would in any way, hamper the recovery process or the employee's right to the selection of the treating physician. If the employee abuses this right, the employer/carrier may seek relief through board hearing.

Section 32. This section encourages prompt reporting of treatment by doctors treating injured workers. Some doctors now file a report of first treatment but fail to notify the carrier of follow-up treatment. When the doctor gets around to billing some months later, the bill is considerable. Some doctors have continued to treat an employee after sending a first report indicating further care was not necessary, or would be minimal. By the time the carrier gets a bill and a follow-up report, the bill is for many hundreds of dollars. This change will also provide the board and employer/carrier with the current medical status on the employee so that his progress can be better monitored.

Section 33. This section deletes language left over in the Act from the days when the employer selected the physician. Experience has shown that the employee never exercises this right except upon the urging of his doctor or attorney. This situation delays resolution of disputed claims and allows some doctors to unnecessarily increase the costs of workers' compensation while they stand around watching another doctor perform an examination of an injured worker. This process is duplicative, involves at least 4 parties and wastes time. Section also includes substitution of "benefits" for "compensation" where applicable.

Section 34-36. Substitutes "benefits" for "compensation" where applicable.

Section 37. This section deletes ambiguous language which is the result of incomplete amending in 1962 to the statute of limitations provision for filing a claim.

In W. R. Grasle Co. v. Alaska Workmen's Compensation Board, 517 p.2d 999 (Alaska 1974), the Supreme Court found no time frame in which the four-year statute may operate subsequent to the 1962 amendment.

The section also includes substitution of "benefits" for "compensation" where applicable.

Section 38-40. Substitutes "benefits" for "compensation" where applicable.

Seciton 41. This section provides realistic time frames in the board hearing process and rids the statute of board authorization to rule on a claim without benefit of the parties to be heard. The change from 10 to 20 days for service of notice of hearing will allow sufficient time for the parties to properly prepare the case for board hearing, thereby reducing the number of continuances or further hearings, and will enable conformance with 8 AAC 45.070(b). Due to the time required for the board to adequately research the difficult legal issues involved in many cases and the geographic separation of some members, the board has consistently been unable to comply with the statutory requirement of 20 days for issuance of its written decision and order. The change from 20 to 30 days is proposed to grant sufficient research time for the board to set forth its findings and conclusions according to proper statutory criteria, thereby reducing the number of hearings resulting from remands or requests for modification of award, and to allow additional time for the order to be sent to the board members for their review and signature.

The section also deletes the portion of the provision authorizing the board to rule on a claim without benefit of hearing. This portion has never been used by the board as it precludes the right of the parties to be heard or the opportunity for cross-examination on the issues of the claim.

Includes substitution of benefits for compensation where applicable.

Section 42-45. Substitutes "benefits" for "compensation" where applicable.

Section 46. The amendments in AS 23.30.155 are essentially "housekeeping" changes and are aimed primarily towards reducing litigation and administrative delays in processing claims. These changes address serious problems or gaps in the Act which mislead or confuse employees, employers, and insurance carriers and which result in needless litigation. This section 1) clarifies a controverted claim and the requirements under which a notice of controversion must be filed; 2) requires notice be filed with the board whenever payment of compensation has begun, terminated or changed and provides penalties for failure to file such notice; 3) includes substitution of "benefits" for "compensation" where applicable; 4) requires board approval for reimbursement of advance payments or overpayments of compensation from unpaid installments; 5) requires that compensation be paid by a check or draft which may be immediately cashed; 6) authorizes the board to order lump sum payments for both scheduled and unscheduled permanent partial disabilities under AS 23.30.190, whenever it is in the interest of the injured employee and will not cause substantial hardship to the employer (the board currently is authorized to order lump sum settlements for unscheduled permanent partial disability under AS 23.30.190(20)); and 7) requires periodic reporting of all payments made on claims which will be used to provide the public and private sectors with current and accurate injury statistical data.

Section 47-49. Substitutes "benefits" for "compensation" where applicable.

Section 50. This section changes the method by which the average weekly wage is determined in all jurisdictions for purposes of computing compensation and provides for a consistent and equitable means to adjust compensation rates for claims being paid to out-of-state recipients.

Section 51. This section clarifies the rules under which compensation rates are adjusted for recipients not residing in Alaska consistent with legislative intent and regulations, insures adequate benefit levels for those recipients and provides for an annual adjustment in the compensation rate commensurate with changes in average weekly wages.

Section 52. This section deletes language now provided for in AS 23.30.155(n) under Section 46.

Section 53. This section provides for payment of compensation to an injured worker at his temporary total disability rate while undergoing rehabilitation or retraining. This change is consistent with interpretations set forth in Supreme Court decisions and with current board practice.

AS 23.30.191 was enacted in 1963 when there was a limit on compensation paid for both temporary and permanent partial disabilities. It was often the case that an injured worker would be paid the maximum, but required rehabilitation to return to the work force. To provide rehabilitation to those no longer entitled to temporary disability compensation, payment of one-half the rate was paid under Section 191. For injuries after May 22, 1975, there is no maximum limit for payment of temporary disability and such compensation should be continued while undergoing rehabilitation if the worker is incapacitated from earning the wages as before injury.

In Phillips Petroleum Company v. Alaska Industrial Board, 17 Alaska (1958), the Supreme Court stated:

> "The period of temporary total disability is defined as: the healing period or the time during which the workman is wholly disabled and unable by reason of his injury to work."

Our statute defines "disability as the incapacity because of injury to earn the wages which the employee was receiving at the time of injury. When such a condition is temporary, AS 23.30.185 requires the payment of temporary total disability compensation during the continuance of the disability.

The intent of the Act is to encourage injured workers who are totally or partially incapacitated for their normal occupation, to undergo vocational rehabilitaiton efforts aimed toward return to gainful employment. This not only benefits the worker, but reduces the future liability of the employer for payment of permanent partial or permanent total disabilities. To reduce the compensation rate by one-half when the worker does undertake such a program discourages rather than encourages participation in retraining.

Section 54. This section provides for the modification of a compromise and release agreement to the degree that a board order can be modified.

AS 23.30.210(b) grants the employee and the employer the right to enter into an agreement to resolve a disputed claim. The board must approve the compromise and release for the agreement to be valid and, if approved, the agreement is enforceable the same as an order of the board. If the language of the Act is strictly construed, however, the agreement cannot be modified within one year for a mistake of fact or a change in condition as is allowed in the board's orders. Fraud, actual or constructive, is the only ground for modification. The board, based on its experience with hardships and harsh results in cases involving change of condition, latent injury or mistake of fact in cases where compromise and release agreements have been approved, believes an agreement should be modifiable at least to the degree that an order can be modified.

Section also includes substitution of "benefits" for "compensation" where applicable.

Section 55. This section provides for inflationary increases in funeral expenses on death claims. The current limit for reasonable and necessary funeral expenses are not adequate and result in a hardship to the family of the deceased or the employer for payment of the additional costs.

Section 56-57. Sections substitute "benefits" for "compensation" where applicable.

Section 58. This section provides stiffer penalties for employees who wilfully misrepresent a claim to collect benefits.

Section 59-60. Sections substitute "benefits" for "compensation" where applicable.

Section 61. See Section 3.

Section 62. Section substitutes "benefits" for "compensation" where applicable.

Section 63. Section amends definition of "medical and related benefits" to include pain clinic services.

Section 64. Section analysis by the Department of Commerce and Economic Development, Division of Insurance. Also includes substitution of benefits for Compensation where applicable.

Section 65. This section clarifies the definition of "wages" for purposes of computing an employee's average weekly wage. The deletion of "in force at the time of the injury" is necessary to make the definition consistent with the method by which the average weekly wage is determined under AS 23.30.220 as a result of the 1977 amendments.

Section 66. This section is amended to include a definition for "benefits" as explained in Section 9-12, and defines the term "reserve rate" as used in Section 15.

Section 67. Section deletes inconsistent and ambiguous language in the Act and those provisions that are repealed by the proposed legislation.

Section 68. This section clarifies that the amount of payment to the second injury fund and the conditions under which payment is required, is in accordance with the version of AS 23.30.040(b) that was in effect on the date of injury to the employee.

Section 69. See Section 15.

Section 70. This section provides for an effective date for the bill of July 1, 1981.

THE LEGISLATURE OF THE STATE OF ALASKA

TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. Committee Substitute for House Bill No. 159 (L & C)

Title "An Act relating to workers' compensation, and providing for an effective . . ."

Requested by Labor and Commerce Committee Date 3/1/82

II. FISCAL DETAIL

Agency Affected Labor

Program Category Affected Worker Protection

BRU, Program, or Subprogram(s) Affected Workers' Compensation

(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
100 PERSONAL SERVICES		161.8	178.0	195.8	215.4	236.9
200 TRAVEL		20.0	22.0	24.2	26.6	29.3
300 CONTRACTUAL		122.3	71.3	78.4	86.2	94.9
400 COMMODITIES		3.4	3.7	4.1	4.5	4.9
500 EQUIPMENT		10.4	0	0	0	0
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL	0	317.9	275.0	302.5	332.7	366.0

FUNDING (Thousands of Dollars)

GENERAL FUND	0	(132.3)	(197.2)	(216.9)	(238.6)	(262.5)
FEDERAL FUNDS						
OTHER (Specify Fund Source)						
**Second Injury Fund		450.2	472.2	519.4	571.3	628.5

POSITIONS

FULL TIME	0	4	4	4	4	4
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

It is the intent of the Legislature that an injured worker receive rehabilitation services which enhance returning to work as quickly as possible at earnings as close as possible to the worker's gross earnings at the time of the injury. The implementation of a delivery system to provide timely and adequate rehabilitation services is fundamental in meeting this objective.

This fiscal note provides that the state administrative costs for rehabilitation under the proposed AS 23.30.041 be paid from the Second Injury Fund. This includes the costs of four new positions, plus the cost of four existing positions which entails a transfer in funding source from General Funds to Second Injury Funds.
(Continued page 2)

IV. DATE 3/2/82 PREPARED BY Nico Bus

AGENCY Labor

PHONE 465-2720

Original: Legislative Finance

cc: Budget and Management
Prime Sponsor (First Legislator Named)

33-001 (Rev. 12/81)

1. Assumes an inflation rate of 10% per annum after FY '83.

2. Assumes an effective date of July 1, 1982.

3. The total cost for FY'83 for the four new positions is detailed on attached forms 13. In addition the following items are included in the FY '83 costs.

A Workers' Compensation Officer I reclassification to a Workers' Compensation Officer II with related travel and contractual services. Cost $16.6

100 Personal Services	$ 5.5
200 Travel	5.0
300 Auto, Lease, Indirect, etc.	6.1
	$16.6

The data processing operations cost will increase by $14.0 because of enhancements for a tickler system, running two systems parallel and the files expansion to retain tne addresses of all claimants.

The printing of 10,000 Workers' Compensation Acts and 25,000 Employee Information booklets. $35.0

The design and printing of new forms. $2.5

Computer program modifications to implement the changes introduced by the bill. $20.0

Equipment expense for computer terminals, panelling, cabinets, and files. $6.0

Included one-time items in FY '83

Equipment	$10.4
Booklets and Acts	35.0
Design and printing of new forms	2.5
Computer programs	20.0
	$67.9

Funding Change

Items included in the FY 83 Governor's budget that will change funding sources from General Fund to the Second Injury Fund.

4 positions (including benefits)	$141.3
Non-personal service costs relating to these 4 existing positions	
200: travel	9.9
300: contractual	25.8
400: commodities	2.3
	179.3

FY'83 Component Breakdown:

Workers' Compensation Administration		Second Injury Fund
PS		$161.8
Travel		20.0
Contract*	$47.0	75.3
Commodities		3.4
Equipment		10.4
TOTAL	$47.0	$270.9

Funding	General Fund	Second Injury
Funding transfer	(179.3)	179.3
Rehabilitation Services/ delivery system	47.0	270.9
	(132.3)	450.2

*$3,000 Workers Compensation Acts and Information Booklets; $12,000 Data Processing

**Second Injury Fund is currently being reviewed to determine whether revenues are sufficient to cover the cost of rehabilitation. It may be necessary to amend AS 23.30.040 to increase the maximum percentage contribution rate.

	POSITION TITLE				RANGE/STEP	BARG. UNIT.	LOCATION	GOV.	APPROV.	DISAPP.
1	Rehabilitation Administrator				22A		EiSA			
	TYPE OF POSITION	STAFF MONTHS	RP No.	PCN No.	PRIORITY		FORM 12 PAGE/LINE	LEG.		
2	PFT	12	N/A	New Position			N/A			

	TYPE OF EXPENDITURE			AMOUNT
	1		2	3
3	PERSONAL SERVICES:			
4	SALARY 3714 x 12		44,568	
5	BENEFITS .1592		7,095	
6	SBS .0613		2,189	
7	FIXED BENEFITS 183 x 12		2,190	
8	TOTAL PERSONAL SERVICES	01		6,047
9	TRAVEL	02		10,000
10	CONTRACTUAL	03		15,607
11	COMMODITIES	04		850
12	EQUIPMENT	05		1,600
13	OTHER			
14	TOTAL COST			84,104

	RECEIPT CODE	FUNDING SOURCE	
15		FED RCPTS. 1002	
16		GF MATCH. 1003	
17	100	GEN. FUND 1004	
18		I-A RCPTS. 1005	
19		PGM RCPTS 1028	
20	841	OTHER Second Injury Fund	84,104
21	CONTINUATION		
22	ADDITION	X	

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4A KEY NUMBER _____ COLUMN NO. _____

JUSTIFICATION:

It is the intent of the Legislature that an injured worker receive rehabilitation services which enhance returning to work as quickly as possible at earnings as close as possible to the worker's gross earnings at the time of the injury. The implementation of a delivery system to provide timely and adequate rehabilitation services is fundamental in meeting this objective.

The rehabilitation administrator is necessary to develop and implement a workers' compensation rehabilitation program designed to administer and monitor the rehabilitation benefits of industrially injured workers covered by the Alaska Workers' Compensation Act.

Extensive travel within the state is necessary to provide assistance to approximately 12,000 employers in developing programs for re-employment of injured workers and coordinating counselor services with workers, insurers/employers, labor unions, and rehabilitation providers.

9. Travel: $10,000 (20 trips @ $500 per trip)
10. Contractual: Space $3,100 (to be transferred to DOA)
Auto Lease & Operating Costs $5,600
Indirect (11.46% x 44,568 = $5,107)
Other costs which include communications, equipment rental, etc., $1,800
11. Commodities: Cost per position
12. Equipment: Desk, desk chair, side chairs, bookcase, file - $1,600

AGENCY Labor PROGRAM Worker Protection

BRU Workers' Compensation

COMPONENT Second Injury Fund

13 REQUEST FOR NEW POSITION

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	POSITION TITLE			RANGE/STEP	BARG. UNIT.	LOCATION		APPROV.	DISAPP.
1	Workers Compensation Officer II			18A	GBU	JBA	GOV.		
	TYPE OF POSITION	STAFF MONTHS	RP No.	PCN No.	PRIORITY	FORM 12 PAGE/LINE			
2	PFT	12	N/A	New Position		N/A	LEG.		

	TYPE OF EXPENDITURE		AMOUNT
	1	2	3
4	PERSONAL SERVICES: SALARY 3249 x 12	38,988	
5	BENEFITS .1592	6,207	
6	SBS .0613	2,188	
7	FIXED BENEFITS 183 x 12	2,196	
8	TOTAL PERSONAL SERVICES 01		49,579
9	TRAVEL 02		5,000
10	CONTRACTUAL 03		14,968
11	COMMODITIES 04		850
12	EQUIPMENT 05		1,395
13	OTHER		0
14	TOTAL COST		71,792

	RECEIPT CODE	FUNDING SOURCE	
15		FED RCPTS. 1002	
16		GF MATCH. 1003	
17	100	GEN. FUND 1004	
18		I-A RCPTS. 1005	
19		PGM RCPTS 1008	
20	841	OTHER Second Injury Fund	71,792
21	CONTINUATION		
22	ADDITION	X	

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4A KEY NUMBER _____ COLUMN NO. _____

JUSTIFICATION:

It is the intent of the Legislature that an injured worker receive rehabilitation services which enhance returning to work as quickly as possible at earnings as close as possible to the worker's gross earnings at the time of the injury. The implementation of a delivery system to provide timely and adequate rehabilitation services is fundamental in meeting this objective.

The workers' compensation officer is necessary to coordinate with workers, employers, insurers and rehabilation providers to expedite the retraining and reemployment of injured workers. Travel within the Fairbanks and Northern regions will be necessary to coordinate this effort.

9. Travel: $5,000 (10 trips @ $500 per trip)

10. Contractual: Space $3,100 (to be transferred to DOA)
Auto Lease, Maintenance Agreement & Operating Costs $5,600
Indirect Costs (11.46% x 38,988 = $4,468)
Other costs which include communications, equipment rental, etc. $1,800

11. Commodities: Cost per position

12. Equipment: Desk, desk chair, side chair, file, worktable, bookcase $1,395

AGENCY Labor PROGRAM Worker Protection

BRU Workers' Compensation

COMPONENT Second Injury Fund

13 REQUEST FOR NEW POSITION

Page 2 of 4 REVISED DATE _____

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	POSITION TITLE			RANGE/STEP	BARG. UNIT	LOCATION		APPROV.	DISAPP.
1	Workers Compensation Officer II			18A	GBU	JBA	GOV.		
	TYPE OF POSITION	STAFF MONTHS	RP No.	PCN No.	PRIORITY	FORM 12 PAGE/LINE			
2	PFT	12	N/A	*New Position		N/A	LEG.		

3	TYPE OF EXPENDITURE		1	2	AMOUNT 3
4	PERSONAL SERVICES: SALARY 3249 x 12			38,988	
5	BENEFITS .1592			6,207	
6	SBS .0613			2,188	
7	FIXED BENEFITS 183 x 12			2,196	
8	TOTAL PERSONAL SERVICES	01			49,579
9	TRAVEL	02			5,000
10	CONTRACTUAL	03			14,968
11	COMMODITIES	04			850
12	EQUIPMENT	05			1,395
13	OTHER				0
14	TOTAL COST				71,792

	RECEIPT CODE	FUNDING SOURCE	
15		FED RCPTS. 1002	
16		GF MATCH. 1003	
17	100	GEN. FUND 1004	
18		I-A RCPTS. 1005	
19		PGM RCPTS 1008	
20	841	OTHER Second Injury Fund	71,792
21	CONTINUATION		
22	ADDITION	X	

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4A KEY NUMBER _____ COLUMN NO. _____

JUSTIFICATION:

It is the intent of the Legislature that an injured worker receive rehabilitation services which enhance returning to work as quickly as possible at earnings as close as possible to the worker's gross earnings at the time of the injury. The implementation of a delivery system to provide timely and adequate rehabilitation services is fundamental in meeting this objective.

The workers' compensation officer is necessary to coordinate with workers, employers, insurers and rehabilation providers to expedite the retraining and reemployment of injured workers. Travel within the Fairbanks and Northern regions will be necessary to coordinate this effort.

9. Travel: $5,000 (10 trips @ $500 per trip)

10. Contractual: Space $3,100 (to be transferred to DOA)
Auto Lease, Maintenance Agreement & Operating Costs $5,600
Indirect Costs (11.46% x 38,988 = $4,468)
Other costs which include communications, equipment rental, etc. $1,800

11. Commodities: Cost per position

12. Equipment: Desk, desk chair, side chair, file, worktable, bookcase $1,395

AGENCY Labor PROGRAM Worker Protection

BRU Workers' Compensation

COMPONENT Second Injury Fund

13 REQUEST FOR NEW POSITION

REVISED DATE _____

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POSITION TITLE				RANGE/STEP	BARG. UNIT.	LOCATION		APPROV.	DISAPP.
Clerk Typist III				8B	GBU	AWA	GOV.		
TYPE OF POSITION	STAFF MONTHS	RP No.	PCN No.	PRIORITY		FORM 12 PAGE/LINE	LEG		
PFT	12	N/A	New Position			N/A			

TYPE OF EXPENDITURE			AMOUNT
1		2	3
PERSONAL SERVICES:			
SALARY 1530 x 12		18,360	
BENEFITS .1592		2,923	
SBS .0613		1,125	
FIXED BENEFITS 183 x 12		2,196	
TOTAL PERSONAL SERVICES	01		24,604
TRAVEL	02		
CONTRACTUAL	03		7,004
COMMODITIES	04		850
EQUIPMENT	05		700
OTHER			
TOTAL COST			33,158

RECEIPT CODE	FUNDING SOURCE	
	FED RCPTS. 1002	
	GF MATCH. 1003	
100	GEN. FUND 1004	
	I-A RCPTS. 1005	
	PGM RCPTS 1028	
841	OTHER Second Injury Fund	33,153
CONTINUATION		
ADDITION	X	

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KEY NUMBER _____ COLUMN NO. _____

JUSTIFICATION:

It is the intent of the Legislature that an injured worker receive rehabilitation services which enhance returning to work as quickly as possible at earnings as close as possible to the worker's gross earnings at the time of the injury. The implementation of a delivery system to provide timely and adequate rehabilitation services is fundamental in meeting this objective.

The Clerk III position will provide clerical assistance to the Workers' Compensation Officer in the Juneau Second Injury Fund office and will be responsible for providing and coordinating distribution of information from the claim files to the other regions.

10. Contractual: Space $3,100 (to be transferred to DOA)
Indirect (11.46% x 18,360 = $2,104)
Other costs which include communications, equipment rental, etc. $1,800

11. Commodities: Cost per position

12. Equipment: Desk, desk chair $700

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01 1136 (7/81)

	POSITION TITLE				RANGE/STEP	BARG. UNIT.	LOCATION		APPROV.	DISAPP.
1	Clerk IV				9B	GBU	EBA	GOV.		
	TYPE OF POSITION	STAFF MONTHS	RP No.	PCN No.	PRIORITY		FORM 12 PAGE/LINE			
2	PFT	12	N/A	New Position			N/A	LEG.		

	TYPE OF EXPENDITURE			AMOUNT
	1		2	3
4	PERSONAL SERVICES: SALARY 1627 x 12		19,524	
5	BENEFITS .1592		3,108	
6	SBS .0613		1,197	
7	FIXED BENEFITS 183 x 12		2,196	
8	TOTAL PERSONAL SERVICES	01		26,025
9	TRAVEL	02		0
10	CONTRACTUAL	03		7,137
11	COMMODITIES	04		850
12	EQUIPMENT	05		700
13	OTHER			
14	TOTAL COST			34,712

	RECEIPT CODE	FUNDING SOURCE	
15		FED RCPTS. 1002	
16		GF MATCH. 1003	
17	100	GEN. FUND 1004	
18		I-A RCPTS. 1007	
19		PGM RCPTS 1028	
20	841	OTHER Second Injury Fund	34,712
21	CONTINUATION		
22	ADDITION	X	

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4A KEY NUMBER _____ COLUMN NO. _____

JUSTIFICATION:

It is the intent of the Legislature that an injured worker receive rehabilitation services which enhance returning to work as quickly as possible at earnings as close as possible to the worker's gross earnings at the time of the injury. The implementation of a delivery system to provide timely and adequate rehabilitation services is fundamental in meeting this objective.

The Clerk IV position will provide clerical assistance to the Rehabilitation Administrator and Workers' Compensation Officer and will be responsible for maintaining follow-up on all rehabilitation files.

10. Contractual: Space $3,100 (to be transferred to DOA)
Indirect (11.46% x $19,524 = $2,237)
Other costs which include communications, equipment rental, etc. $1,800

11. Commodities: Cost per position

12. Equipment: Desk and desk chair $700

AGENCY Labor PROGRAM Worker Protection

BRU Workers' Compensation

COMPONENT Second Injury Fund

13 REQUEST FOR NEW POSITION.

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01 1136 (7/81)

RECOMMENDED CHANGES TO HB 159

SECTION 3. (p.2 l.19)

Change "AS 20.30.041" to "AS 23.30.041"

SECTION 5. (p. 3 l.26)

AS 23.30.041 Rehabilitation Program

Note (Insert in place of HB 159 Section 23.30.041(c), (d),(e),(f), and (g))

(c) When an employee suffers a permanent disability which precludes his return to suitable gainful employment, he shall be entitled to be fully evaluated for participation in a rehabilitation program within 90 days after date of injury. The full evaluation shall be performed by a qualified rehabilitation professional. The reasonable costs of the evaluation shall be at the expense of the employer. If in the opinion of the qualified rehabilitation professional, the medical, physical or emotional state of the employee is such that a full evaluation cannot then be made, the rehabilitation professional shall prepare a preliminary evaluation.

(d) The full evaluation by the qualified rehabilitation professional shall determine if the employee would benefit from a rehabilitation program. The determination shall be based on the following criteria:

(1) The rehabilitation program will restore the employee to a position to accept suitable, gainful employment equal to or as near as possible to that of his pre-injury employment. An employee is restored to a position of suitable gainful employment if he can return to (in the order of preference)

i) work at the same or similar job with the same employer or employer in the same industry as the employer at the time of injury.

ii) A job using essentially the same skills as the job at time of injury but in a different industry.

iii) A job using different skills but the academic achievement level as attained at the time of injury.

iv) A job requiring an academic achievement level which is different from that attained at the time of injury, but which rehabilitation evaluation determines is attainable by the employee and which job is believed to be available to the employee in his community at the time academic training is completed.

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Juneau Office

(2) The employee cannot be restored to a position to accept suitable gainful employment without the rehabilitation program.

(3) The cost of the rehabilitation program, including all costs to be incurred by the employer for and during the rehabilitation program, plus an estimate of continuing benefits due to the employee after the conclusion of the rehabilitation program are equal to or less than the benefits due the employee under this Act, assuming no rehabilitation program is implemented and assuming no discounting or lump-sum payment of benefits.

(4) The rehabilitation program may consist of any of the following, however, if the employee may be restored to a suitable gainful employment with rehabilitation programs of high preference, then a rehabilitation program of a lower preference need not be offered by the employer.

In order of preference rehabilitation programs are:

i) Prosthetic devices and training enabling work at the same or similar employment as at the time of injury.

ii) Work site modification and vocational training to the same or similar occupation.

iii) On the job training for a new occupation.

iv) Vocational training for a new occupation.

v) Academic training for a new occupation.

(5) A vocational rehabilitation program may not exceed 37 weeks, except that such services may be extended an additional 37 weeks if the rehabilitation administrator determines that special circumstances exist. Nothing in this subsection prohibits an employer or carrier from providing extended vocational rehabilitation services on a voluntary basis. If rehabilitation requires residence away from the employee's customary residence, reasonable cost of board, lodging, and travel shall be paid by the employer. Temporary disability under AS 23.30.185 or AS 23.30.200 shall be paid throughout the rehabilitation process.

(e) A preliminary evaluation shall include the reasons why a full evaluation cannot be rendered, an opinion as to when the employee will be eligible for a full evaluation, any information which would be included in a full evaluation which can be determined and reported by the rehabilitation professional at the time of the preliminary evaluation.

(f) If the full evaluation or preliminary evaluation is not timely scheduled for an employee entitled thereto by the employer, the employee or the Board may designate a qualified rehabilitation professional to perform the evaluation, the reasonable costs of which shall be paid by the employer.

(g) Refusal by an injured employee to participate in an evaluation or a rehabilitation plan offered by the employer results in forfeiture of disability compensation for the period the refusal continues. However, if an employee begins participation in an evaluation or rehabilitation plan within two months from the date of refusal, and successfully completes the evaluation and rehabilitation plan and becomes employed for a period of 30 consecutive business days following the completion of the rehabilitation program, the employee shall receive a lump-sum payment of 25 percent of the compensation forfeited by him. The lump-sum payment is available only once to an employee refusing rehabilitation. The Board may find that an employee refuses to participate in an evaluation or rehabilitation plan if the employee fails to cooperate with the qualified rehabilitation professional.

(h) The employer responsible for the benefits under this Act shall be liable for, and any subsequent employer hiring the employee during and as part of the rehabilitation program shall not be liable for, benefits under this Act for injuries occurring to the employee while engaged in job training, work readiness, work therapy experience or work sampling which is part of the rehabilitation program offered by the employer and the earnings for which, if any, are credited to gross wages upon which compensation benefits are calculated.

(e) In this section

1) "Suitable gainful employment" means employment that is reasonably attained in light of an individual's age, education, previous occupation,and injury, and that offers an opportunity to restore the individual as soon as practical to a remunerative occupation and as nearly as possible to his average weekly wage as determined at the time of injury.

ii) "Qualified rehabilitation professional" means a person who by education, professional training and experience has the skills to make judgements, administer and interpret tests, counsel, and make recommendations with respect to a persons medical, intellectual, emotional, physical or motivational capacity to accept and perform suitable gainful employment, and to design, implement and supervise programs which tend to enhance a person's medical, intellectual, emotional, physical or motivational capacity to accept suitable gainful employment.

SECTION 7.

Remove.

SECTION 12.

Remove and adopt a new section to read:

add to Chapter 23.30 a section to read "AS 23.30.096."

Upon the filing of a claim under this Act, an employee thereby authorizes all providers of medical treatment pertaining to the injury or rendered prior to the date of injury to release information to the employer. If requested by the employer, the employee shall execute all releases to facilitate access to that information.

SECTION 14.

Acceptable except add to subsection (c) the following additional sentence to read:

"If a claim is controverted by the employer and the employee does not request a hearing for a period of two years following the date of controversion, the claim is deemed denied by the Board."

SECTION 15. (p. 8 l.25)

Strike "occasioned solely" and insert in lieu "proximately caused".

SECTION 16. (p. 9 l.3)

Add after ". . . is conclusive" and before "even if . . ." a phrase to read:

", provided there is some evidence of record to support the finding,"

SECTION 17.

Strike and instead add a section to read:

"AS 23.30.155(j) if an employer has made advance payments or overpayments of compensation, he is entitled to be reimbursed out of any unpaid installment or installments of compensation due up to an amount equal to twenty per cent of each of the subsequent installments. If the employer seeks to offset by more than twenty per cent of the amount of each subsequent installment, prior Board approval is required.

SECTION 24.

Add to subsection (12) (p. 13 l.3) a clause to read:

"but no benefit is payable for loss of hearing above 3,000 cycles per second unless hearing above 3,000 cycles per second is a requirement of the job held at the time of injury."

SECTION 31. (p. 18 l.13)

Change "occasioned solely" to "proximately caused"

SECTION 35. (p. 20 l.10)

Add after ". . . of injury" and before ";" a phrase to read:

"up to the amount which when added to all other components of gross earnings brings gross weekly earnings up to the state's average weekly wage"

SECTION 35. (p. 20 l. 19-21)

Should be amended to read:

"and (b) the amount that is or would be deducted or withheld as of January 1, preceding the injury under the Social Security Act of 1935 from the earnings of"

SECTION 39.

Add new section to read:

SEC. 23.30.125 add new subsection

23.30.125(e) An order of determination of the propriety of a rehabilitation program pursuant to AS 23.30.041 issued by the Commissioner or his designated representative acting alone, may be heard before a full panel upon the petition of employee or employer filed within 10 days after issuance of the order.

The Board shall give priority in calendaring its cases for hearing to hearings to determine the propriety of a rehabilitation program pursuant to AS 23.30.041.

SECTION 40.

SEC. 3.30.005(f) is amended to read:

(f) Two members of a panel constitute a quorum for hearing claims, and the action taken by a quorum of a panel is considered the action of the full Board; the Commissioner or his designated representative acting alone shall constitute a quorum for making determinations of propriety of a rehabilitation program pursuant to AS 23.30.041.

SECTION 41.

This Act shall take effect July 1, 1982, and shall effect only claims occurring on or after the effective date hereof.

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March 19, 1982

Honorable Albert P. Adams
Chairman, House Finance Committee
Alaska State Legislature
Pouch V
Juneau, AK 99811

Re: HB 159

Dear Chairman Adams:

On behalf of the American Insurance Association, a trade association of casualty and property insurers, I wanted to write you and alert you and the members of the Finance Committee to a concern with regard to Section 2 of the above Bill. Section 2 adds a subsection to AS 23.30.025 to permit deductible insurance to be offered in worker's compensation policies.

Our concern is directed primarily to the situation where a deductible policy is taken out by a small employer. Because the amount of the deductible will be paid ultimately by the employer, it is likely that in many cases an employer will delay in making reports, or make no report at all, to the insurer in the case of an injury. This would be true because the employer would thereby improve his statistics for the purposes of a rate modification based on his experience. Experience rating is based much more upon frequency than it is upon severity of injury. Accordingly, if many of the small injuries are not reported, the employer will know that his rates will go down. To the extent that this is a valid concern, it also may mean that claims will be handled in house by people who are not experienced and competent at managing industrial claims. Proper management and expedient vocational rehabilitation management and counseling are essential to the best recovery of a worker.

In addition, an insurer may have collectability problems with small employers, unless the insurer requires a letter of credit or other absolute assurance that the money will be available.

We understand that there is presently a plan approved by the Director for an Alaskan company writing worker's compensation insurance. That plan requires that in order to qualify, an employer having net worth of not less than $5,000,000.00.

We also suggest that it would be very useful to have the statute set forth priorities for the kinds of rehabilitation to be sought in the case of an industrial injury. Properly drafted, such a priority system would encourage an employer to take an injured employee back; would tend to make the system work more quickly and effectively; and would tend to make the system less expensive. The following language could be inserted at an appropriate point in the rehabilitation sections of the Bill:

> "The following priorities are hereby established for use in developing alternative rehabilitation plans. No higher numbered priority may be utilized unless all lower numbered priorities have been determined by the rehabilitation administrator to be unlikely to result in returning the employee to suitable, gainful employment.
>
> Priority #1. Modification of previous job with the same employer, including a transitional return to work.
>
> Priority #2. A new job with the same employer in keeping with any limitations or restrictions of the employee.
>
> Priority #3. Modification of previous job with a new employer.
>
> Priority #4. A new job with a new employer as a result of direct job placement based upon transferable skills.
>
> Priority #5. A new job with a new employer involving on-the-job training.
>
> Priority #6. Retraining and job placement consistent with the purposes of rehabilitation.

These priorities, we believe, are consistent with the testimony of the persons with expert knowledge on such matters before the Committee on Labor and Commerce.

Please let us know if we can provide further information that would be of assistance with regard to this Bill. Thank you for your time.

Sincerely,

M. T. Thomas

MTT/kmp

cc: Rep. Terry Martin
Sen. Bob Mulcahy
Don Koch
Jackie McClintock

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Original sponsor: Rules/Legislative Council

IN THE HOUSE BY THE LABOR AND COMMERCE COMMITTEE

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

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWELFTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to workers' compensation; and providing for an effective date."

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

Sec 66 P44

Section 1. AS 18.80.220(4) is amended to read: Same as New Sec

(4) an employer, labor organization or employment agency to discharge, expel or otherwise discriminate against a person because he has

(A) opposed any practices forbidden under AS 18.80.200 - 18.80.280; [OR BECAUSE HE HAS]

(B) filed a complaint, testified or assisted in a proceeding under this chapter; or

(C) filed a claim for workers' compensation benefits under AS 23.30;

Sec 13 P13

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

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

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

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

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

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

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

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

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

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

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

(b) If the employee is unable to designate a health care provider [PHYSICIAN] and the emergency nature of the injury requires immediate medical care, or if he does not desire to designate a health care provider [PHYSICIAN] and so advises the employer, the employer shall designate the health care provider [PHYSICIAN]. Designation under this subsection, however, does not prevent the employee from subsequently designating a health care provider [PHYSICIAN] for continuance of required medical care.

Sec 31 P24,25

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

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

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

Sec 32 P24

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

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

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

Sec 36 P26

* Sec. 9. AS 23.30.105(a) is amended to read:

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

Sec 40 P30

* Sec. 10. AS 23.30.110(c) is amended to read:

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

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

Sec 45 P33

* Sec. 11. AS 23.30.155(j) is amended to read:

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

Sec 46 P33

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

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

(o) If the board determines that it is in the interest of an injured employee and that a substantial hardship will not be imposed on the employer, the liability of the employer for all or part of compensation payable under AS 23.30.190 may be discharged by the payment of a lump sum.

Sec 51 P36

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

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

Sec 52 p 36,37

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

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

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

(2) The calculation required by this subsection does not apply if the recipient is absent from Alaska for medical or rehabilitation services not reasonably available in Alaska.

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

(4) Application of this subsection may not result in a reduction of the weekly compensation rate to less than $65 a week except as provided in (a) of this section.

Sec 53 p 37

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

(d) In a jurisdiction for which no average weekly wage is computed by the United States Secretary of Labor for the purposes of unemployment insurance, the average weekly wage shall be as determined by the commissioner.

Sec 55 p 38,39,40

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

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

employment or otherwise, payable during the continuance of the partial disability, but subject to reconsideration of the degree of the impairment by the board on its own motion or upon application of a party in interest; [WHENEVER THE BOARD DETERMINES THAT IT IS IN THE INTEREST OF JUSTICE, THE LIABILITY OF THE EMPLOYER FOR COMPENSATION, OR ANY PART OF IT AS DETERMINED BY THE BOARD, MAY BE DISCHARGED BY THE PAYMENT OF A LUMP SUM;] Sec 56 P40

* Sec. 17. AS 23.30.191 is repealed and reenacted to read:

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

Sec 58 P41

* Sec. 18. AS 23.30.215(a)(1) is amended to read:

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

* Sec. 19. AS 23.30.220(2) is amended to read:

(2) the average weekly wage is [THAT MOST FAVORABLE TO THE EMPLOYEE] calculated by dividing (156) 456 [52] into the total wages earned, including self-employment, in the highest paid three consecutive years out of [ANY ONE OF] the five [THREE] calendar years immediately preceding the injury; Sec 63 P43

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

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

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

Sec 66 P45

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

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

Sec 70 P45

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

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

Sec 71 P45,46

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

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

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

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

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

Sec 72 P44

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

2 adjust to current Rev. statutes.

Sec 73 P46

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

SIGN-IN SHEET

Name (please print)	Address	Representing	Testify? (YES or NO)	Phone Number
Eileen Blatz	.	Dept. Labor	NO	465-2720
Jack Thompson	2216 Post Rd Anch 99501	WCCA / ACE		272 0506
DON KOCH	POUCH D. JUNEAU 99803	DIV OF INSURANCE	NO OBSERVE ANSWER QUESTIONS	465-2577
Jim Robison	Box 899 ANCH 99510	w/c - A.S.D.C.L.	Depends	276-1640
Don Rouleau	Box 4-2653 ANCH. 99509	A.S.D.C.L.	NO	2745464
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George Kruse	310 2nd St Juneau	AK. State C of C	No	586-2323
James R. Wakefield	369 S. Franklin	Laborers Local # 942	No	586-3880
Michael Thomas	Box 1211 Juneau AK	American Insurance Assn.	No	586 3340
Jean Kline		A.H.C	—	586-1741
W Lewis		AGC		
Beverley Ward	134 N Franklin	ARCO	No	586-3680
Wes Coyner	311 Douglas Hwy	ANIC		586-7931
J. McLEAN	Box 1774 Jun.	AK Int. Assn.	No	

HOUSE LABOR & COMMERCE COMMITTEE Worker's Compensation HEARING DATE: 1/25/82

call Jackie Mc clintock

WCCA NEWSLETTER

HELPING ALL ALASKANS THRU A BETTER WORKERS COMPENSATION LAW

February 1982

WCCA has been involved with a joint effort of management and labor to correct some of the problems in HB159 now under consideration by the House Labor and Commerce Committee. Labor representatives include the AFL-CIO, District Council of Laborers, the Ironworkers, and the Teamsters. Management representatives of WCCA are from WIEN, Unit Construction, and Air Van Lines on the smaller joint labor-management subcommittee which meets nearly daily following the larger WCCA meeting which set direction on February 5, 1982.

While the area of workers' compensation is large and complex, the following five topics have been selected for detailed examination and hopefully consensus and legislative response in this session:

- Bunkhouse rule, which covers a worker at a remote site.
- No compensation payable to a worker injured while under the influence of intoxicating beverage or drugs not taken according to prescription direction.
- Determination of the wage base for setting compensation in an equitable manner for employee and employer (the average weekly wage setting process).
- Use of a spendable income approach in setting compensation to reduce disincentive to return to work due to higher compensation payments than net take-home pay. Iowa has addressed this issue.
- Establish a Vocational Rehabilitation monitoring capability within the Division of Workers' Compensation to obtain a quick response of all parties in a case involving rehabilitation. Guidelines for vocational rehabilitation services would be developed to assure a high quality of service.

Both labor and management representatives would like to have an expanded membership participation on the working committee and be able to address other aspects of workers' compensation in the future. These could include the use of modified work including union members and an examination of a wage loss system.

Due to the imminent legislative committee action, please contact one of the following board members with your ideas or concerns:

Richard Cattanach 349-4568 Jack Thompson 272-0536

" OUR SUPPORT DEPENDS ON YOUR SUPPORT "

LABOR/MANAGEMENT WORK DRAFT

FEBRUARY 13, 1982

Original Sponsor: Rules/Legislative Council

IN THE HOUSE

BY THE LABOR AND COMMERCE COMMITTEE

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

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWELFTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to workers' compensation; and providing for an effective date."

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

* Section 1. AS 23.30.025 is amended by adding a new subsection to read:

See 2 No change

(c) An insurer may issue a policy of insurance insuring the payment of benefits under this chapter which provides for a deductible amount to be paid by the employer. A policy with a deductible provision must be approved by the director of insurance and must provide that the deductible amount be paid by the insurer to the employee on behalf of the employer. After payment of the deductible by the insurer, the insurer may recover the deductible amount from the employer. The failure of an employer to reimburse an insurer for the deductible amount does not relieve the insurer from any other obligation it may have under the policy of insurance. An insurer is not required to apply for a deviation under AS 21.39.070 in order to issue a policy under this subsection. This subsection does not apply to a policy of excess insurance purchased by a self-insurer.

* Sec. 2. AS 23.30.040(e) is repealed and reenacted to read:

NEW

(e) The board may authorize payment from the second injury fund of:

(1) up to $200 per month for maintenance to an employee being rehabilitated under § 41 of this chapter who suffers an extreme financial hardship;

(2) rehabilitation expenses exclusive of costs for provider services and testing.

* Sec. 3. LEGISLATIVE INTENT. It is the intent of the legislature that an injured worker receive rehabilitation services which enhance returning to work as quickly as possible at earnings as close as possible to his gross earnings at the time of the injury. The legislature recognizes five rehabilitation goals in a workers' compensation program:

NEW

(1) Early identification of injured workers who will eventually need rehabilitation;

(2) Use of competent rehabilitation providers;

(3) Opportunities for return to direct employment;

(4) Maintaining an atmosphere conducive to rehabilitation;

(5) Providing incentives and removing disincentives to rehabilitation.

The Department of Labor shall adopt regulations in accordnce with AS 23.30.005 to accomplish these goals.

NEW

* Sec. 4. The board shall select and employ a rehabilitation administrator and may authorize the rehabilitation administrator to select and employ rehabilitation monitors.

NEW

* Sec. 5. The rehabilitation administrator is a partially exempt service under AS 39.25.120. The monthly salary of the rehabilitation administrator is equal to Step A, Range 22 of the salary schedule in AS 39.27.011(a) for Anchorage.

* Sec. 6 AS 23.30 is amended by adding a new section to read:

Sec. 23.30.041. REHABILITATION OF INJURED WORKERS. (a) The rehabilitation administrator shall implement the provisions of this section. The rehabilitation administrator shall continuously study the issue of rehabilitation, both physical and vocational, and shall investigate and maintain a directory of all qualified rehabilitation facilities, agencies, and providers, both public and private.

(b) When an employee suffers an injury covered by this chapter which precludes his return to suitable gainful employment, he shall be entitled to prompt rehabilitation services. The employer or carrier, at its own expense, shall provide for necessary and appropriate rehabilitation services. If rehabilitation services are not voluntarily offered, the rehabilitation

administrator, if he deems the services necessary and appropriate, may retain a rehabilitation provider at the expense of the employer or carrier.

(c) Rehabilitation services shall not exceed 37 weeks, provided, however, the rehabilitation services may be extended an additional 37 weeks if the rehabilitation administrator determines that special circumstances exist. Nothing in this subsection precludes an employer or carrier from providing rehabilitation services beyond such period on a voluntary basis. Where rehabilitation requires residence at or near a facility or institution, away from the employee's customary residence, reasonable cost of board, lodging and travel shall be paid by the employer.

(d) Temporary disability benefits paid pursuant to §§ 185 or 200 of this chapter shall include such period as may be reasonably required for training in the use of artificial members and appliances, and shall be paid throughout the rehabilitation process.

(e) The rehabilitation provider shall file a plan for approval with the rehabilitation administrator in accordance with board regulations. Within ten (10) days of the rehabilitation administrator's decision any party may seek review of the decision by requesting a hearing in accordance with § 110 of this chapter. A decision by the rehabilitation administrator is presumed valid absent a showing of clear error.

(f) Refusal by an injured employee to participate in an evaluation or a plan approved by the rehabilitation administrator shall result in a forfeiture of disability compensation for the period such refusal persists. However, if an employee commences participation in an evaluation or plan of rehabilitation within two months from the date of such refusal, and successfully completes such rehabilitation plan or evaluation by becoming employed for a period of thirty consecutive business days following the completion of the rehabilitation program, he shall receive a lump sum payment of 25% of the compensation forfeited by him. Such lump sum payment is available only once to an employee refusing rehabilitation. The rehabilitation administrator may find that an employee refuses to participate in an evaluation or vocational plan if, the employee fails to cooperate with the rehabilitation provider, or if the employee, or anyone acting on the employee's behalf, interferes with the rehabilitation process.

* Sec. 7. AS 23.30.045 (a) is amended to read:

(a) An employer is liable for and shall secure the payment to his employees of the compensation payable under §§ 41, 50, 95, 145, and 180 - 215 of this chapter. If the employer is a subcontractor, the contractor is liable for and shall secure the payment of the compensation to employees of the subcontractor unless the subcontractor secures the payment.

* Sec. 8. AS 23.30.045 (c) is amended to read:

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

* Sec. 9. AS 23.30.080 is amended by adding a new subsection to read:

(d) If an employer fails to insure or provide security as required by AS 23.30.075, the board SHALL issue a stop order prohibiting the use of employee labor by the employer until the employer insures or provides security as required by AS 23.30.075. The failure of an employer to file evidence of compliance as required by AS 23.30.085 shall create a rebutable presumption that the employer has failed to insure or provide security as required by AS 23.30.075. If an employer fails to comply with a stop order issued under this section, the board shall assess a civil penalty of $1,000 per day. The employer may not obtain a public contract with the state or any of its political subdivisions for three years following the violation of the stop order.

* Sec. 10. AS 23.30.095(e) is amended to read:

(e) The employee shall, after an injury, at reasonable times during the continuance of his disability if requested by his employer or, when ordered by the board, submit himself to an examination by a physician or surgeon authorized to practice medicine under the laws of the state in which the employee may be found, furnished and paid for by the employer. [THE EMPLOYEE HAS THE RIGHT TO HAVE A PHYSICIAN, PAID FOR BY THE EMPLOYER, PRESENT AT THE EXAMINATION OR

EXAMINATIONS.] No fact relative to the injury or claim communicated to or otherwise learned by physician or surgeon who may have attended or examined the employee, or who may have been present at an examination is privileged, either in the hearings provided for in this chapter or an action to recover damages against an employer who is subject to the compensation provisions of this chapter. If an employee refuses to submit himself to any examination provided for in this section [HEREIN], his rights to compensation shall be suspended until the obstruction or refusal ceases, and his compensation during the period of suspension may, in the discretion of the board or the court determining an action brought for the recovery of damages under this chapter [HEREUNDER], be forfeited. The board in any case of death may require an autopsy at the expense of the party requesting the autopsy. No autopsy may be held without notice first being given to the widow or widower or next of kin if they reside in the state or their whereabouts can be reasonably ascertained, of the time and place of the autopsy and reasonable time and opportunity given the widow or widower or next of kin to have a representative present to witness the autopsy. If no adequate notice is given, the findings from the autopsy may be suppressed on motion made to the board or to the superior court, as the case may be.

* Sec. 11. AS 23.30.095 is amended by adding a new section to read:

(j) the board shall adopt and use a schedule for determining the existance and degree of permanent impairment based upon medically or scientifically demonstrable findings.

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

AS 23.30.097. RELEASE OF INFORMATION. Upon request the employee shall provide written authority to the employer, carrier, rehabilitation provider and rehabilitation administrator to obtain medical and rehabilitation information relative to his injury.

* Sec. 13. AS 23.30.~~105~~100(d)(2) is amended to read:

2. If the board excuses the failure on the ground that for some satisfactory reason notice could not be given; however, when the delay in giving notice is so excused, notwithstanding the provisions of AS 23.30.120, the burden of proof as to the validity of the claim shall shift to the employee;

* Sec. 14. AS 23.30.110(c) is amended to read:

(c) The board shall make the investigation which it considers necessary with [IN] respect to [OF] the claim, and upon application of an interested party shall provide an opportunity for [ORDER] a hearing on it. If a hearing on a claim is ordered, the board shall give the claimant and other interested parties at least 10 days' notice of hearing, served personally upon the claimant and other interested parties or sent by registered mail, and shall, within 30 [20] days after the hearing record closes [IS HAD], by order, reject the claim or make an award in respect to it. If a hearing is continued by the board, additional notice under this subsection is not required. [IF NO HEARING IS ORDERED WITHIN 20 DAYS AFTER NOTICE IS GIVEN AS PROVIDED IN (b) OF THIS SECTION, THE BOARD SHALL BY ORDER REJECT THE CLAIM OR MAKE AN AWARD IN RESPECT TO IT.]

* Sec. 15. AS 23.30.120(3) is amended to read:

(3) The injury was not proximately caused by the employee being under the influence of an intoxicating liquor or drugs [OCCASIONED SOLELY BY THE INTOXICATION OF THE INJURED EMPLOYEE];

* Sec. 16. AS 23.30 is amended by adding a new section to read:

Sec. 23.30.122. CREDIBILITY OF WITNESSES. The board has the sole power to determine the credibility of a witness. A finding by the board concerning the weight to be accorded any witnesses testimony, including medical testimony and reports, is conclusive even though the evidence is conflicting or susceptible to contrary conclusions. The findings of the board shall be subject to the same standard of review as a jury's finding in a civil action.

* Sec. 17. AS 23.30.155(j) is amended to read:

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

* Sec. 18. AS 23.30.155 is amended by adding new subsection to read:

(n) If the board determines that it is in the interest of an injured employee, and the parties agree, the liability of the employer for all or part of compensation payable under AS 23.30.190 (a)(1)-(11) may be discharged by the payment of a lump sum.

* Sec. 19. AS 23.30.175(a) is amended to read:

(a) The weekly rate of compensation for disability or death for a recipient residing in Alaska may not exceed the percentage of the Alaska average weekly wage in effect on the date of injury as determined by the table contained in this subsection and initially may not be less than $110 [65] a week. However, if the board determines that the employee's spendable [AVERAGE] weekly wages are less than $110 [65] a week as computed under § 220 of this chapter, it shall issue an order decreasing the weekly rate of compensation to a rate equal to the employee's spendable [AVERAGE] weekly wages, and payments made earlier in excess of the decreased rate shall be deducted from the unpaid compensation in the manner the board determines. In any case, the employer shall pay timely compensation.

On	The Rate Shall Be
July 1, 1975	80% of the Alaska Average Weekly Wage
January 1, 1976	100% of the Alaska Average Weekly Wage
January 1, 1977	133.3% of the Alaska Average Weekly Wage
January 1, 1979	166.6% of the Alaska Average Weekly Wage
January 1, 1981	200% of the Alaska Average Weekly Wage

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

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

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

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

(1) The weekly rate of compensation shall be calculated by multiplying the recipient's weekly compensation rate calculated in accordance with § 180, 185,190, 200 or 215 of this chapter times the ratio of the average weekly wage of the jurisdiction in which the recipient resides to the average weekly wage of Alaska. The rate is based on the average weekly wages in effect when the recipient leaves Alaska and shall be adjusted annually upon publication of the average weekly wages for all jurisdictions.

(2) The calculation required by this subsection does not apply if the recipient is absent from Alaska for medical or rehabilitation services not reasonably available in Alaska.

(3) If the spendable weekly wage of the recipient and the resulting compensation rate is determined under AS 23.30.220(2) the calculation required by this subsection applies to only those gross earnings earned in Alaska.

(4) Application of this subsection may not result in a reduction of the weekly compensation rate to less than $110 a week except as provided in (a) of this section.

* Sec. 22. AS 23.30.175(d) is repealed and reenacted to read:

(d) In a jurisdiction for which no average weekly wage is computed by the United States Secretary of Labor for the purposes of unemployment insurance, the average weekly wage shall be as determined by the commissioner.

* Sec. 23. AS 23.30.180 is amended to read:

Sec. 23.30.180. PERMANENT TOTAL DISABILITY. In case of total disability adjudged to be permanent 80 [66-2/3] per cent of the injured employee's spendable [AVERAGE] weekly wages shall be paid to the employee during the continuance of the total disability. Loss of both hands, or both arms, or both feet, or both legs, or both eyes, or of any two of them, in the absence of conclusive proof to the contrary, constitutes permanent total disability. In all other cases permanent total disability is determined in accordance with the facts.

* Sec. 24. AS 23.30.185 is amended to read:

Sec. 23.30.185. COMPENSATION FOR TEMPORARY TOTAL DISABILITY. In case of disability total in character but temporary in quality 80 [66-2/3] per cent of the injured employee's spendable [AVERAGE] weekly wages shall be paid to the employee during the continuance of the disability.

* Sec. 25. AS 23.30.190 is amended to read:

Sec. 23.30.190. COMPENSATION FOR PERMANENT PARTIAL DISABILITY. (a) In case of disability partial in character but permanent in quality the compensation is 80 [66-2/3] per cent of the injured employee's spendable [AVERAGE] weekly wages in addition to compensation for temporary total disability or temporary partial disability paid in accordance with §§ 185 or 200 of this chapter, respectively, and shall be paid to the employee as follows:

(1) arm lost, 280 weeks compensation, not to exceed $59,000 [$43,680];

(2) leg lost, 248 weeks compensation, not to exceed $54,400 [$40,320];

(3) hand lost, 212 weeks compensation, not to exceed 45,400 [$33,600];

(4) foot lost, 173 weeks compensation, not to exceed 39,700 [$28,700];

(5) eye lost, 140 weeks compensation, not to exceed $30,200 [$22,400];

(6) thumb lost, 51 weeks compensation, not to exceed $14,000 [$10,400];

(7) first finger lost, 28 weeks compensation, not to exceed $8,700 [$6,440];

(8) great toe lost, 26 weeks compensation, not to exceed $7,200 [$5,320];

(9) second finger lost, 18 weeks compensation, not to exceed $5,700 [$4,200]; third finger lost, 18 weeks compensation, not to exceed $4,700 [$3,500];

(10) toe other than great toe lost, 8 weeks compensation, not to exceed $3,000 [$2,240];

(11) fourth finger lost, 7 weeks compensation, not to exceed $2,800 ~~$2,000~~ [$2,100];

(12) loss of hearing of one ear, 52 weeks compensation, not exceeding $9,800 [$7,280]: loss of hearing of both ears, 200 weeks compensation, not to exceed $37,800 [$28,000] No benefit is payable for loss of hearing above 3,000 cycles per second;

(13) compensation for loss of more than one phalange of a digit shall be the same as for loss of the entire digit; compensation for loss of the first phalange is one-half of the compensation for loss of the entire digit;

(14) amputation between the elbow and the wrist is considered equivalent to the loss of an arm, and amputation between the knee and ankle is considered equivalent to the loss of a leg;

(15) compensation for loss of binocular vision or for 80 per cent or more of the vision of an eye is the same as for loss of the eye;

(16) compensation for loss of two or more digits, or one or more phalanges of two or more digits of a hand or foot may be proportioned to the resulting loss of use of the injured hand or foot, but may not exceed the compensation for loss of a hand or foot;

(17) compensation for permanent total loss of use of a member is the same as for loss of the member;

(18) compensation for permanent partial loss or loss of use of a member may be for proportionate loss or loss of use of the member;

(19) in addition to other allowable compensation, the board shall award proper and equitable compensation up to $10,000 for

(A) serious disfigurement of face, head and, when such disfigurement is likely to handicap the employee in securing or holding employment, for serious disfigurement of neck or limbs normally exposed, or

(B) partial or total loss of or loss of use of a part or function of the body not otherwise provided for under this section;

(20) in all other cases in this class of disability the compensation is 80 [66-2/3] per cent of the difference between his spendable [AVERAGE] weekly wages and his wage-earning capacity after the injury in the same employment or otherwise, payable during the continuance of the partial disability, but subject to modification [RECONSIDERATION OF THE DEGREE OF THE IMPAIRMENT] by the board on its own motion or upon application of a party in interest; Whenever the board determines that it is in the interest of justice, the liability of the employer for compensation, or any part if it as determined by the board, may be discharged by the payment of a lump sum;

(21) in a case in which there is a loss of, or loss of use of more than one member or parts of more than one member set out in (1) - (18) of this section, not amounting to permanent total disability, the award of compensation is for the loss of, or loss of use of, each member or part of the member, which awards shall run consecutively, except that where the injury affects only two or more digits of the same hand or foot, (16) of this section applies.

(b) Total compensation paid under (a)(20) of this section may not exceed

$75,000 [60,000].

* Sec. 26. AS 23.30.200 is amended to read:

Sec. 23.30.200. TEMPORARY PARTIAL DISABILITY. In case of temporary partial disability resulting in decrease of earning capacity the compensation shall be 80 [66-2/3] per cent of the difference between the injured employee's spendable [AVERAGE] weekly wages before the injury and his wage earning capacity after the injury in the same or another employment, to be paid during the continuance of the disability, but not to be paid for more than five years.

* Sec. 27. AS 23.30.210 is amended to read:

Sec. 23.30.210. DETERMINATION OF WAGE-EARNING CAPACITY. (a) In a case of partial disability under § 190(20) or 200 of this chapter the wage-earning capacity of an inured employee is determined by his actual spendable weekly wage [EARNINGS] if the actual spendable weekly wage [EARNINGS] fairly and reasonably represents his wage-earning capacity. If the employee has no actual spendable weekly wage [EARNINGS] or his actual spendable weekly wage [EARNINGS] does not fairly and reasonably represent his wage-earning capacity, the board may, in the interest of justice, fix the wage-earning capacity which is reasonable, having due regard to the nature of his injury, the degree of physical impairment, his usual employment, and any other factors or circumstances in the case which may affect his capacity to earn wages in his disabled condition, including the effect of disability as it may naturally extend into the future.

* Sec. 28. AS 23.30.215(a) is amended to read:

(a) If the injury causes death, the compensation is known as a death benefit and is payable in the following amounts to and for the benefit of the following persons:

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

(2) if there is a widow or widower or a child or children of the deceased, the following percentages of the spendable [AVERAGE] weekly wages of the deceased:

(A) 80 [66-2/3] per cent for the widow or widower with no children;

(B) 40 [33-1/3] per cent for the widow or widower with one child and 40 [33-1/3] per cent for the child;

(C) 25 [20] per cent for the widow or widower with two or more children and 55 [46-2/3] per cent divided equally among the children'

(D) [deleted]

(E) 80 [66-2/3] per cent for an only child when there is no widow or widower;

(F) [deleted]

(G) 80 [66-23/] per cent, divided equally, if there are two more more children and no widow or widower:

(3) if the widow or widower remarries, she or he is entitled to be paid in one sum an amount equal to the compensation to which the widow or widower would otherwise be entitled in the two years commencing on the date of remarriage as full and final settlement of all sums due the widow or widower;

(4) if there is no widow or widower or child or children, then for the support of father, mother, grandchildren, brothers, and sisters, if dependent upon the deceased at the time of injury, 40 [35] per cent of the spendable [AVERAGE] weekly wage of the deceased to such beneficiaries, share and share alike, not to exceed $20,000 in the aggregate.

* Sec. 29. AS 23.30.215(b) is amended to read:

(b) In computing death benefits, the spendable [AVERAGE] weekly wage of the deceased shall be computed under § 220 of this chapter and shall be paid in accordance with § 155 of this chapter and subject to the weekly maximum limitation in the aggregate as provided in § 175 of this chapter, but the total weekly compensation may not be less than $75 [45] for a widow or widower nor less than $25 [15] weekly to a child or $50 [30] for children.

* Sec. 30. AS 23.30.220 is repealed and reenacted to read:

Sec. 23.30.220 DETERMINATION OF SPENDABLE WEEKLY WAGE. Except as otherwise provided in this chapter, the spendable weekly wage of the injured employee at the time of the injury is the basis for computing compensation, and shall be the employee's gross weekly earnings minus payroll tax deductions. The gross weekly earnings shall be calculated as follows:

(1) if at the time of the injury the employee has been in the gainful employ of the employer for the full reporting quarter immediately preceding the time of injury, the gross weekly earnings shall be computed by dividing by thirteen the gross earnings said employee earned in the employ of the employer in that reporting quarter.

(2) if at the time of the injury the employee has not been in the employ of the employer for the full reporting quarter immediately preceding the time of injury, the gross weekly earnings shall be computed by dividing 100 into the gross earnings of the employee in the two calendar years immediately preceding the injury.

(3) if the board determines that the gross weekly earnings at the time of the injury cannot be fairly calculated under (1) or (2) of this section, or cannot otherwise be ascertained without undue hardship to the employee, the gross weekly earnings for calculating compensation shall be the usual gross earnings for similar service rendered by paid employees under similar circumstances as determined by the board;

(4) if an employee is a minor or an apprentice, or a trainee, as determined by the board, when injured, and under normal conditions his wages would increase during the period of disability, this fact may be considered by the board in computing his gross weekly earnings;

(5) if the employee is injured while performing his duties as a volunteer ambulance attendant, policeman or fireman, the gross weekly earnings calculating compensation shall be the minimum gross weekly earnings paid a full-time ambulance attendant, policeman or fireman employed, at a reasonable figure previously set by the subdivision to make this determination and in no case may the gross weekly earnings for calculating compensation be less than the minimum wage computed on the basis of 40 hours work per week.

* Sec. 31. AS 23.30 is amended by adding a new section to read:

Sec. 23.30.227. OTHER BENEFITS. No compensation shall be payable to an employee under §§ 180 or 185 of this chapter for any week in which the employee receives unemployment benefits (AS 23.20).

* Sec. 32. AS 23.30.235 is repealed and reenacted to read:

Sec. 23.30.235 CASES IN WHICH NO COMPENSATION IS PAYABLE. No compensation under this chapter shall be allowed for an injury:

(1) proximately caused by the employee's willful intent to injure himself or to willfully injure another;

(2) proximately caused by the employee being under the influence of an intoxicating liquor or drugs unless such drugs are being taken in quantities prescribed by employee's physician.

* Sec. 33. AS 23.30.250 is amended to read:

Sec. 23.30.250. PENALTY FOR MISREPRESENTATION. A person who willfully makes a false or misleading statement or representation for th purpose of obtaining a benefit or payment under this chapter is guilty of <u>theft as defined in AS 11.46.100(3) and is punishable as provided in AS 11.46.120 - 11.46.150</u> [A MISDEMEANOR, AND UPON CONVICTION IS PUNISHABLE BY A FINE OF NOT MORE THAN $1,000, OR BY IMPRISONMENT FOR NOT MORE THAN ONE YEAR, OR BY BOTH].

* Sec. 34. The board shall publish Sections 32 and 33 of this Act in a booklet defining the employee's rights and obligations under the Alaska Workers Compensation Act. The booklet shall be mailed to an injured worker upon notice of an injury.

* Sec. 35. AS 23.30.265 is amended by adding new paragraphs to read:

(29) "arising out of and in the course of employment" includes employer required or supplied travel to and from a remote job site; activities performed at the direction or under the control of the employer; and employer sanctioned activities at employer provided facilities; but excludes activities of a personal nature away from employer provided facilities.

(30) "under the influence of an intoxicating liquor or drugs" means not only all well-known and easily recognized conditions and degrees of intoxication, but any abnormal mental or physical condition which is the result of indulging intoxicating liquors or drugs, and which, to an appreciable degree, deprives one of that clearness of intellect and control of himself which he would otherwise possess.

(31) "drugs" means a controlled substance or cannabis as further defined in AS. 11.81.900.

(32) "gross earnings" means recurring payments by employer to the employee for employment before any authorized or lawfully required deduction or withholding of funds by the employer, excluding irregular bonuses, reimbursement of expenses, expense allowances, and any benefit or payment to the employee which is not taxable to the employee during the pay period. The value of room and board to the employee may be considered in determining gross earnings for those employees with gross weekly earnings which are less than the Alaska average weekly wage at the time of injury.

(33) "payroll taxes" means the following:

(a) An amount equal to the amount which would be withheld pursuant to withholding tables in effect on July 1 preceding the injury under the Internal Revenue Code of 1954, and regulations pursuant thereto, as amended, as though the employee had elected to claim the maximum number of dependants for actual dependency, blindness and old age to which the employee is entitled on the date on which he was injured; and,

(b) An amount equal to the amount required on July 1 preceding the injury by the Social Security Act of 1935 as amended to be deducted or withheld from the amount of earnings of the employee at the time of the injury as if the earnings were earned at the beginning of the calendar year in which he was injured; and,

(c) And any other legislative mandated deductions including but not limited to ESC and FUTA;

(d) The Commissioner shall annually prepare formulas which shall be used to calculate an employee's spendable weekly wage on the basis of his gross weekly earnings, number of dependants, marital status and payroll tax deducations.

(34) "reporting quarter" means one of the 3 month periods (January through March, April through June, July through September, October through December) used to report employee wages to the Internal Revenue Service.

(35) "Suitable Gainful Employment" means employment which is reasonably attainable in light of the individuals age, education, previous occupation, and injury, and which offers an opportunity to restore the individual as soon as practical and as nearly as possible to is gross earnings as determined at the time of injury.

* Sec. 36. AS 23.30.095(g), 23.30.125(b), 23.30.175(e) and (f), AS 23.30.191 and AS 23.30.265(20) are repealed.

* Sec. 37. AS 39.25.120 is amended by adding a new paragraph to read:

(20) the rehabilitation administrator of the Workers' Compensation Board.

* Sec. 38. This act takes effect July 1, 1982.

See Jacobe on B. Dressler's concern of 55¢ payment date. separate amendment.

Make sure drafter copy has typo corrections. ✓

Bill Beer
3667
3868

LABOR/MANAGEMENT WORK DRAFT

FEBRUARY 13, 1982

Original Sponsor: Rules/Legislative Council

IN THE HOUSE accept in concept.

BY THE LABOR AND COMMERCE COMMITTEE

fiscal note

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

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWELFTH LEGISLATURE - SECOND SESSION

$320,0000
4 - Staff
1 Aud - 6 Trips
Travel monies
reprint booklet
Computer update

A BILL

For an Act entitled: "An Act relating to workers' compensation; and providing for an effective date."

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

* Should be in Title 21 - Insurance Code

Estimate of Savings

* Section 1. AS 23.30.025 is amended by adding a new subsection to read:

this or substance is already being done.

present in 1/25/82

(c) An insurer may issue a policy of insurance insuring the payment of benefits under this chapter which provides for a deductible amount to be paid by the employer. A policy with a deductible provision must be approved by the director of insurance and must provide that the deductible amount be paid by the insurer to the employee on behalf of the employer. After payment of the deductible by the insurer, the insurer may recover the deductible amount from the employer. The failure of an employer to reimburse an insurer for the deductible amount does not relieve the insurer from any other obligation it may have under the policy of insurance. An insurer is not required to apply for a deviation under AS 21.39.070 in order to issue a policy under this subsection. This subsection does not apply to a policy of excess insurance purchased by a self-insurer.

Recovery unsuccessful if ...

maybe 659

* Sec. 2. AS 23.30.040(e) is repealed and reenacted to read:

(e) The board may authorize payment from the second injury fund of:

OK in addition to T.T.D.

(1) up to $200 per month for maintenance to an employee being rehabilitated under § 41 of this chapter who suffers an extreme financial hardship;

(2) rehabilitation expenses exclusive of costs for provider services and testing.

1) What type of deductibles - how to be enforced

Leave for special Letter of Intent

* Sec. 3. LEGISLATIVE INTENT. It is the intent of the legislature that an injured worker receive rehabilitation services which enhance returning to work as quickly as possible at earnings as close as possible to his gross earnings at the time of the injury. The legislature recognizes five rehabilitation goals in a workers' compensation program:

(1) Early identification of injured workers who will eventually need rehabilitation;

(2) Use of competent rehabilitation providers;

(3) Opportunities for return to direct employment;

(4) Maintaining an atmosphere conducive to rehabilitation;

(5) Providing incentives and removing disincentives to rehabilitation.

The Department of Labor shall adopt regulations in accordnce with AS 23.30 005 to accomplish these goals. list responsibilities — Reg w/s Leg

Zee Jackson report

* Sec. 4. The board shall select and employ a rehabilitation administrator and may authorize the rehabilitation administrator to select and employ rehabilitation monitors.

5% of one fund to Rehab —

Zee Jackson report

Sec. 5. The rehabilitation administrator is a partially exempt service under AS 39.25.120. The monthly salary of the rehabilitation administrator is equal to Step A, Range 22 of the salary schedule in AS 39.27.011(a) for Anchorage. by region of residency

Zee Jackson report

* Sec. 6 AS 23.30 is amended by adding a new section to read:

Sec. 23.30.041. REHABILITATION OF INJURED WORKERS. (a) The rehabilitation administrator shall implement the provisions of this section. The rehabilitation administrator shall continuously study the issue of rehabilitation, both physical and vocational, and shall investigate and maintain a directory of all qualified rehabilitation facilities, agencies, and providers, both public and private.

(b) When an employee suffers an injury covered by this chapter which precludes his return to suitable gainful employment, he shall be entitled to prompt rehabilitation services. The employer or carrier, at its own expense, shall provide for necessary and appropriate rehabilitation services. If rehabilitation services are not voluntarily offered, the rehabilitation

administrator, if he deems the services necessary and appropriate, may retain a rehabilitation provider at the expense of the employer or carrier.

(c) Rehabilitation services shall not exceed 37 weeks, provided, however, the rehabilitation services may be extended an additional 37 weeks if the rehabilitation administrator determines that special circumstances exist. Nothing in this subsection precludes an employer or carrier from providing rehabilitation services beyond such period on a voluntary basis. Where rehabilitation requires residence at or near a facility or institution, away from the employee's customary residence, reasonable cost of board, lodging and travel shall be paid by the employer.

(d) Temporary disability benefits paid pursuant to §§ 185 or 200 of this chapter shall include such period as may be reasonably required for training in the use of artificial members and appliances, and shall be paid throughout the rehabilitation process.

(e) The rehabilitation provider shall file a plan for approval with the rehabilitation administrator in accordance with board regulations. Within ten (10) days of the rehabilitation administrator's decision any party may seek review of the decision by requesting a hearing in accordance with § 110 of this chapter. A decision by the rehabilitation administrator is presumed valid absent a showing of clear error.

(f) Refusal by an injured employee to participate in an evaluation or a plan approved by the rehabilitation administrator shall result in a forfeiture of disability compensation for the period such refusal persists. However, if an employee commences participation in an evaluation or plan of rehabilitation within two months from the date of such refusal, and successfully completes such rehabilitation plan or evaluation by becoming employed for a period of thirty consecutive business days following the completion of the rehabilitation program, he shall receive a lump sum payment of 25% of the compensation forfeited by him. Such lump sum payment is available only once to an employee refusing rehabilitation. The rehabilitation administrator may find that an employee refuses to participate in an evaluation or vocational plan if, the employee fails to cooperate with the rehabilitation provider, or if the employee, or anyone acting on the employee's behalf, interferes with the rehabilitation process.

* Sec. 7. AS 23.30.045 (a) is amended to read:

(a) An employer is liable for and shall secure the payment to his employees of the compensation payable under §§ 41, 50, 95, 145, and 180 - 215 of this chapter. If the employer is a subcontractor, the contractor is liable for and shall secure the payment of the compensation to employees of the subcontractor unless the subcontractor secures the payment.

* Sec. 8. AS 23.30.045 (c) is amended to read:

prov. 159

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

* Sec. 9. AS 23.30.080 is amended by adding a new subsection to read:

prov. 159

(d) If an employer fails to insure or provide security as required by AS 23.30.075, the board [may] shall issue a stop order prohibiting the use of employee labor by the employer until the employer insures or provides security as required by AS 23.30.075. The failure of an employer to file evidence of compliance as required by AS 23.30.085 shall create a rebutable presumption that the employer has failed to insure or provide security as required by AS 23.30.075. If an employer fails to comply with a stop order issued under this section, the board shall assess a civil penalty of $1,000 per day. The employer may not obtain a public contract with the state or any of its political subdivisions for three years following the violation of the stop order.

x insert prov. Sec. 7 of 159

* Sec. 10. AS 23.30.095(e) is amended to read:

prov. Sec. 8

(e) The employee shall, after an injury, at reasonable times during the continuance of his disability if requested by his employer or, when ordered by the board, submit himself to an examination by a physician or surgeon authorized to practice medicine under the laws of the state in which the employee may be found, furnished and paid for by the employer. [THE EMPLOYEE HAS THE RIGHT TO HAVE A PHYSICIAN, PAID FOR BY THE EMPLOYER, PRESENT AT THE EXAMINATION OR

EXAMINATIONS.] No fact relative to the injury or claim communicated to or otherwise learned by physician or surgeon who may have attended or examined the employee, or who may have been present at an examination is privileged, either in the hearings provided for in this chapter or an action to recover damages against an employer who is subject to the compensation provisions of this chapter. If an employee refuses to submit himself to any examination provided for in this section [HEREIN], his rights to compensation shall be suspended until the obstruction or refusal ceases, and his compensation during the period of suspension may, in the discretion of the board or the court determining an action brought for the recovery of damages under this chapter [HEREUNDER], be forfeited. The board in any case of death may require an autopsy at the expense of the party requesting the autopsy. No autopsy may be held without notice first being given to the widow or widower or next of kin if they reside in the state or their whereabouts can be reasonably ascertained, of the time and place of the autopsy and reasonable time and opportunity given the widow or widower or next of kin to have a representative present to witness the autopsy. If no adequate notice is given, the findings from the autopsy may be suppressed on motion made to the board or to the superior court, as the case may be.

new — maybe needs staff language

* Sec. 11. AS 23.30.095 is amended by adding a new section to read:

(j) the board shall adopt and use a schedule for determining the existance and degree of permanent impairment based upon medically or scientifically demonstrable findings.

consistent with Am. Med. Assn. Guides

new sec

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

AS 23.30.097. RELEASE OF INFORMATION. Upon request the employee shall provide written authority to the employer, carrier, rehabilitation provider and rehabilitation administrator to obtain medical and rehabilitation information relative to his injury.

? → clarify to claimant employers

* Sec. 13. AS 23.30.~~105~~100(d)(2) is amended to read:

2. If the board excuses the failure on the ground that for some satisfactory reason notice could not be given; however, when the delay in giving notice is so excused, notwithstanding the provisions of AS 23.30.120, the burden of proof as to the validity of the claim shall shift to the employee;

Be sure that there is proof that employers shows he has received claim of injury from employee.

* Sec. 14. AS 23.30.110(c) is amended to read:

from Dorsey bill Sec 10 of present draft

(c) The board shall make the investigation which it considers necessary with [IN] respect to [OF] the claim, and upon application of an interested party shall provide an opportunity for [ORDER] a hearing on it. If a hearing on a claim is ordered, the board shall give the claimant and other interested parties at least 10 days' notice of hearing, served personally upon the claimant and other interested parties or sent by registered mail, and shall, within 30 [20] days after the hearing record closes [IS HAD], by order, reject the claim or make an award in respect to it. ~~If~~ if a hearing is continued by the board, additional notice under this subsection is not required. [IF NO HEARING IS ORDERED WITHIN 20 DAYS AFTER NOTICE IS GIVEN AS PROVIDED IN (b) OF THIS SECTION, THE BOARD SHALL BY ORDER REJECT THE CLAIM OR MAKE AN AWARD IN RESPECT TO IT.]

* Sec. 15. AS 23.30.120(3) is amended to read:

AS 23.30.225

(3) The injury was not proximately caused by the employee being under the influence of an intoxicating liquor or drugs [OCCASIONED SOLELY BY THE INTOXICATION OF THE INJURED EMPLOYEE];

* Sec. 16. AS 23.30 is amended by adding a new section to read:

Sec. 23.30.122. CREDIBILITY OF WITNESSES. The board has the sole power to determine the credibility of a witness. A finding by the board concerning the weight to be accorded any witnesses testimony, including medical testimony and reports, is conclusive even though the evidence is conflicting or susceptible to contrary conclusions. The findings of the board shall be subject to the same standard of review as a jury's finding in a civil action.

Dorsheff prev. Sec. 11

* Sec. 17. AS 23.30.155(j) is amended to read:

(j) If an employer has made advance payments or overpayments of compensation, he is entitled to be reimbursed, after approval by the board, out of any unpaid installment or installments of compensation due. 2? maybe consider electing — off set as subsequent payments

* Sec. 18. AS 23.30.155 is amended by adding new subsection to read:

Dorr's Bill. (n) If the board determines that it is in the interest of an injured employee, and the parties agree, the liability of the employer for all or part of compensation payable under AS 23.30.190 (a)(1)-(19) may be discharged by the payment of a lump sum.

Jerke? ——→

Consider for HB659

* Sec. 19. AS 23.30.175(a) is amended to read:

(a) The weekly rate of compensation for disability or death for a recipient residing in Alaska may not exceed the percentage of the Alaska average weekly wage in effect on the date of injury as determined by the table contained in this subsection and initially may not be less than $110 [65] a week. However, if the board determines that the employee's spendable [AVERAGE] weekly wages are less than $110 [65] a week as computed under § 220 of this chapter, it shall issue an order decreasing the weekly rate of compensation to a rate equal to the employee's spendable [AVERAGE] weekly wages, and payments made earlier in excess of the decreased rate shall be deducted from the unpaid compensation in the manner the board determines. In any case, the employer shall pay timely compensation.

On	The Rate Shall Be
July 1, 1975	80% of the Alaska Average Weekly Wage
January 1, 1976	100% of the Alaska Average Weekly Wage
January 1, 1977	133.3% of the Alaska Average Weekly Wage
January 1, 1979	166.6% of the Alaska Average Weekly Wage
January 1, 1981	200% of the Alaska Average Weekly Wage

Dav's Sec. 14, 15, 18 of 159

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

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

Sec. 14 of 159

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

Dav's (c) The following rules apply to recipients who do not reside in Alaska:

(1) The weekly rate of compensation shall be calculated by multiplying the recipient's weekly compensation rate calculated in accordance with § 180, 185,190, 200 or 215 of this chapter times the ratio of the average weekly wage of the jurisdiction in which the recipient resides to the average weekly wage of Alaska. The ratio rate is based on the average weekly wages in effect when the recipient leaves Alaska and shall be adjusted annually upon publication of the average weekly wages for all jurisdictions.

(2) The calculation required by this subsection does not apply if the recipient is absent from Alaska for medical or rehabilitation services not reasonably available in Alaska.

(3) If the spendable weekly wage of the recipient and the resulting compensation rate is determined under AS 23.30.220(2) the calculation required by this subsection applies to only those gross earnings earned in Alaska.

(4) Application of this subsection may not result in a reduction of the weekly compensation rate to less than $110 a week except as provided in (a) of this section.

* Sec. 22. AS 23.30.175(d) is repealed and reenacted to read:

Dav's (d) In a jurisdiction for which no average weekly wage is computed by the United States Secretary of Labor for the purposes of unemployment insurance, the average weekly wage shall be as determined by the commissioner.

* Sec. 23. AS 23.30.180 is amended to read:

Sec. 23.30.180. PERMANENT TOTAL DISABILITY. In case of total disability adjudged to be permanent 80 [66-2/3] per cent of the injured employee's spendable [AVERAGE] weekly wages shall be paid to the employee during the continuance of the total disability. Loss of both hands, or both arms, or both feet, or both legs, or both eyes, or of any two of them, in the absence of conclusive proof to the contrary, constitutes permanent total disability. In all other cases permanent total disability is determined in accordance with the facts.

* Sec. 24. AS 23.30.185 is amended to read:

Sec. 23.30.185. COMPENSATION FOR TEMPORARY TOTAL DISABILITY. In case of disability total in character but temporary in quality 80 [66-2/3] per cent of the injured employee's spendable [AVERAGE] weekly wages shall be paid to the employee during the continuance of the disability.

* Sec. 25. AS 23.30.190 is amended to read:

Sec. 23.30.190. COMPENSATION FOR PERMANENT PARTIAL DISABILITY. (a) In case of disability partial in character but permanent in quality the compensation is 80 [66-2/3] per cent of the injured employee's spendable [AVERAGE] weekly wages in addition to compensation for temporary total disability or temporary partial disability paid in accordance with §§ 185 or 200 of this chapter, respectively, and shall be paid to the employee as follows: 35% increase in ceilings

(1) arm lost, 280 weeks compensation, not to exceed $59,000 [$43,680];

(2) leg lost, 248 weeks compensation, not to exceed $54,400 [$40,320];

(3) hand lost, 212 weeks compensation, not to exceed 45,400 [$33,600];

(4) foot lost, 173 weeks compensation, not to exceed 39,700 [$28,700];

(5) eye lost, 140 weeks compensation, not to exceed $30,200 [$22,400];

(6) thumb lost, 51 weeks compensation, not to exceed $14,000 [$10,400];

(7) first finger lost, 28 weeks compensation, not to exceed $8,700 [$6,440];

(8) great toe lost, 26 weeks compensation, not to exceed $7,200 [$5,320];

(9) second finger lost, 18 weeks compensation, not to exceed $5,700 [$4,200]; third finger lost, 18 weeks compensation, not to exceed $4,700 [$3,500];

(10) toe other than great toe lost, 8 weeks compensation, not to exceed $3,000 [$2,240];

(11) fourth finger lost, 7 weeks compensation, not to exceed ~~$2,000~~ 2,800 [$2,100];

(12) loss of hearing of one ear, 52 weeks compensation, not exceeding $9,800 [$7,280]: loss of hearing of both ears, 200 weeks compensation, not to exceed $37,800 [$28,000] No benefit is payable for loss of hearing above 3,000 cycles per second;

(13) compensation for loss of more than one phalange of a digit shall be the same as for loss of the entire digit; compensation for loss of the first phalange is one-half of the compensation for loss of the entire digit;

(14) amputation between the elbow and the wrist is considered equivalent to the loss of an arm, and amputation between the knee and ankle is considered equivalent to the loss of a leg;

(15) compensation for loss of binocular vision or for 80 per cent or more of the vision of an eye is the same as for loss of the eye;

(16) compensation for loss of two or more digits, or one or more phalanges of two or more digits of a hand or foot may be proportioned to the resulting loss of use of the injured hand or foot, but may not exceed the compensation for loss of a hand or foot;

(17) compensation for permanent total loss of use of a member is the same as for loss of the member;

(18) compensation for permanent partial loss or loss of use of a member may be for proportionate loss or loss of use of the member;

(19) in addition to other allowable compensation, the board shall award proper and equitable compensation up to $10,000 for

(A) serious disfigurement of face, head and, when such disfigurement is likely to handicap the employee in securing or holding employment, for serious disfigurement of neck or limbs normally exposed, or

(B) partial or total loss of or loss of use of a part or function of the body not otherwise provided for under this section;

(20) in all other cases in this class of disability the compensation is 80 [66-2/3] per cent of the difference between his spendable [AVERAGE] weekly wages and his wage-earning capacity after the injury in the same employment or otherwise, payable during the continuance of the partial disability, but subject to modification [RECONSIDERATION OF THE DEGREE OF THE IMPAIRMENT] by the board on its own motion or upon application of a party in interest; Whenever the board determines that it is in the interest of justice, the liability of the employer for compensation, or any part if it as determined by the board, may be discharged by the payment of a lump sum;

(21) in a case in which there is a loss of, or loss of use of more than one member or parts of more than one member set out in (1) - (18) of this section, not amounting to permanent total disability, the award of compensation is for the loss of, or loss of use of, each member or part of the member, which awards shall run consecutively, except that where the injury affects only two or more digits of the same hand or foot, (16) of this section applies.

(b) Total compensation paid under (a)(20) of this section may not exceed

$75,000 [60,000].

* Sec. 26. AS 23.30.200 is amended to read:

Sec. 23.30.200. TEMPORARY PARTIAL DISABILITY. In case of temporary partial disability resulting in decrease of earning capacity the compensation shall be 80 [66-2/3] per cent of the difference between the injured employee's spendable [AVERAGE] weekly wages before the injury and his wage earning capacity after the injury in the same or another employment, to be paid during the continuance of the disability, but not to be paid for more than five years.

* Sec. 27. AS 23.30.210 is amended to read:

Sec. 23.30.210. DETERMINATION OF WAGE-EARNING CAPACITY. (a) In a case of partial disability under § 190(20) or 200 of this chapter the wage-earning capacity of an inured employee is determined by his actual spendable weekly wage [EARNINGS] if the actual spendable weekly wage [EARNINGS] fairly and reasonably represents his wage-earning capacity. If the employee has no actual spendable weekly wage [EARNINGS] or his actual spendable weekly wage [EARNINGS] does not fairly and reasonably represent his wage-earning capacity, the board may, in the interest of justice, fix the wage-earning capacity which is reasonable, having due regard to the nature of his injury, the degree of physical impairment, his usual employment, and any other factors or circumstances in the case which may affect his capacity to earn wages in his disabled condition, including the effect of disability as it may naturally extend into the future.

* Sec. 28. AS 23.30.215(a) is amended to read:

(a) If the injury causes death, the compensation is known as a death benefit and is payable in the following amounts to and for the benefit of the following persons: for 19 of 159

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

(2) if there is a widow or widower or a child or children of the deceased, the following percentages of the spendable [AVERAGE] weekly wages of the deceased:

(A) 80 [66-2/3] per cent for the widow or widower with no children;

(B) 40 [33-1/3] per cent for the widow or widower with one child and 40 [33-1/3] per cent for the child;

(C) 25 [20] per cent for the widow or widower with two or more children and 55 [46-2/3] per cent divided equally among the children'

(D) [deleted] ~~Sec. 155~~ Sec- deleted in 159

(E) 80 [66-2/3] per cent for an only child when there is no widow or widower;

(F) [deleted] ~~$~~ Sec- deleted

(G) 80 [66-23/] per cent, divided equally, if there are two ~~more~~ or more children and no widow or widower;

(3) if the widow or widower remarries, she or he is entitled to be paid in one sum an amount equal to the compensation to which the widow or widower would otherwise be entitled in the two years commencing on the date of remarriage as full and final settlement of all sums due the widow or widower;

(4) if there is no widow or widower or child or children, then for the support of father, mother, grandchildren, brothers, and sisters, if dependent upon the deceased at the time of injury, 40 [35] per cent of the spendable [AVERAGE] weekly wage of the deceased to such beneficiaries, share and share alike, not to exceed $20,000 in the aggregate.

* Sec. 29. AS 23.30.215(b) is amended to read:

(b) In computing death benefits, the spendable [AVERAGE] weekly wage of the deceased shall be computed under § 220 of this chapter and shall be paid in accordance with § 155 of this chapter and subject to the weekly maximum limitation in the aggregate as provided in § 175 of this chapter, but the total weekly compensation may not be less than $75 [45] for a widow or widower nor less than $25 [15] weekly to a child or $50 [30] for children.

* Sec. 30. AS 23.30.220 is repealed and reenacted to read:

Sec. 23.30.220 DETERMINATION OF SPENDABLE WEEKLY WAGE. Except as otherwise provided in this chapter, the spendable weekly wage of the injured employee at the time of the injury is the basis for computing compensation, and shall be the employee's gross weekly earnings minus payroll tax deductions. The gross weekly earnings shall be calculated as follows:

(1) if at the time of the injury the employee has been in the gainful employ of the employer for the full reporting quarter immediately preceding the time of injury, the gross weekly earnings shall be computed by dividing by thirteen the gross earnings said employee earned in the employ of the employer in that reporting quarter.

(2) if at the time of the injury the employee has not been in the employ of the employer for the full reporting quarter immediately preceding the time of injury, the gross weekly earnings shall be computed by dividing 100 into the gross earnings of the employee in the two calendar years immediately preceding the injury.

current act. (3) if the board determines that the gross weekly earnings at the time of the injury cannot be fairly calculated under (1) or (2) of this section, or cannot otherwise be ascertained without undue hardship to the employee, the gross weekly earnings for calculating compensation shall be the usual gross earnings for similar service rendered by paid employees under similar circumstances as determined by the board;

current but clear (4) if an employee is a minor or an apprentice, or a trainee, as determined by the board, when injured, and under normal conditions his wages would increase during the period of disability, this fact may be considered by the board in computing his gross weekly earnings;

(5) if the employee is injured while performing his duties as a volunteer ambulance attendant, policeman or fireman, the gross weekly earnings calculating compensation shall be the minimum gross weekly earnings paid a full-time ambulance attendant, policeman or fireman employed, at a reasonable figure previously set by the subdivision to make this determination and in no case may the gross weekly earnings for calculating compensation be less than the minimum wage computed on the basis of 40 hours work per week.

amend #4

* Sec. 31. AS 23.30 is amended by adding a new section to read:

Sec. 23.30.227. OTHER BENEFITS. No compensation shall be payable to an employee under §§ 180 or 185 of this chapter for any week in which the employee receives unemployment benefits (AS 23.20).

* Sec. 32. AS 23.30.235 is repealed and reenacted to read:

Sec. 23.30.235 CASES IN WHICH NO COMPENSATION IS PAYABLE. No compensation under this chapter shall be allowed for an injury:

(1) proximately caused by the employee's willful intent to injure himself or to willfully injure another;

a high degree of proof in some to be need to prove for protection of employee.

(2) proximately caused by the employee being under the influence of an intoxicating liquor or drugs unless such drugs are being taken in quantities prescribed by employee's physician.

prev-Sec. 20 of 159

* Sec. 33. AS 23.30.250 is amended to read:

Sec. 23.30.250. PENALTY FOR MISREPRESENTATION. A person who willfully makes a false or misleading statement or representation for the purpose of obtaining a benefit or payment under this chapter is guilty of theft as defined in AS 11.46.100(3) and is punishable as provided in AS 11.46.120 - 11.46.150 [A MISDEMEANOR, AND UPON CONVICTION IS PUNISHABLE BY A FINE OF NOT MORE THAN $1,000, OR BY IMPRISONMENT FOR NOT MORE THAN ONE YEAR, OR BY BOTH].

* Sec. 34. The board shall publish Sections 32 and 33 of this Act in a booklet defining the employee's rights and obligations under the Alaska Workers Compensation Act. The booklet shall be mailed to an injured worker upon notice of an injury.

→ Support Leg. intent.

* Sec. 35. AS 23.30.265 is amended by adding new paragraphs to read:

(29) "arising out of and in the course of employment" includes employer required or supplied travel to and from a remote job site; activities performed at the direction or under the control of the employer; and employer sanctioned activities at employer provided facilities; but excludes activities of a personal nature away from employer provided facilities.

Black's Law Dictionary

(30) "under the influence of an intoxicating liquor or drugs" means not only all well-known and easily recognized conditions and degrees of intoxication, but any abnormal mental or physical condition which is the result of indulging intoxicating liquors or drugs, and which, to an appreciable degree, deprives one of that clearness of intellect and control of himself which he would otherwise possess.

may be better definition.

See Title 17 for cross reference.

(31) "drugs" means a controlled substance or cannabis as further defined in AS 11.81.900. check new drug laws - make sure same number.

(32) "gross earnings" means recurring payments by employer to the employee for employment before any authorized or lawfully required deduction or withholding of funds by the emp'oyer, excluding irregular bonuses, reimbursement of expenses, expense allowances, and any benefit or payment to the employee which is not taxable to the employee during the pay period. The value of room and board to the employee may be considered in determining gross earnings for those employees with gross weekly earnings which are less than the Alaska average weekly wage at the time of injury.

(33) "payroll taxes" means the following:
check w update language - check with Dept. of Rev.

(a) An amount equal to the amount which would be withheld pursuant to withholding tables in effect on July 1 preceding the injury under the Internal ~~check date~~ Revenue Code of 1954, and regulations pursuant thereto, as amended, as though the employee had elected to claim the maximum number of dependants for actual dependency, blindness and old age to which the employee is entitled on the date on which he was injured; and,

(b) An amount equal to the amount required on July 1 preceding the
check for those who have opted out of SS
injury by the Social Security Act of 1935 as amended to be deducted or withheld from the amount of earnings of the employee at the time of the injury as if the earnings were earned at the beginning of the calendar year in which he was injured; and,

(c) And any other legislative mandated deductions including but not limited to ESC and FUTA;

(d) The Commissioner shall annually prepare formulas which shall be used to calculate an employee's spendable weekly wage on the basis of his gross weekly earnings, number of dependants, marital status and payroll tax deducations.

(34) "reporting quarter" means one of the 3 month periods (January through March, April through June, July through September, October through December) used to report employee wages to the Internal Revenue Service.

(35) "Suitable Gainful Employment" means employment which is reasonably attainable in light of the individuals age, education, previous occupation, and injury, and which offers an opportunity to restore the individual as soon as practical and as nearly as possible to his gross earnings as determined at the time of injury.

* Sec. 36. AS 23.30.095(g), 23.30.125(b), 23.30.175(e) and (f), AS 23.30.191 and AS 23.30.265(20) are repealed.

* Sec. 37. AS 39.25.120 is amended by adding a new paragraph to read:

(20) the rehabilitation administrator of the Workers' Compensation Board.

* Sec. 38. This act takes effect July 1, 1982.

AMENDMENT

Offered in the HOUSE By Rogers

TO: CSHB 159(L&C)

Page 2, after line 6: insert the following new material:

* Sec. 3. AS 23.30.040(a) is repealed and reenacted to read:

(a) There is created a second injury fund, administered by the commissioner. Money in the second injury fund may be used only for

(1) payments for the benefit of persons entitled to benefits from the second injury fund under this chapter as ordered or awarded by the board; and

(2) the cost of the rehabilitation services administered under AS 23.30.041.

Renumber subsequent bill sections.

A M E N D M E N T

Offered in the HOUSE

By Rogers

TO: CSHB 159(L&C)

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* Sec. 3. AS 23.30.040(a) is repealed and reenacted to read:

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(2) the cost of the rehabilitation services administered under AS 23.30.041.

Renumber subsequent bill sections.

A M E N D M E N T

Offered in the HOUSE By Martin

TO: CSHB 159(L&C)

Page 3, line 19:

After "staff." insert the following:

"For administration purposes only the rehabilitation administrator and his staff shall be considered employees of the division of vocational rehabilitation in the Department of Education."

Alaska State Chamber of Commerce · HB159
Legislative Position Papers — 1982

WORKERS' COMPENSATION

Encouraged by the preliminary work of the legislature's Workers' Compensation Study Commission, the Alaska State Chamber of Commerce supports the commission's efforts to (1) improve the administration of the system, (2) make the compensation insurance program more competitive and (3) encourage changes in the rate-making process which would create more competition within the insurance industry.

The Chamber further believes that the commission's recommendations must also encourage realistic benefit revisions necessary to restore the incentive for injured workers to return to productive employment and remove the excesses in employers' workers' compensation costs.

Alaska National
INSURANCE COMPANY

A policy of service and protection

February 24, 1982

Labor and Commerce Committee
House of Representatives
State of Alaska
Pouch Y
Juneau, Alaska 91011

ATT: Honorable Terry Martin, Chairman

RE: HB 159 - Proposed Amendments to the Current Requirements for Reporting to the Division of Workers' Compensation

Dear Representatives:

In the last session, the Legislature adopted in Chapter 59 of 1981 Laws (CSHB 94 (Fin)am) which, among other things, amended Section 155 of the Alaska Workers' Compensation Act to materially extend the requirements imposed upon insurance companies to file reports of current cases with the Workers' Compensation Board.

The legislation went into effect July 11, 1981, and spawned one of the most prolific paper burdens faced by the insurance industry today.

It will be the purpose of this letter to urge the Committee to include in HS 159 the attached proposed amendments which would have the effect of materially reducing the reporting obligations of insurance carriers to the Board, but will recognize the need for continuing the provision of relevant information to claimants.

It is my understanding that the Division of Workers' Compensation, shortly after the adoption of that amendment and I believe pursuant to some discussions prior to the legislative enactment of those provisions, developed an extremely complex computer system for digesting all of the reported information.

At the invitation of Jackie McLintock, the Director of the Division of Workers' Compensation, I visited their office and reviewed the computer system, watched it work and tested the data it contains.

Frankly, I must state to the Committee that the computer system works well, provides a wide array of information and is basically a well conceived interacting data processing system for manipulation and presentation of the data that goes into the computer. Although I am frank to admit the workability of the system, I have no information as to its cost or as to the practicality of its function except as I will set forth below.

7001 Jewel Lake Road • Post Office Box 3440, Anchorage, Alaska 99510 • Telephone (907) 248-2642 • Telex (090) 25-456

Shortly after the adoption of the legislation, the Division of Workers' Compensation promulgated some early proposed instructions on how to prepare the necessary forms to make the system operative. The book which is 107 pages long explains in intimate detail how to fill out each of the blanks on each of the several forms.

Even with our limited experience in handling workers' compensation claims under the new system, we can tell you that the precision that is required in filling these forms out and the time consumed in answering the several questions contained on these complex forms is enormous. There is even a provision in the statute and implemented by the Division's set of instructions that requires a form be filed on the anniversary date of the claim even though there has been no change in the status of that claim.

We have two very serious concerns about this new law and the way it is being administered:

1. There is an overriding major concern which we have concerning the recent activities and proposals from the Division of Workers' Compensation and the Board. It is our belief that primary responsibility for the day to day management of all workers' compensation claims lies with the insurance carrier or the self-insurance workers' compensation claims administrator. The Division of Workers' Compensation should exercise its responsibility to resolve disputes through the Board hearing process. We also recognize that the Division of Workers' Compensation has a responsibility to assure that the system is working equitably.

   Although we recognize that the Division has specific complaints about particular insurance carriers' handling of some claims, or the handling of some claims by workers' compensation self-insurance claims administrators, we believe that on balance most all of the workers' compensation claims in the state are being handled quickly and fairly and in accordance with the law. The Division of Workers' Compensation has authority, as does the Division of Insurance, to investigate insurance carriers and workers' compensation self-insurance claim administrators and to review claim files to determine that they are being handled properly, and we believe that to be a more effective enforcement mechanism than inordinate reportings by all carriers in all cases.

   We reject the notion that the Division of Workers' Compensation should thrust itself into the position of becoming the entity primarily responsible for assuring the rights of the injured worker. If that is carried to its logical extreme, the Division of Workers' Compensation will have as many claim adjusters as there are in the whole industry.

It is our view that the Division of Workers' Compensation, the Board and the Division of Insurance need to have the ability to audit for compliance with the laws and the tools to enforce the laws, but they should not be put into the position of usurping the responsibilities of the private insurance sector in the day to day handling and administering of a very complex act.

2. The whole new reporting mechanism is adding a substantial burden of time and expense to the already expensive cost of handling a workers' compensation case. This additional cost must be loaded into the price of workers' compensation insurance and passed on to the employers. This ordinarily would prove to be no problem to the insurance carrier, however, we are concerned that with the substantially increasing costs on the benefit side of the premium dollar, more and more employers are being forced into alternatives to purchasing workers' compensation insurance. While we cannot attribute last year's legislation and the implementation by the Division of Workers' Compensation concerning these reports as the sole contributing factor to these phenomena, we have observed that the overall increase in cost for workers' compensation has driven employers to either:

   a. Ignore the law and not purchase workers' compensation insurance;

   b. Force themselves in some way to qualify for self-insurance status to avoid having to purchase insurance;

   c. Become involved with groups or alternatives to purchase of single insurance with questionable financial responsibility, or

   d. In some cases go out of business.

While we recognize that there ought to be periodic reconsideration of the benefit structures and a balancing in light of new public policy of the interest of the injured workers against the cost to employers, we do not feel that it is appropriate to continually increase the expense of the system unless there is some compelling reason to impose new administrative burdens.

We are, of course, concerned that in the last month or so in which the reports have been submitted to the Division, I have been given to understand that the Division has returned forms for minor technical errors and has indicated to the insurance carrier that until the forms were resubmitted correctly the penalty periods would be running. The impact is that for minor technical flaws in filling out the report an insurance carrier could be subjected to severe financial penalties.

We think it is ludicrous that an insurance carrier could be penalized more for failure to submit a report to the Board than for failure to submit the payment to the injured employee.

I have made some effort to try to determine what value this new computer system offers injured workers in the State of Alaska or the Division of Workers' Compensation.

The Division is quick to offer several specific examples of how they have been able to use the terminal access facility to answer questions of claimants who make phone calls to the Division. They also indicate that at some point in time the computer system will enable them to digest data for statistical purposes and also enable them to have immediate access to benefit history for a claimant in order to evaluate compromise and release agreements and other matters coming before the Board.

We believe that the limited value derived from having the computer available does not warrant its substantial expense.

Values of The System

1. Ability to answer claimant's questions.

   It is indeed of some value to have access to the history of claim payments when a claimant asks a question of the Division of Workers' Compensation. It should be observed, however, that first not all of the claim payment history is or ever will be in the computer since only changes in payments are required to be reported except at anniversary time. Accordingly, when claimants call prior to an anniversary date only inadequate data will be on the computer and it still will be necessary for the Division to refer a claimant to his insurance carrier to get the full information. Furthermore, the frequency of claimant inquiries at the Division, which they regard as substantial, is miniscule when compared to the number of injured workers in the workers' compensation system.

2. Statistical Data

   It is true that the Division has been asked by the legislature and by interested groups to provide statistics on frequency and severity of loss by different classifications in the State of Alaska. In fact, while I was Director of the Insurance Division, I argued that the Division of Workers' Compensation should have that information and in the Richard L. Block & Associates' report of 1980 I recommended that the Division have access to that information. My position in this regard has not changed, and I believe it is appropriate that the Division be able to accumulate relevant statistical information on accident frequency and severity. The computer system which they have devised certainly has the capacity for accumulating that data,

but I would point out that absolutely none of the interim reports filed by the carrier contribute in any way to that information. The only information submitted by a carrier which could be used for statistical purposes is the first notice to the Board of the existence of the accident and the last report filed by the carrier which gives a complete description and evaluation of payments, benefits, cause of loss, etc.

3. Ability to evaluate the propriety of compromise and release claims and other inquiries made by the parties.

The value that the computer will have to determine the propriety of matters coming before the Board on specific cases is, at best, questionable. The fact is that compromise and release claims are submitted to the Board for a variety of factors only a minority of which have anything to do with the amount of payments which have in fact been made to date. A compromise and release agreement submitted to the Board must be approved on the merits of each individual case based on information only some of which will be statistical or financial submitted by the employer and the employee. It is ludicrous to establish a complex computer system to accumulate data on every single claim processed in the State of Alaska in order to provide a facility to approve the few lump-sum compromise and release agreements submitted to the Board when those submitting those agreements can provide that information themselves.

Cost of The System

There is little available information on the true cost of operating this computer system, however, a review of the Division's budget would indicate that there are several employees either in the Division of Administration or in the Division of Workers' Compensation who have dedicated their time to processing the paper work to make the computer system operative.

In addition and not reflected in the Division of Workers' Compensation's budget is the computer time and computer programming costs which would be more properly buried in the Data Processing Division's budget.

Further, there is the time of employees devoted to working the system for interested inquirers.

I have been advised by Jackie McLintock that they are up to date currently in processing the paper work which has come in; but, as the system becomes more mature and claim frequencies increase, there is going to have to be a substantial additional burden placed on the Division of Workers' Compensation to process all of these reports. After all, if there are to be three or four reports for every claim, then the claim

processing capabilities of the Division of Workers' Compensation would have to essentially be equal to the claim data processing capabilities of all of the carriers processing workers' compensation claims in this state at any point in time.

It is our conclusion that this expense, whatever it may be, is not justified to obtain the limited benefits which are gained from that system.

There are some other issues upon which I can only speculate.

I did observe in reviewing the system that there is a substantial amount of confidential information in the computer. I am troubled by the fact that because it is in the possession of the State it comes under the freedom of information provisions and thus the privacy of every workers' compensation claimant is potentially violated. It is possible, for example, for anyone to go into a Department of Labor office and ask for information concerning a claimant and find out his wages, what physicians he has been seeing in connection with his injury, what his workers' compensation entitlements are and other pertinent information, all of which would not be available if the information were not filed with the State.

I was interested to observe also that the Division is maintaining a master list of attorneys and keying each attorney into the cases he is handling. It is thus possible to write a program to access a report showing all fees paid to the lawyers in the State, who their clients are and other information which I believe the members of the Bar would be concerned to learn is now publicly available information. Each lawyer is now designated in the system as an employers' lawyer or an employees' lawyer.

A further collateral issue has to do with the maintenance of the law digest portion of their program.

Frankly, the work done in preparing the law digest function on the computer appear to be extremely well done, and they are to be complimented for putting together a very good program. My concern is not that they have built this aspect of the system, but rather they have concentrated their efforts on making available to their own internal staff an excellent means of accessing opinions of the Workers' Compensation Boards in order to help draft future opinions, but they have devoted no time whatsoever to making printed versions of the workers' compensation opinions available to anyone else.

The history of access to Board opinions in this regard is that for those lawyers who had contacts with the Juneau office, photo copies of mimeographed versions of their opinions could be obtained; but no one else in the State could have access to them except the parties to each case. Now I understand that the Juneau office will not make them available even to lawyers in Juneau. This means that the Board intends to rely on prior cases in drafting its future opinions, but the lawyers who must argue before the Boards will not have access to those opinions in any way. It seems to me that it would be more appropriate for the Division of Workers' Compensation to have created a facility to make the opinions available to a private publishing firm in Alaska, who could have developed the digest and made it commercially available to all lawyers and other interested parties. It may be that the Division is considering making the opinions and the digest available to interested parties which would be a step forward, but it strikes me as completely inappropriate that such a function that could be well done by private concerns is being done by a state agency.

Alternative Suggestion

While I believe it is inappropriate for the State to be accumulating this information, there are certain things which I do believe are appropriate for the employee to have and it is interesting to note that no one has drafted any statute requiring this information be made available to the employee. It is true that in the set of instructions promulgated by the Board, they ask that the original report go to the employee.

It is further our concern that the reports are so complex that in their current form they are probably more confusing to the employee then they are helpful.

I attach a proposed alternative to be included in Section 155.

Its salient points are these:

1. The carrier must report to the employee at every change in compensation.

2. The form upon which such reports are made to the employee must meet minimum standards established by the Board but are not prepared on Board forms. This will permit each carrier to design a simple form which meets minimum standards but which are readable and understandable by the claimant.

3. There are penalties imposed upon the carrier for not submitting the reports in a timely fashion, but instead of the penalties being automatic they are imposed upon application by the employee, are paid to the employee and are determined ultimately by the Board.

4. The Board will receive only a first notice from the carrier acknowledging receipt of some information concerning the existence of a claim and a final notice which provides whatever statistical information the Board believes is relevant to monitoring the workers' compensation system. This, of course, is in addition to the notice of injury submitted by the employee.

It is our opinion that with the information the Board will be in a position to know all claims have been acknowledged by a carrier and who that carrier is, enabling the Board to refer an injured worker to the proper person handling the workers' compensation claim should any inquiries come to the Division of Workers' Compensation.

Under current law, which we do not propose be changed, an injured worker could file a specific request for hearing before the Board on their workers' compensation claim if they feel they are not being treated properly by the carrier, or may file a claim with the Division of Insurance to investigate whether the insurance company is properly handling the workers' compensation claim and giving it its due attention.

All of the interim reports currently required by Section 155 to be filed with the Board by the carrier would be eliminated.

We regard the change in direction as extremely important and hope the Committee will see fit to adopt the proposed amendment.

Yours cordially,

Richard L. Block
President

RLB/crl

23.30.155 (c) Repeal

23.30.155 (h) Repeal

23.30.155 (m) Repeal

23.30.155 (g) Add

(i) Within 14 days after receipt of any document which evidences the existence of a claim under this Act, the employer or carrier shall file with the Board and provide to the employee an acknowledgment of claim which shall be on a form prescribed by the Board and which shall be for the purpose of providing both the Board and the claimant with the name and point of contact in the state of Alaska for information concerning the claim, proposed disposition of the claim, and claimants rights and entitlements under the Act.

(ii) The employer shall notify the claimant of any change in compensation to be paid to claimant. The notice shall be delivered to claimant within 14 days after a last payment before termination or suspension of payments, or with any payment that is less than, more than or being paid pursuant to a different statutory entitlement than any previous payment or which is a resumption of payments. The notice shall be on a form prepared by the employer but which meets minimum standards set by the Board and shall contain:

1) Nature of the change in payment.

2) Reason for the change.

3) Amount of the change.

4) Method of calculation.

5) Statutory entitlement being paid, terminated, suspended or modified.

(iii) Within 14 days after final payment of compensation has been made, the employer shall send to the Board a notice on a form prescribed by the Board stating:

1. Reason for closing the case

2. Total amount paid for compensation, medical, rehabilitation and allocated loss expense.

3. Other statistical information as is necessary to determine accident frequency and severity, trends, and which is prescribed by regulation.

4. Other information which the Board determines necessary to properly administer the workers' compensation system.

(iv) If the employer fails to notify the employee, the Board, upon application of the employee, may assess a civil penalty, payable to the employee of up to $100.00 for each notice not timely rendered.

As of 10-79	$ 554,828
As of 10-80	902,697
As of 10-81	1,160,314*

*Reduced to an effective value of $902,697 as a result of the Group's Loss Limitation Agreement.

The question is often raised, "Weren't we over-reserved when dividend shares were first distributed?" The answer is, **"no!"**

The original reserve for incurred, but unreported claims (variations in claims values, unreported claims) was 12%. As of October, 1981 the shortfall in reserves for 1977 amounted to a net 15% after deducting the incurred-but-unreported original reserve. Who makes up the difference? The insurer. This is done through investment earnings on the reserves held for the account of the Group. Certainly, if this income merely decreases the loss short-fall, it certainly cannot be considered a profit to the insurer.

As of October, 1981 the 1977 Group Year carries 21 open cases valued at $554,000, all of which are still in the medical care stage of development. Next year the medical fee schedule will increase by 33% as a result of medical fee price fixing action in 1981.

Why aren't all claims for 1977 closed? Lots of reasons, mainly due to the character of the injuries themselves. Take the case of the driver who overturned and went off the road in a blizzard in December 1977. His nearly frozen body was found half a day after he was trapped in his truck with head injuries. The extent of his injuries took nearly three years to assess. Permanent brain damage requires institutional care for the rest of his life. The injury is irreversible. Lifetime medicals, lifetime pension, and ultimately, a death benefit. The man is 47 years old, otherwise physically in fairly good shape. What began as a routine frostbite and anoxia case turns out to be a massive neurological disability.

The CMSA Group Isn't The Only Victim Of Claim Maturation.

The California 8293, Mover's, Classification experience over the years shows a constant picture of upward cost development each year. Here is a seven year history disclosed by the California Workers' Compensation Insurance Rating Bureau:

Year	Six Months After Year End Loss Ratio	Thirty Months After Year End Loss Ratio
1971	40.8%	56.5%
1972	45.7	57.9
1973	46.1	45.0
1974	46.5	64.5
1975	52.6	68.4
1976	54.8	63.8
1977	58.3	65.2*

*Only 18 months development

Five Percent Of Mover's Injury Claims Cost Two-Thirds Of The Money.

Severe injuries, deaths, permanent partial and permanent total disabilities comprise only about 5% of all reported work injuries in the moving industry. Yet the dollar outlay for their care involves twice as many claims dollars as are involved in the other 95% of the injuries. The four major causes of loss in the moving industry are:

Strains, sprains including back:	38.3% of cost
Struck by, striking stationary objects:	5.3% of cost
Falls:	16.2% of cost
Moving vehicle accidents:	12.2% of cost

Vehicle overturns generate the largest individual claim cost, ($23,300 each on the average), striking fixed objects claims are at the lower end of the disabling injury average claims cost scale ($400 each on the average). Non-disabling claims, so-called medical only claims, represent 54% of all occurrences, currently cost an average of $157.

Nothing is inexpensive in the injury business. That's why renewed effort at loss frequency and severity reduction is imperative. The progress shown in the 1979-1980 year as well as the industry as a whole, despite inflating costs of services and benefit increases. How do you accomplish this objective? Better activity planning, preventative oriented supervision, training, and fitness (qualification).

How Do You Cope With An Insurance Subject In Which The Cost Of Goods Sold Cannot Be Determined For Years After The Service Has Been Sold At A Fixed Price?

At times it seems that all insurance executives are finance experts. It all looks so easy. If it is so easy, why are most of the nation's major insurers and a large number of the not-so-great companies suffering substantial underwriting losses? Inflation beats out the rising cost of claims after the protection has been sold. To offset the impact of inflation on claims costs, many insurers have made heavy investments in the short-term high earnings money market. Mostly in U.S. Government paper. What is going to happen as short money earnings continue to fall? Plenty. All the cut rates will disappear, it will be back to paying claims out of underwriting, not investment earnings. For a lot of folks that got highly discounted deals from companies using cash flow to fuel competitive strategies aimed at cornering all the cash, there is going to be a considerable shock. There will be no free lunches for the buyer, and the sellers will have

to retreat from the market, their surplus in jeapordy.

Competition can be a great leveller, a destroyer. The extent to which the cash-flow insurance theorists are going reflects their desperation. Take the hysterical effort to get open workers' compensation rating. Most of the insurers clamoring for open rates have never made a case for displayed ability to earn a consistent underwriting profit through good claims management and through efficient administration. Deferred payment plans, cash-flow plans, paid-loss-retrospective plans are systems which appeal to those who believe that there is money to be made on reserves. Large buyers may be benefitted, but at the cost to small insurance buyers. By reducing the spread of risk, economically, by distorting loss information upon which any rate system depends through impecunious claims management, the smaller buyers will suffer.

For years the objective of insurance company regulation was centered on the idea of maintaining solvency of insurers. Today the prevailing idea is that freedom of enterprise must prevail—freedom to compete and freedom to fail. The idea became fashionable as insolvency guarantee associations emerged that require surviving insurers to pick up the losses of failing and insolvent insurers. And so the number of endangered insurers have increased as weak small competitors emerged and conglomerate manipulation of well-established companies raped conservative companies for cash-flow profit. The quick buck, easy solution business is flourishing.

What this all has to do with the Group is simply this. This Group is the alternative to buffeting by all the side shoe deals that wax and wane in the industry.

Group starts out with protecting the equities of the buyer, not the fueling of impossible cross subsidies of insurer's cash-flow dilemmas. It provides quality services, stability, a constant, fair division of underwriting profits on a clear, clean-cut basis, and provides you, as a buyer, with expertise and performance overview that counts. Your Group operates through a system of contractual arrangements with an insurer that makes a commitment to support your Association's objective of a lower net cost system of outstanding protection quality. A lot of the companies now looking at your business today were in hiding years ago. They only come out in the fair weather. Look at their long-term actual performance records, then compare what our Group has done for your industry. Your Group can give more bang for your protection dollar than anyone—even the government-owned, non-profit, non-taxpaying enterprises. Your continued support of your Group means your Group's continued support of your interests. Our plan is working!

California Leads The Nation As User Of Work Comp Benefit System.

The California Workers' Compensation Institute reports that 15% of the nation's work injury benefits were paid to California workers, with a $1.422 **billion** outlay in 1979. Nationwide the payout for job injuries totaled $11.9 **billion**, up from 22% the previous year.

Drawn from Social Security research, the study deals with paid claims only, not incurred but unreported or other reserves. Tracking of work injury payments by the federal agency began in 1949. About 20% of all work comp benefits paid in the nation are covered by federal work injury programs.

Rand Institute Releases Its Report On "The Law And Economics Of Workers' Compensation".

The Rand Corporation performs independent objective policy analysis and research on a vast range of subjects, including the Civil Justice System. The report does not attempt to establish a public policy position but it does identify issues about which more should be learned. One conclusion of the report is that the dream of a self-administering system has not been realized because state agencies have not sufficiently participated in clarifying statutes and settling disputes. The clear inference is that litigation has become a popular pastime in the comp business, that's why sharper legal definitions and statutes are never realized. The report cites the fact that 17% of the cost of benefits paid go to the adjudication process. The view of the Rand people is that many workers, weary of the litigation of comp claims are looking to other social insurance programs instead for benefits.

The researchers point out that most of the alternatives to the existing system aren't so hot, either. For example, Tort suits against employers. Suits against third parties. All of which would please the legal profession but put greater distance between the injured worker and basic benefits when he most needs help. Linda Darling-Hammond and Thomas Kneisener, project authors, identify areas in which answers must be found before true work comp reform can be realized:

1. How do the practices of various actors within the system – administrators, insurers, employers, lawyers, employees, and unions – affect the system's outcome, (e.i., who pays and is paid, how much is paid and how promptly)?
2. How do statutes, administrative rulings, and judicial interpretations of the laws affect the outcomes of the system?
3. How do the rules that govern compensation affect the behaviour of the key actors? How do the actors seek to cope with uncertainties created by changes in the rules?

In 1982 there is a strong likelihood that another attempt will be mounted to reform the California Workers' Compensation System. If you would like more information about the findings of the Rand research, write Rand Corporation, 1700 Main Street, Santa Mon-

ica, California 90406 for information about their report R-2716/1CJ.

Year before last when State Senator Greene introduced his bill that was aimed at "making all the changes that would be required for the next 20 years" the only result was a substantial increase in benefits with no reform over the judicial process. Regarded in the Legislature as a matter too technical, even for legislators, the tendency has been to relegate change to the lawyers, the unions, and the government itself. What this Group seeks is to establish an effective advocacy in behalf of employers who are supposed to fund the benefits which must and should be paid to the legitimately injured with as little need for outside predators as possible. How about it? Are you ready for mounting an effort to be heard? **Support your Group, urge your peers in the moving industry to join.**

Promptness Of Payments Semi Annual Report.

The Department of Industrial Relations released its January to June, 1981 ranking of insurers and self insurers as to the promptness of first payments.

Long recognized as the critical point in which the injured worker makes the decision whether to approach his injury benefit needs on an adversary basis or on a basis of understanding and trust in the system that's supposed to operate simply, the fourteenth day following the injury is pretty important. If the worker doesn't get his first disability benefit payment by the fifteenth day, the odds are he'll get help—and that seldom includes help from a concerned employer. In 104,181 disability cases handled between January and June this year, the average number of days from disability to first payment was 19.4. The law expects the first payment will be made within 14 days. The previous six months record was an average of 18 days.

Your Group urges you to report all claims promptly. Without your report, nothing happens. If you really care, check with your injured, off duty employee to see if his benefits are coming through. If not, call your responding Claims Office or your Agent of Record. Late claims bear with them a penalty loading of 10% of the delinquent benefit. If you don't report promptly, you have no complaints when your loss costs increase. If you don't tell us when the insurer isn't apparently doing his job, we can't free up snarls. Don't wait for the doctor's first report. Simply complete the claim form and get it in. If you are short details, say so but send what you have and let us follow through. **Follow the Action Plan** in your Information To Members Booklet. If you have questions or unusual problems, let's hear about them early on. It will save you a lot of money. **Get involved, stop being a mere spectator.**

EYES LEFT!

As the 1980 legislative products of California pass in review one of the late items to graduate into law may be the harbringer of substantial increases in workers' compensation benefits next year. Senate Bill 347 (Greene) amends the Unemployment Insurance Code Section 2655 to read "weekly benefit amount from $30 to $154 to $50 to $175." That pretty well establishes the level to which permanent partial disability benefits and permanent total disability benefits will rise. If this comes to pass without any restraint or better definition of disability conditions or judicial process and review reform, the cost of just one benefit increase could represent as much as a 22% increase in insurance rates. It is difficult to argue that the truly disabled are seriously disadvantaged in the growing spread between actual wages and time-loss benefits earned while unable to work because of a job injury. But what worries everyone is that no one can yet establish, without extensive litigation and arguments in a judicial environment that shuns precedential rule making, just how injured someone is. Doctors disagree, lawyers disagree, insurers disagree, employers disagree, and suddenly the injured worker is the hostage in a system in which everyone but him profits from the uncertainty of it all. Your Group works hard at minimizing the costs of claims, increasing the promptness of benefit payment, and attempts to inform Group Members of the reasons behind questioned conclusions. Your average insurer is interested in moving claims as fast as possible, and is protected by a minimum rate law that raises the ante as costs rise. Your Group doesn't have votes. You do. You can first vote for a safe workplace or you can vote for rising costs. You can't vote or cause to be enacted effective reform legislation unless you are informed and properly led. You need the leadership of your Group, your Association. Your equities in the system aren't going to be protected by anyone else.

Group Renewal For 1981 Under Way.

Your Association has filed its statement of intent to renew the CMSA Group under the underwriting management of the Truck Insurance Exchange with the Department of Insurance and the Workers' Compensation Rating Bureau.

Renewal face sheets should be in the mail prior to December 1, 1981, together with new manual rates. Members should contact your Group by telephone or by mail to indicate changes of address, changes of ownership, or additional workplaces.

Also, if Members have changed accounting firms, the Group should be notified so that a new audit authorization can be prepared for signature.

If you require new **Information To Members** booklets, additional **Action Plan** cards, or claims supplies, call or write your Group Agent of Record, L.E. August, at (213) 986-4610, PO Box 256, Encino, California, 91316. Your Group is now beginning its fifth consecutive year of service to the Members of CMSA.

Alaska National
INSURANCE COMPANY

A policy of service and protection

LEGISLATIVE POSITION PAPER

LEGISLATION: Labor and Management Compromise substitute for CSHB 159

SECTION

One

SUBSTANCE:

Grants specific authority to file and use a deductible workers' compensation policy.

POSITION:

Not opposed to the substance but redrafting is indicated.

ACTION:

Obtain redrafting of the language then do not oppose.

BACKGROUND:

This company has already filed and obtained approval for a deductible plan; this provision is not objectionable. The provision is more appropriately found in the Insurance Code with some language revisions.

SUGGESTED ALTERNATIVE:

SECTION 1: AS.21.42. is amended by adding a new section to read:

> "21.42.165 - An insurer issuing a workers' compensation insurance policy pursuant to AS 23.30.025 may contain a provision requiring the insured to pay a portion of the benefits due under AS.23.30. provided the provision making that requirement has the prior approval of the Director and provided further the policy provides that as to the employee and the Workers' Compensation Board the policy meets all the requirements of 23.30.025 and 23.30.030. Filing for apporval under this section is not a deviation under AS.21.39.070.

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LEGISLATIVE POSITION PAPER

LEGISLATION: Labor and Management Compromise substitute for CSHB 159

SECTIONS

Two through Eight

SUBSTANCE:

Substantially modifies the approach to providing rehabilitation benefits.

POSITION:

Opposed.

ACTION:

All of the sections must be removed from the bill. If the sections are not withdrawn from the bills the bill must be opposed. Preventing adoption of these sections is considered of highest priority.

BACKGROUND:

Rehabilitation has always been regarded as an important part of the workers' compensation system, however, there has not been agreement as to what constitutes effective and reimbursable rehabilitation programs.

Typically, rehabilitation is provided where it is believed vocational retraining will return the injured worker to the level of gainful employment enjoyed prior to injury in a work setting as closely approximating his work setting prior to injury as his new physical condition will permit.

On the other hand, there are those who believe that the rehabilitation program ought to be used to reorient the injured worker to a life or work style unnecessarily different from that he enjoyed prior to injury.

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To develop appropriate cost effective and responsive rehabilitation programs, most carriers use professional rehabilitation counselors who determine the need for, and probable value of rehabilitation programs, develop plans and implement them, all at the expense of the employer.

This legislation would usurp the primary responsibility for making professional determinations concerning rehabilitation from the trained professionals operating in and funded by the private sector and transfer that responsibility to a new, unqualified and expensive state bureau at an initial cost of over one quarter of a million dollars.

More particularly:

Section 2 removes any limit for rehabilitation benefits paid from the Second Injury Fund at the same time the Board is granting full temporary total benefits to workers while they are on rehabilitation.

Section 3 establishes a set of principles to guide rehabilitation efforts. While the principles are essentially not objectionable, they are of no value in a statute unless other statutes in fact accomplish those objectives. It is our view that the other sections do not tend toward the intended objectives.

Sections 4, 5, 6 set up the bureaucracy to implement the intended objectives. The Director of the Division of Workers' Compensation testified that the initial cost to the state would be $350,000. It is our belief that the more difficult to assess but substantially larger cost would be in the increased costs to employers to fund unnecessary, premature, redundant, ill conceived or unwelcome rehabilitation programs designed and mandated by state designated rehabilitation specialists.

Section 6 [23.30.041 (b)], further provides that the Rehabilitation Bureau may impose a rehabilitation program when ever it deems it appropriate which could be in every permanent total disability case. The costs which could be imposed under this and following subsections could be astronomical. They include:

a) Extention of the rehabilitation program beyond the first 37 weeks at the direction of the rehabilitation administrator with no defined limit.

b) Travel to and lodging at any location away from the employees residence for the full rehabilitation period.

c) Temporary total benefits for the full period of rehabilitation.

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LEGISLATIVE POSITION PAPER

LEGISLATION: Labor and Management Compromise substitute for CSHB 159

SECTION

Eleven

SUBSTANCE:

Adds a new subsection to give the Board specific definition of permanent impairment.

POSITION:

Not opposed.

ACTION:

No action except to seek modification as indicated.

BACKGROUND:

The Board currently has no specific guidelines for determining the degree of permanent impairment. The proposed section would give the Board authority to establish a schedule for determining the existence and degree of permanent impairment. We believe that the authority to adopt such a schedule is a useful device to add certainty to the system. We would urge however that giving the Board carte blanche authority to adopt a schedule without guidelines is inappropriate.

The Board is currently using, without specific statutory authority to do so, the American Medical Association Guide To Permanent Impairment, a document to which the American Medical Association has devoted a great deal of time and study. We believe this is a satisfactory, impartial, fair, easy to administer, and objective definition of permanent impairment and one with which the medical profession, which must actually render the impairment ratings, is familiar.

We believe that the Board should be directed to use this standard.

SUGGESTED ALTERNATIVE:

We would urge the language be modified as follows:

> "(j) the board shall adopt and use the American Medical Asociation Guide To Permanent Impairments as the basis for determining the existence and degree of permanent impairments".

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LEGISLATIVE POSITION PAPER

LEGISLATION: Labor and Management Compromise substitute for CSHB 159

SECTION

Twelve

SUBSTANCE:

Requires an injured employee to grant specific authority to release medical information to the employers, carriers and so forth.

POSITION:

Favor, but would suggest an improvement.

ACTION:

Seek an improvement in the measure, but support in any event.

BACKGROUND:

When a workers' compensation claim is filed it is necessary for the insurance company to obtain medical information from the treating physicians, examining physicians, or physicians who have rendered medical care in prior cases for the injured worker.

Doctors are understandably reluctant to give out medical information without having a specific release from the employee in order not to violate their responsibilities of privacy.

This statute requires the employee to execute whatever authorities are required by other physicians in order to obtain release of medical information.

We believe that this is an important addition to the workers' compensation statute.

SUGGESTED IMPROVEMENT:

If a provision were placed in the law which had the effect of pro tanto granting the authority would eliminate the need for getting specific written authority and protect the physicians and hospitals.

Further, the authority in the proposed language relates to medical information only relative to his injury.

It is vital that we have access to medical information concerning prior medical treatments.

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For example, it is relevant to any adjustment of a case for injury to the employee to have access to medical records concerning prior injuries or prior illness since it bears on the method of handling the medical treatment of the existing case.

We would suggest the following language:

> "Upon the filing of a claim under this Act an employee thereby authorizes all providers of medical treatment pertaining to the injury or rendered prior to the date of injury to release information to the employer. If requested by the employer, the employee shall execute all releases to facilitate access to that information."

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LEGISLATIVE POSITION PAPER

LEGISLATION: Labor and Management Compromise substitute for CSHB 159

SECTIONS

15 & 32

SUBSTANCE:

These two sections of the bill change the degree to which the presence of alcoholism or drugs can defeat the injured employees rights to compensation.

POSITION:

Support.

ACTION:

No action.

BACKGROUND:

These two sections read together change the burden of proof for the employer with respect to alcoholism from the requirement that they demonstrate liquor solely caused the accident to liquor proximately caused the accident, and adds a similar provision with respect to drugs.

We have some cases in which alcoholism was definitely present and a contributing factor to the accident, however, it is clearly the case that no single factor could ever be argued as the sole factor in a accident.

If we could demonstrate that although it wasn't the sole factor it was the proximate cause of the accident it would be useful in defeating some alcoholism and drug related claims.

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LEGISLATIVE POSITION PAPER

LEGISLATION: Labor and Management Compromise substitute for CSHB 159

SECTION

Seventeen

SUBSTANCE:

Same as Section 11 of CSHB 159 (Sofo) January 25, 1982.

ADDITIONAL COMMENT:

We would point out that if the Legislature is concerned about those carriers which will offset for over payment or advance payments by making no payments at all, we would not be adverse to a provision which reads as follows:

> "(j) if an employer has made advance payments or over payments of compensation, he is entitled to be reimbursed, out of any unpaid installment or installments of compensation due up to an amount equal to fifty percent of each of the subsequent payments. If the employer seeks to offset by more than fifty percent of subsequent payments such additional offsets require the prior approval of the Board."

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LEGISLATIVE POSITION PAPER

LEGISLATION: Labor and Management Compromise substitute for CSHB 159

SECTION

Eighteen

SUBSTANCE:

Authorizes lump sum payments.

POSITION:

Support.

ACTION:

Support.

BACKGROUND:

This is similar to Section 12 of CSHB 159, January 25 (Sofo), with this material change; the legislature has added the words "and the parties agree". This means that if the parties agree the Board may authorize the lump sum payment but it cannot do so without the parties concurrence. This was my principle concern with the drafting in the other bill.

IMPORTANT DRAFTING NOTE:

In Section 25 of the proposed legislation there is substantial modification to AS 23.30.190. They neglected to remove the last phrase of subsection (20). In view of the adoption of this section in the bill the last phrase in subsection (20) is unnecessary and should be removed.

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LEGISLATIVE POSITION PAPER

LEGISLATION: Labor and Management Compromise substitute for CSHB 159

SECTION

19, 23, 24, 26, 27, 28 & 29

SUBSTANCE:

Makes changes to reflect a change basis for calculating benefits from 66 2/3% of gross wages to 80% of spendable wages.

POSITION:

Support.

ACTION:

Support.

BACKGROUND:

Changing compensation from 66 2/3% of a workers gross wages to 80% of his spendable wages will probably have salutory effect on the benefit levels particularly with respect to higher wage earners.

The exact magnitude of the savings to be effected by such a change cannot now be determined but it is believed that there will be a reduction in benefits as a result.

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STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y · STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

M E M O R A N D U M

February 26, 1982

SUBJECT: Worker's compensation
(CSHB 159 (L&C))

TO: Representative Terry Martin
Chairman, House Labor and
Commerce Committee

FROM: Billy G. Berrier
Director
Division of Legal Services

Paragraph (e) on page 4, lines 17 to 20 of the bill provides:

> (e) The employer and employee may agree on a vocational rehabilitation plan. If the employer and employee fail to agree on a vocational rehabilitation plan, a plan may be filed for approval with the rehabilitation administrator.

The second sentence is in the passive form and does not indicate who can file a plan. This leaves an ambiguity.

I have left the paragraph as it is since I understand final determination of who can file a plan has not been made. When that determination has been made the paragraph should be corrected to reflect the decision of the committee.

BGB:ljb

Enclosure

THE LEGISLATURE OF THE STATE OF ALASKA

TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. CS for House Bill No. 159

Title "An Act relating to workers' compensation, and providing for an effective . . ."

Requested by Labor and Commerce Committee Date 2/18/82

II. FISCAL DETAIL

Agency Affected Labor

Program Category Affected Worker Protection

BRU, Program, or Subprogram(s) Affected Workers' Compensation

(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

		FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
100	PERSONAL SERVICES		151.8	178.0	195.8	215.4	236.9
200	TRAVEL		20.0	22.0	24.2	26.6	29.3
300	CONTRACTUAL		122.3	71.3	78.4	86.2	94.9
400	COMMODITIES		3.4	3.7	4.1	4.5	4.9
500	EQUIPMENT		10.4	0	0	0	0
600	LAND & STRUCTURES						
700	GRANTS, CLAIMS, ETC.						
	TOTAL	0	317.9	275.0	302.5	332.7	366.0

FUNDING (Thousands of Dollars)

GENERAL FUND	0	317.9	275.0	302.5	332.7	366.0
FEDERAL FUNDS						
OTHER (Specify Fund Source)						

POSITIONS

FULL TIME	0	4	4	4	4	4
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

It is the intent of the Legislature that an injured worker receive rehabilitation services which enhance returning to work as quickly as possible at earnings as close as possible to the worker's gross earnings at the time of the injury. The implementation of a delivery system to provide timely and adequate rehabilitation services is fundamental in meeting this objective.

1. Assumes an inflation rate of 10% per annum after FY '83.

2. Assumes an effective date of July 1, 1982.

3. The total cost for FY'83 for the four new positions is detailed on attached forms 13. In addition the following items are included in the FY '83 costs.
(Continued page 2)

IV. DATE February 19, 1982 PREPARED BY Nico Bus

AGENCY Labor

PHONE 465-2720

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named)

33-001 (Rev. 12/81)

III. Analysis

A Workers' Compensation Officer I reclassification to a Workers' Compensation Officer II with related travel and contractual services. Cost $16.6

100 Personal Services	$ 5.5
200 Travel	5.0
300 Auto, Lease, Indirect, etc.	6.1
	$16.6

The data processing operations cost will increase by $14.0 because of enhancements for a tickler system, running two systems parallel and the files expansion to retain the addresses of all claimants.

The printing of 10,000 Workers' Compensation Ac's and 25,000 Employee Information booklets. $35.0

The design and printing of new forms. $2.5

Computer program modifications to implement the changes introduced by the bill. $20.0

Equipment expense for computer terminals, panelling, cabinets, and files. $6.0

Included one-time items in FY '83

Equipment	$10.4
Booklets and Acts	35.0
Design and printing of new forms	2.5
Computer programs	20.0
	$67.9

FY'83 Component Breakdown:

	Workers' Compensation Administration	Second Injury Fund
PS		$161.8
Travel		20.0
Contract*	$47.0	75.3
Commodities		3.4
Equipment		10.4
TOTAL	$47.0	$270.9

*$10,000 Workers Compensation Acts; $25,000 Information Booklet; $12,000 Data Processing

	POSITION TITLE			RANGE/STEP	BARG. UNIT.	LOCATION		APPROV.	DISAPP.
1	Rehabilitation Administrator			22A		EBA	GOV.		
	TYPE OF POSITION	STAFF MONTHS	RP No.	PCN No.	PRIORITY	FORM 12 PAGE/LINE			
2	PFT	12	N/A	New Position		N/A	LEG.		

	TYPE OF EXPENDITURE		AMOUNT
	1	2	3
4	PERSONAL SERVICES: SALARY 3714 x 12	44,568	
5	BENEFITS .1592	7,095	
6	SBS .0613	2,188	
7	FIXED BENEFITS 183 x 12	2,196	
8	TOTAL PERSONAL SERVICES 01		56,047
9	TRAVEL 02		10,000
10	CONTRACTUAL 03		15,607
11	COMMODITIES 04		850
12	EQUIPMENT 05		1,600
13	OTHER		
14	TOTAL COST		84,104

	RECEIPT CODE	FUNDING SOURCE	
15		FED RCPTS. 1002	
16		GF MATCH. 1003	
17	100	GEN. FUND 1004	84,104
18		I-A RCPTS. 1005	
19		PGM RCPTS 1028	
20		OTHER	
21	CONTINUATION		
22	ADDITION	X	

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4A KEY NUMBER ..... COLUMN NO. .....

JUSTIFICATION:

It is the intent of the Legislature that an injured worker receive rehabilitation services which enhance returning to work as quickly as possible at earnings as close as possible to the worker's gross earnings at the time of the injury. The implementation of a delivery system to provide timely and adequate rehabilitation services is fundamental in meeting this objective.

The rehabilitation administrator is necessary to develop and implement a workers' compensation rehabilitation program designed to administer and monitor the rehabilitation benefits of industrially injured workers covered by the Alaska Workers' Compensation Act.

Extensive travel within the state is necessary to provide assistance to approximately 12,000 employers in developing programs for re-employment of injured workers and coordinating counselor services with workers, insurers/employers, labor unions, and rehabilitation providers.

9. Travel: $10,000 (20 trips @ $500 per trip)
10. Contractual: Space $3,100 (to be transferred to DOA)
Auto Lease & Operating Costs $5,600
Indirect (11.46% x 44,568 = $5,107)
Other costs which include communications, equipment rental, etc., $1,800
11. Commodities: Cost per position
12. Equipment: Desk, desk chair, side chairs, bookcase, file - $1,600

AGENCY Labor PROGRAM Worker Protection

BRU Workers' Compensation

COMPONENT Second Injury Fund

13 REQUEST FOR NEW POSITION

REVISED DATE

FY 83

01-1136 (7/81)

	POSITION TITLE			RANGE/STEP	BARG. UNIT.	LOCATION		APPROV.	DISAPP.
1	Workers Compensation Officer II			18A	GBU	JBA	GOV.		
	TYPE OF POSITION	STAFF MONTHS	RP No. / PCN No.	PRIORITY		FORM 2 PAGE/LINE			
2	PFT	12	N/A / New Position			N/A	LEG.		

3	TYPE OF EXPENDITURE		AMOUNT
	1	2	3
	PERSONAL SERVICES.		
4	SALARY 3249 x 12	38,988	
5	BENEFITS .1592	6,207	
6	SBS .0613	2,188	
7	FIXED BENEFITS 183 x 12	2,196	
8	TOTAL PERSONAL SERVICES 01		49,579
9	TRAVEL 02		5,000
10	CONTRACTUAL 03		14,968
11	COMMODITIES 04		850
12	EQUIPMENT 05		1,395
13	OTHER		0
14	TOTAL COST		71,792

	RECEIPT CODE	FUNDING SOURCE	
15		FED RCPTS. 1002	
16		GF MATCH. 1003	
17	100	GEN. FUND 1004	71,792
18		I-A RCPTS. 1005	
19		PGM RCPTS 1028	
20		OTHER	
21	CONTINUATION		
22	ADDITION	X	

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4A KEY NUMBER _____ COLUMN NO. _____

JUSTIFICATION:

It is the intent of the Legislature that an injured worker receive rehabilitation services which enhance returning to work as quickly as possible at earnings as close as possible to the worker's gross earnings at the time of the injury. The implementation of a delivery system to provide timely and adequate rehabilitation services is fundamental in meeting this objective.

The workers' compensation officer is necessary to coordinate with workers, employers, insurers and rehabilitation providers to expedite the retraining and reemployment of injured workers. Travel within the Fairbanks and Northern regions will be necessary to coordinate this effort.

9. Travel: $5,000 (10 trips @ $500 per trip)

10. Contractual: Space $3,100 (to be transferred to DOA)
Auto Lease, Maintenance Agreement & Operating Costs $5,600
Indirect Costs (11.46% x 38,988 = $4,468)
Other costs which include communications, equipment rental, etc. $1,800

11. Commodities: Cost per position

12. Equipment: Desk, desk chair, side chair, file, worktable, bookcase $1,395

AGENCY Labor PROGRAM Worker Protection

BRU Workers' Compensation

COMPONENT Second Injury Fund

13 REQUEST FOR NEW POSITION.

REVISED DATE _____

FY 83

01-1130 (7/81)

	POSITION TITLE			RANGE/STEP	BARG. UNIT	LOCATION		APPROV.	DISAPP.
1	Clerk Typist III			8B	GBU	AMA	GOV.		
	TYPE OF POSITION	STAFF MONTHS	RP No.	PCN No.	PRIORITY	FORM 12 PAGE/LINE			
2	PFT	12	N/A	New Position		N/A	LEG.		

	TYPE OF EXPENDITURE			AMOUNT
	1		2	3
3	PERSONAL SERVICES:			
4	SALARY 1530 x 12		18,360	
5	BENEFITS .1592		2,923	
6	SBS .0613		1,125	
7	FIXED BENEFITS	183 x 12	2,196	
8	TOTAL PERS SERVICES	01		24,604
9	TRAVEL	02		
10	CONTRACTUAL	03		7,004
11	COMMODITIES	04		850
12	EQUIPMENT	05		700
13	OTHER			
14	TOTAL COST			33,158

	RECEIPT CODE	FUNDING SOURCE	
15		FED RCPTS. 1002	
16		GF MATCH. 1003	
17	100	GEN. FUND 1004	33,158
18		I-A RCPTS. 1007	
19		PGM RCPTS 1028	
20		OTHER	
21	CONTINUATION		
22	ADDITION	X	

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4A KEY NUMBER _____ COLUMN NO. _____

JUSTIFICATION:

It is the intent of the Legislature that an injured worker receive rehabilitation services which enhance returning to work as quickly as possible at earnings as close as possible to the worker's gross earnings at the time of the injury. The implementation of a delivery system to provide timely and adequate rehabilitation services is fundamental in meeting this objective.

The Clerk III position will provide clerical assistance to the Workers' Compensation Officer in the Juneau Second Injury Fund office and will be responsible for providing and coordinating distribution of information from the claim files to the other regions.

10. Contractual: Space $3,100 (to be transferred to DOA)
Indirect (11.46% x 18,360 = $2,104)
Other costs which include communications, equipment rental, etc. $1,800

11. Commodities: Cost per position

12. Equipment: Desk, desk chair $700

AGENCY Labor PROGRAM Worker Protection

BRU Workers' Compensation

COMPONENT Second Injury Fund

13 REQUEST FOR NEW POSITION

REVISED DATE _____

FY 83

(01-1136 (7/81))

	POSITION TITLE			RANGE/STEP	BARG. UNIT.	LOCATION		APPROV.	DISAPP.
1	Clerk IV			9B	GBU	EBA	GOV		
	TYPE OF POSITION	STAFF MONTHS	RP No.	PCN No.	PRIORITY	FORM 12 PAGE/LINE			
2	PFT	12	N/A	New Position		N/A	EGG		

3	TYPE OF EXPENDITURE		AMOUNT
	1	2	3
4	PERSONAL SERVICES: SALARY 1627 x 12	19,524	
5	BENEFITS .1592	3,108	
6	SBS .0613	1,197	
7	FIXED BENEFITS 183 x 12	2,196	
8	TOTAL PERSONAL SERVICES 01		26,025
9	TRAVEL 02		0
10	CONTRACTUAL 03		7,137
11	COMMODITIES 04		850
12	EQUIPMENT 05		700
13	OTHER		
14	TOTAL COST		34,712

	RECEIPT CODE	FUNDING SOURCE	
15		FED RCPTS. 1002	
16		GF MATCH. 1003	
17	100	GEN. FUND 1004	34,712
18		I-A RCPTS. 1005	
19		PGM RCPTS 1028	
20		OTHER	
21	CONTINUATION		
22	ADDITION	X	

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4A KEY NUMBER ..... COLUMN NO. .....

JUSTIFICATION:

It is the intent of the Legislature that an injured worker receive rehabilitation services which enhance returning to work as quickly as possible at earnings as close as possible to the worker's gross earnings at the time of the injury. The implementation of a delivery system to provide timely and adequate rehabilitation services is fundamental in meeting this objective.

The Clerk IV position will provide clerical assistance to the Rehabilitation Administrator and Workers' Compensation Officer and will be responsible for maintaining follow-up on all rehabilitation files.

10. Contractual: Space $3,100 (to be transferred to DOA)
Indirect (11.46% x $19,524 = $2,237)
Other costs which include communications, equipment rental, etc. $1,800

11. Commodities: Cost per position

12. Equipment: Desk and desk chair $700

AGENCY Labor PROGRAM Worker Protection

BRU Workers' Compensation

COMPONENT Second Injury Fund

13 REQUEST FOR NEW POSITION.

Page 4 of 4 REVISED DATE

FY 83

01 1136 (7/81)

WEEK OF FEBRUARY 1, 1982

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update:

NYIE expects to gain new authority this week

NEW YORK—New York lawmakers are expected this week to approve legislation that would allow the New York Insurance Exchange to directly underwrite risks located outside the state as a surplus lines market.The New York Assembly was to vote Monday on the measure; a Senate vote

Continued on next page

Court orders equal spouses' benefits

By JERRY GEISEL

RICHMOND, Va.—A federal appeals court ruling mandating equitable pregnancy benefits for spouses could boost thousands of employers' health insurance costs.

In a case with national significance, the U.S. Fourth Circuit Court of Appeals said Newport News Shipbuilding violated the 1978 Pregnancy Discrimination Act by refusing to provide equitable pregnancy benefits to wives of male employees in its group health insurance plan.

The appellate court decision is a victory for the Equal Employment Opportunity Commission. It had appealed a lower court decision that said the Pregnancy Discrimination Act only requires employers to offer equal pregnancy benefits to employees—and not to employees' spouses, too (*BI*, Feb. 23, 1981).

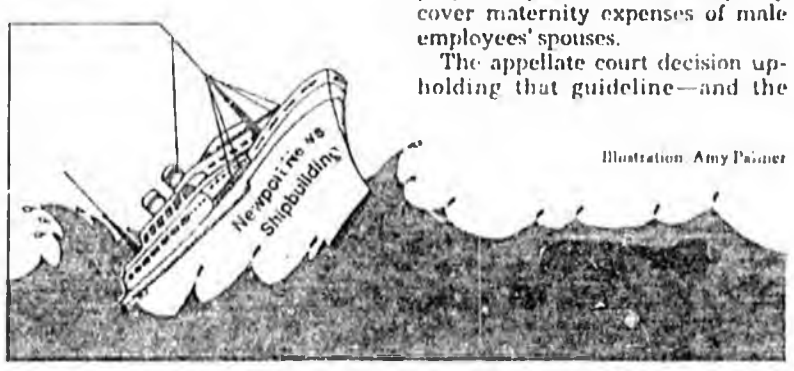

Illustration: Amy Palmer

The EEOC says if an employer's health insurance plan covers the medical expenses of female employees' spouses, it must equally cover maternity expenses of male employees' spouses.

The appellate court decision upholding that guideline—and the first appellate level ruling on the Pregnancy Discrimination Act—is a costly blow to employers, like Newport News Shipbuilding, that said EEOC had no legal authority to require equitable pregnancy coverage for male employees' wives.

Newport News Shipbuilding, which has asked the appellate court to reconsider its decision, says equalizing pregnancy benefits for male employees' wives will hike the company's health insurance costs about $700,000 a year, said Bob Ponton, manager of equal employment opportunity for Newport News which has 23,000 employees.

Nationwide, the cost of equalizing spouses' pregnancy benefits could run into the tens of millions of dollars for the thousands of employers who do not provide equal pregnancy benefits in their dependent health insurance plans.

"We are talking about massive amounts of money," said Steve Bokat, senior labor counsel for the National Chamber Litigation Center in Washington, D.C.

Employers' dependent health insurance premiums could rise 3% to 14% if they were forced to provide equitable pregnancy benefits for spouses of male employees, according to insurance company actuaries. Firms with predominantly male workforces would face the greatest increases.

However, employers who r...

Continued on page 31

Court orders equal benefits for pregnancy

Continued from page 1

quire their employees to pay some or all of the cost of dependent health care coverage would be shielded from much of this cost.

Although the appellate court decision only applies in Maryland, North Carolina, South Carolina, Virginia and West Virginia, where the 4th Circuit Court has jurisdiction, it could be cited as a precedent in other states where the EEOC is suing employers for failing to provide equitable pregnancy benefits.

For example, EEOC is suing Emerson Electric Co. because the St. Louis, Mo.-based electronics giant's group health insurance plan provides greater benefits to husbands of female employees than to wives of male employees (*BI*, Sept. 7, 1981).

And with the appellate court victory under its belt, the EEOC will continue to sue companies that won't heed its guidelines on pregnancy benefits for spouses, according to Michael Connolly, EEOC general counsel.

The EEOC maintains that the Civil Rights Act of 1964 makes it clear that there must be equality of benefits for spouses in group health insurance plans. The Pregnancy Discrimination Act amends the Civil Rights Act.

"If an employer makes available to female employees insurance that covers the cost of all the medical conditions of their spouses, but provides male employees with insurance coverage for only some of the medical conditions (i.e., all but pregnancy-related) of their spouses, male employees are receiving a less favorable fringe package," the EEOC says.

The Newport News Shipbuilding case, which benefit managers around the country were watching closely, involved a 1980 suit filed by the firm challenging the pregnancy benefit guideline issued by the EEOC.

In its largest group insurance plan covering hourly employees, Newport News Shipbuilding pays all reasonable and customary expenses for spouses of female employees, but it places a $500 cap on their pregnancy hospitalization benefits for spouses of male employees.

In the February 1981 ruling, federal Judge Calvitt Clarke Jr. agreed with Newport News Shipbuilding's argument that the Pregnancy Discrimination Act only applied to employees and not to spouses.

"The clear legislative intent behind the Pregnancy Discrimination Act was to ensure that *working women are protected against all forms of employment discrimination based on sex*," Judge Clarke wrote.

But the appellate court disagreed with this decision. It argues that the Pregnancy Discrimination Act also applies to spouses' pregnancy benefits because those benefits are employment related.

"When an employer considers extension of medical benefits to spouses of employees, it does so with an 'employment-related purpose' just as it does when it considers the extension of such benefits to employees," the appellate court said. "Benefits would never be extended to spouses if the extension did not serve an employment-related purpose."

The appellate court decision "will go a long away to ensuring that employees, both male and female, are compensated equally without regard to distinctions based on pregnancy," said Mr. Connolly. ■

Workers' compensation can pay off big—and in some strange situations

YOUR HIDDEN BENEFITS

by Andrew Tobias

A secretary unhinged by the discovery of her boss' dead body was awarded workers' compensation benefits. So was the widow of a judge whose death was held to have been related to the enormous size of his case backlog. So, too, a foundry worker who hurt his arm banging a recalcitrant vending machine during his coffee break, and an attorney who injured his back stretching across his desk to pick up a pen. (The injury laid him up for 90 days.)

Eighty-eight percent of all salaried and wage-earning Americans in 1981 were covered by workers' compensation insurance against job-related injuries and illnesses. And the definition of "job-related" grows ever broader.

A 37-year-old employee of an American auto parts manufacturer, on assignment in Birmingham, England, collapsed and died in March 1979 following sexual intercourse with a female co-worker. It was determined that vapors from a space heater in her flat had been the cause. Even though their meeting had been held after normal working hours and occurred off company premises, a Michigan administrative law judge ruled that the man's family was eligible for workers' compensation benefits. ("The deceased's work assignment in England exposed him to situations and hazards that were different in nature and degree from those in Michigan," wrote the judge.)

One could write at length about the dreadful ways insurance companies will occasionally abuse their patrons (one large insurer until recently denied that the cost of a cemetery plot, a clergyman or flowers were allowable "funeral expenses"); or, on the other hand, about the dreadful ways policyholders cheat their insurance carriers (an extreme being the man who blew up an airliner to collect on his mother's flight insurance). But here and there in the contentious, inefficient, half-trillion-dollar world of insurance, one finds a relatively bright spot. Workers' compensation insurance, although not without flaws, is one such spot. Most of us have it—we are covered, automatically, by our employers—but few of us think about it. In short, you may be better insured than you think.

Each state has its own rules, but in most, disabled workers receive two-thirds of their pre-disability wage, up to certain limits—*tax-free* (see Table A). In all but a few states, the same weekly benefits are paid during periods of *temporary* total disability, as well as to the spouse and children of workers killed on the job. Table B shows some of the lump sum payments made *in addition to* weekly benefits.

If a safety inspector in Pittsburgh falls into a blast furnace or a Philadelphia bank executive is murdered by an irate loan applicant, his or her spouse will collect $13,624 a year in workers' comp benefits, tax-free, for life (or until remarriage). That is, *unless* the deceased happened to be an employee of the federal government (a *federal* safety inspector or an executive of the Philadelphia Federal Reserve Bank), in which case the spouse would collect $37,596 a year. Federal employees, in whatever state they are employed, have their own special schedule of weekly and lump sum benefits.

A normal Nebraskan thumb is worth $10,800. If it hangs from the hand of a Nebraskan on the federal payroll, it's $54,209. Similarly, the loss of a foot brings $16,870 to a Californian, but $148,170 to a Californian on the federal payroll.

Prior to the enactment of workers' (formerly workmen's) compensation laws, beginning in 1911, an injured worker had to prove negligence on the part of his or her employer in order to recoup medical expenses and lost wages, let alone collect damages. The employer, on the other hand—presumably better equipped to wage and wait out a protracted legal struggle—had only to prove that the employee's injury was his own fault ("We never asked Charlie to stick his hand in the machine") or the fault of a fellow worker ("Caspar shouldn't have turned the thing on while Charlie was looking around inside it") or even merely that the worker had taken the job knowing it could result in his injury ("Whoever said coal mining was safe?"). It was a miserable system, not unlike the auto insurance system we still have.

Under the new laws (rather like what no-fault auto insurance ought to be but isn't), workers gave up their right to sue employers for damages in return for a guarantee of swift and certain benefit payments, regardless of fault. Benefit levels have naturally risen many times since 1911 and continue to rise with inflation. Today, coverage is mandatory everywhere but South Carolina, New Jersey and Texas, with very limited exceptions. Claims—millions of them—range from things like paper cuts and ankles sprained in company softball games to mangled limbs and worse. There were 13,000 on-the-job fatalities in 1980.

Workers' compensation insurance cost employers some $25 billion in 1981, and, like any other cost of business, it was passed on to consumers: about $300 per household. In Florida not long ago, it accounted for $2000 of the cost of building a $55,000 house,

continued

TABLE A: YOUR MAXIMUM WEEKLY BENEFITS

State	1970	1981	Increase	State	1970	1981	Increase
Ala.	$ 50	$148	196%	Neb.	$55	$180	227%
Alaska	83	859	935%	Nev.	66	245	269%
Ariz.	154	204	32%	N.H.	67	213	218%
Ark.	49	126	157%	N.J.	91	199	119%
Cal.	52	175	237%	N.M.	48	222	363%
Colo.	60	245	308%	N.Y.	80	215	169%
Conn.	84	285	239%	N.C.	50	210	320%
Del.	75	175	133%	N.D.	59	213	261%
D.C.	70	456	551%	Ohio	56	275	391%
Fla.	56	228	307%	Okla.	43	155	260%
Ga.	50	110	120%	Ore.	63	281	314%
Hawaii	113	235	109%	Pa.	60	262	337%
Idaho	43	198	360%	R.I.	70	217	210%
Ill.	71	376	430%	S.C.	50	216	332%
Ind.	57	140	146%	S.D.	50	191	282%
Iowa	56	384	586%	Tenn.	47	119	153%
Kan.	56	170	204%	Tex.	49	133	171%
Ky.	56	233	316%	Utah	47	230	389%
La.	49	163	233%	Vt.	61	208	241%
Me.	73	322	341%	Va.	62	213	244%
Md.	85	248	192%	Wash.	81	205	152%
Mass.	70	245	250%	W. Va.	66	262	300%
Mich.	104	181	74%	Wis.	79	249	215%
Minn.	70	244	249%	Wyo.	35	362	934%
Miss.	40	98	145%	**Federal Employees**	**405**	**723**	**103%**
Mo.	58	150	159%	U.S. Cost of Living Change			135%
Mont.	60	219	265%				

Andrew Tobias is the author of "The Invisible Bankers: Everything the Insurance Industry Never Wanted You To Know," to be published later this month, from which this article is adapted. *Copyright ©1982 by Andrew Tobias.*

Illustrations by Donald H. Smith

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***HIDDEN BENEFITS** /continued*

5 cents of every dollar's worth of garbage collection and $1.75 of every $25 bag of groceries!

What made the system so expensive? One worker hurt his hand so badly in a Disney World tram accident, he maintained, that he could no longer drive a bus. He received $3810 for his disability. Yet he reportedly managed to play pinball right after the tragedy, then to drive back to West Palm Beach. Another worker filed a workers' comp claim the day he was told the CETA program under which he was employed would expire. According to his boss, his injury had been sustained when he deliberately dove out of a moving car.

Florida's own former insurance commissioner—later convicted of extortion and mail fraud—collected over $19,000 for a heart attack, arthritis, ulcers and depression. The heart attack occurred in his rush to catch a flight to Las Vegas to attend a convention.

Florida's system has been tightened considerably in the last couple of years, but it typifies the sort of abuses to which *any* insurance scheme is liable. Which is one of the reasons insurance in America is as unfair and inefficient as it is—but that's another story. P

TABLE B: LUMP SUM BENEFITS FOR SELECTED DISABILITIES

State	Arm at Shoulder	Hand	Thumb*	Leg at Hip	Foot	Toe**	Eye
Ala.	$32,856	$25,160	$9176	$29,600	$20,572	$1628	$18,352
Alaska	43,680	33,600	10,400	40,320	28,700	2240	22,400
Ariz.	43,725	36,437	10,931	36,437	29,150	1822	21,862
Ark.	25,200	18,900	7560	22,050	15,750	1260	12,600
Cal.	29,488	21,770	3797	32,288	16,670	420	10,553
Colo.	17,472	8736	4200	17,472	8736	924	11,676
Conn.	88,920	71,820	27,075	67,830	56,430	3705	66,975
Del.	43,800	38,544	13,140	43,800	28,032	2628	35,040
D.C.	142,347	111,323	34,218	131,397	95,529	7300	72,998
Fla.	No schedule. Determined case by case.						
Ga.	24,750	17,600	6,600	24,750	14,850	2200	13,750
Hawaii	73,320	57,340	17,625	67,680	48,175	3760	37,600
Idaho	36,300	32,670	13,310	24,200	16,940	847	21,175
Ill.	88,438	71,503	26,343	75,266	58,331	4516	60,213
Ind.	33,750	15,000	4500	16,875	13,125	2250	13,125
Iowa	88,250	67,070	21,180	77,660	52,950	5295	49,420
Kan.	35,700	25,500	10,200	34,000	21,250	1700	20,400
Ky.	No schedule. Determined case by case.						
La.†	32,600	24,450	8150	28,525	20,375	1630	16,300
Me.	66,434	54,808	16,608	66,434	54,808	3322	33,217
Md.	74,400	62,000	24,800	74,400	62,000	2480	62,000
Mass.	6750	5250	—	6000	4500	—	6000
Mich.	56,490	45,150	13,650	45,150	34,020	2310	34,020
Minn.	65,880	53,680	15,860	53,680	40,260	3660	39,040
Miss.	19,600	14,700	5880	17,150	12,250	980	9800
Mo.	20,880	15,750	5400	18,630	13,500	1260	12,600
Mont.	30,660	21,900	8212	32,850	19,710	1752	18,068
Neb.	40,500	31,500	10,800	39,700	27,000	1800	22,500
Nev.	No schedule. Determined case by case.						
N.H.	45,582	37,275	10,650	45,582	32,103	2130	26,838
N.J.	48,161	29,255	4583	45,972	24,412	917	23,882
N.M.	44,300	26,688	12,182	44,300	25,472	3101	28,795
N.Y.	32,760	25,620	7875	30,240	21,525	1680	16,800
N.C.	50,400	42,000	15,750	42,000	30,240	2100	25,200
N.D.	10,000	10,000	3250	9360	6000	480	6000
Ohio	30,938	24,062	8250	27,500	20,625	1375	17,188
Okla.†	22,500	18,000	5400	22,500	18,000	900	18,000
Ore.	19,200	15,000	4800	15,000	13,500	400	10,000
Pa.	107,420	87,770	26,200	107,420	65,500	4192	72,050
R.I.	67,704	52,948	16,275	67,704	44,485	2170	34,720
S.C.	47,720	35,340	14,040	42,120	30,240	2160	21,600
S.D.	38,200	28,650	9550	30,560	23,875	1910	28,650
Tenn.	23,800	17,850	7140	23,800	14,875	1190	11,900
Tex.†	26,600	19,950	7890	26,600	16,625	1330	13,300
Utah	28,611	25,704	10,251	19,125	13,464	612	18,360
Vt.	44,720	36,400	10,400	44,720	36,400	2080	26,000
Va.	42,600	31,950	12,780	37,275	26,625	2130	21,300
Wash.	36,000	32,400	12,960	36,000	25,200	2760	14,400
W.Va.	41,933	34,944	13,978	41,933	24,461	2796	23,063
Wis.	35,000	28,000	11,200	35,000	17,500	1750	19,250
Wyo.	36,234	29,470	10,629	32,611	24,156	1691	22,707
Federal Employees	**225,607**	**176,358**	**54,209**	**208,161**	**148,170**	**11,564**	**115,645**

Table abbreviated from "Analysis of Workers' Compensation Laws," U.S. Chamber of Commerce, Washington, D.C. 20062

* Other fingers, not shown, are successively less valuable
** Great toe, not shown, is worth a great deal more
† Weekly benefits are deducted from these lump sums

Alaska National
INSURANCE COMPANY

A policy of service and protection

LEGISLATIVE POSITION PAPER

LEGISLATION: Labor and Management Compromise substitute for CSHB 159

SECTION

19, 23, 24, 26, 27, 28 & 29

SUBSTANCE:

Makes changes to reflect a change basis for calculating benefits from 66 2/3% of gross wages to 80% of spendable wages.

POSITION:

Support.

ACTION:

Support.

BACKGROUND:

Changing compensation from 66 2/3% of a workers gross wages to 80% of his spendable wages will probably have salutory effect on the benefit levels particularly with respect to higher wage earners.

The exact magnitude of the savings to be effected by such a change cannot now be determined but it is believed that there will be a reduction in benefits as a result.

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LEGISLATIVE POSITION PAPER

LEGISLATION: Labor and Management Compromise substitute for CSHB 159

SECTION

Eighteen

SUBSTANCE:

Authorizes lump sum payments.

POSITION:

Support.

ACTION:

Support.

BACKGROUND:

This is similar to Section 12 of CSHB 159, January 25 (Sofo), with this material change; the legislature has added the words "and the parties agree". This means that if the parties agree the Board may authorize the lump sum payment but it cannot do so without the parties concurrence. This was my principle concern with the drafting in the other bill.

IMPORTANT DRAFTING NOTE:

In Section 25 of the proposed legislation there is substantial modification to AS 23.30.190. They neglected to remove the last phrase of subsection (20). In view of the adoption of this section in the bill the last phrase in subsection (20) is unnecessary and should be removed.

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LEGISLATIVE POSITION PAPER

LEGISLATION: Labor and Management Compromise substitute for CSHB 159

SECTION

Seventeen

SUBSTANCE:

Same as Section 11 of CSHB 159 (Sofo) January 25, 1982.

ADDITIONAL COMMENT:

We would point out that if the Legislature is concerned about those carriers which will offset for over payment or advance payments by making no payments at all, we would not be adverse to a provision which reads as follows:

> "(j) if an employer has made advance payments or over payments of compensation, he is entitled to be reimbursed, out of any unpaid installment or installments of compensation due up to an amount equal to fifty percent of each of the subsequent payments. If the employer seeks to offset by more than fifty percent of subsequent payments such additional offsets require the prior approval of the Board."

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Alaska National
INSURANCE COMPANY

A policy of service and protection

March 17, 1982

Honorable Terry Martin
House of Representatives
Pouch 4
Juneau, Alaska 99811

Dear Terry:

For the past two weeks, I have been working delingently with representatives of the Labor and Management Coalition to work out language which meets the concerns which we all have for curing the problems in rehabilitation but doing so in the context of the existing mechanisms for case management.

As you know Terry, I am very strongly opposed to setting up a new function or staff in the bureaucracy to do that which is, by and large being properly handled and, which with some changes in the law, can work well, in the private sector.

As of last night (3/16/82) we have come close to concurrance in principle on the items which heretofore have divided us.

I have, at the request of the Labor and Management Coalition drafted language to make HB 159 acceptable to me and still meet all of the objectives of the Labor and Management Coalition. They have not had time to review this last draft (RLB 3/17/82).

Briefly, these changes:

1) Impose a statutory requirement for a rehabilitation evaluation within 90 days of injury or, if not appropriate, a preliminary evaluation.

2) Define those entitled to rehabilitation exactly as in the Labor and Management Coalition' version.

3) Set standards for qualifying a rehabilitation program.

4) Impose a mechanism for quickly resolving disagreements concerning rehabilitation.

5) Provide for no new functions or positions in Division of Workers' Compensation. Thus, there is genuinely no fiscal impact on the General Fund or the Second Injury Fund.

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6) Cleans up a number of concerns which do not deal with rehabilitation shared by all of us. All proposed changes not dealing with rehabilitation have been agreed to by labor, management and the insurers.

One final point.

I have been led to believe that Jackie McKlintock has expressed concern that she does not now have the staff to carry the current work load, any future obligations placed on the Board. I would make the following observations:

1) The recommended changes will reduce the work load because rehabilitation funding from the Second Injury Fund is eliminated. Use of DVR is eliminated and only disputed cases will go to the Board.

2) Because DVR's role in workers' compensation cases is eliminated by these changes, whatever money is released in DVR can be transferred in the budget approval process to the Division of Workers' Compensation to hire additional hearing representatives.

Terry, I believe it is imperative that the proposed changes be inserted as presented into HB 159.

Your cooperation over these last few weeks is very much appreciated. I believe, as a result of our mutual efforts a very fine bill will result.

Yours cordially,

Richard L. Block
President

RLB/cv

RLB 3/11/82

PROPOSED CHANGES
TO
CSHB 159 (L & C) 3/3/82

SECTION 1. (p. 1 l. 19)

Eliminate subsection (4)

SECTION 2.

Remove

SECTION 3. (p. 2 l. 19)

Change "AS 20.20.041" to "AS 23.30.097"

SECTION 4.

Remove and substitute a new section 4.

SEC. 23.30.005 (f) is amended to read.

(f) Two members of a panel constitute a quorum for hearing claims, and the action taken by a quorum of a panel is considered the action of the full Board; the Commissioner or his designated representative acting alone shall constitute a quorum for making determinations of propriety of a rehabilitation program pursuant to AS 23.30.097.

SECTION 5.

Remove and add proposed new section to add AS 23.30.097 to read:

AS 23.30.097 Rehabilitation Program

(a) When an employee suffers a permanent disability which precludes his return to suitable gainful employment, he shall be entitled to be fully evaluated for participation in a rehabilitation program within 90 days after date of injury. The full evaluation shall be performed by a qualified rehabilitation professional. The reasonable costs of the evaluation shall be at the expense of the employer. If in the opinion of the qualified rehabilitation professional, the medical, physical or emotional state of the employee is such that a full evaluation cannot then be made, the rehabilitation professional shall prepare a preliminary evaluation.

(b) The full evaluation by the qualified rehabilitation professional shall determine if the employee would benefit from a rehabilitation program. The determination shall be based on the following criteria:

(1) The rehabilitation program will restore the employee to a position to accept suitable, gainful employment equal to or as near as possible to that of his pre-injury employment. An employee is restored to a position of suitable gainful employment if he can return to (in the order of preference)

i) Return to work at the same or similar job with the same employer or employer in the same industry as the employer at the time of injury.

ii) A job using essentially the same skills as the job at time of injury but in a different industry.

iii) A job using different skills but the same academic achievement level as attained at the time of injury.

iv) A job requiring an academic achievement level which is different from that attained at the time of injury, but which rehabilitation evaluation determines is attainable by the employee and which job is believed to be available to the employee in his community at the time academic training is completed.

(2) The employee cannot be restored to a position to accept suitable gainful employment without the rehabilitation program.

(3) The cost of the rehabilitation program, including all costs to be incurred by the employer for and during the rehabilitation program, plus an estimate of continuing benefits due the employee after the conclusion of the rehabilitation program are equal to or less than the benefits due the employee under this Act, assuming no rehabilitation program is implemented and assuming no discounting or lump-sum payment of benefits.

(4) The rehabilitation program may consist of any of the following, however, if the employee may be restored to a suitable gainful employment with rehabilitation programs of high preference, then a rehabilitation program of a lower preference need not be offered by the employer.

In order of preference rehabilitation programs are:

i) Prosthetic devices and training enabling work at the same or similar employment as at the time of injury.

ii) Work site modification and vocational training to the same or similar occupation.

iii) On the job training for a new occupation.

iv) Vocational training for a new occupation.

v) Academic training for a new occupation. The employer is not obligated to provide academic training for a period longer then two consecutive school semesters, except that the Board may, after successful completion of the first two semesters authorize up to two more consecutive semesters.

(c) A preliminary evaluation shall include the reasons why a full evaluation cannot be rendered, an opinion as to when the employee will be eligible for a full evaluation, any information which would be included in a full evaluation which can be determined and reported by the rehabilitation professional at the time of the preliminary evaluation.

(d) If the full evaluation or preliminary evaluation is not timely scheduled for an employee entitled thereto by the employer, the employee or the Board may designate a qualified rehabilitation professional to perform the evaluation, the reasonable costs of which shall be paid by the employer. If the full evaluation shows that the employee would benefit from a rehabilitation program, the program shall be provided at the expense of the employer.

(e) Refusal by an injured employee to participate in an evaluation or a rehabilitation plan offered by the employer results in forfeiture of disability compensation for the period the refusal continues. However, if an employee begins participation in an evaluation or rehabilitation plan within two months from the date of refusal, and successfully completes the evaluation and rehabilitation plan and becomes employed for a period of 30 consecutive business days following the completion of the rehabilitation program, the employee shall receive a lump-sum payment of 25 percent of the compensation forfeited by him. The lump-sum payment is available only once to an employee refusing rehabilitation. The Board may find that an employee refuses to participate in an evaluation or rehabilitation plan if the employee fails to cooperate with the qualified rehabilitation professional.

(f) The employer responsible for the benefits under this Act shall be liable for, and any subsequent employer hiring the employee during and as part of the rehabilitation program shall not be liable for, benefits under this Act for injuries occurring to the employee while engaged in job training, work readiness, work therapy experience or work sampling which is part of the rehabilitation program offered by the employer and the earnings for which, if any, are credited to gross wages upon which compensation benefits are calculated.

(g) Compensation payable pursuant to AS 23.30.185 or AS 23.30.200 shall be paid, in lieu of any other compensation except compensation due under AS 23.30.190 during the period the employee is actively engaged in a rehabilitation program.

(h) In this section

i) "Suitable gainful employment" means employment that is reasonably attainable in light of an individual's age, education, previous occupation, and injury, and that offers an opportunity to restore the individual as soon as practical to a remunerative occupation and as nearly as possible to his average weekly wage as determined at the time of injury.

ii) "Qualified rehabilitation professional" means a person who by education, professional training and experience has the skills to make judgements, administer and interpret tests, counsel, and make recommendations with respect to a persons medical, intellectual, emotional, physical or motivational capacity to accept and perform suitable gainful employment, and to design, implement and supervise programs which tend to enhance a person's medical, intellectual, emotional, physical or motivational capacity to accept suitable gainful employment.

SECTION 6.(p. 5 l. 15)

Change "AS 23.30.041" to "AS 23.30.097"

SECTION 7.

Remove

SECTION 8.

No changes

SECTION 9.

No changes

SECTION 10.

No changes

SECTION 11.

No changes

SECTION 12.

Remove and adopt a new section to read:

add to Chapter 23.30 a section to read
"AS 23.30.096."

Upon the filing of a claim under this Act, an employee thereby authorizes all providers of medical treatment pertaining to the injury or rendered prior to the date of injury to release information to the employer. If requested by the employer, the employee shall execute all releases to facilitate access to that information.

SECTION 13.

No changes

SECTION 14.

Acceptable except add to the subsection (c) the following additional sentence to read:

"If a claim is controverted by the employer and the employee does not request a hearing for a period of two years following the date of controversion, the claim is deemed denied by the Board."

SECTION 15. (p. 8 l.25)

Strike "occasioned solely" and insert in lieu "proximately caused".

SECTION 16. (p. 9 l. 3)

Add after "...is conclusive" and before "even if..." a phrase to read:

", provided there is some evidence of record to support the finding,"

SECTION 17.

Strike and instead add a section to read:

"AS 23.30.155(j) if an employer has made advance payments or overpayments of compensation, he is entitled to be reimbursed out of any unpaid installment or installments of compensation due up to an amount equal to twenty per cent of each of the subsequent installments. If the employer seeks to offset by more than twenty per cent of the amount of each subsequent installment, prior Board approval is required.

SECTION 18.

No change

SECTION 19.

No change

SECTION 20.

No change

SECTION 21.

No change

SECTION 22.

No change

SECTION 23.

No change

SECTION 24.

Add to subsection (12) (p. 13 l. 3) a clause to read:

"but no benefit is payable for loss of hearing above 3,000 cycles per second unless hearing above 3,000 cycles per second is a requirement of the job held at the time of injury."

SECTION 25.

No change

SECTION 26.

No change

SECTION 27.

No change

SECTION 28.

No change

SECTION 29.

No change

SECTION 30.

No change

SECTION 31. (p. 18 l. 13)

Change "occasioned solely" to "proximately caused"

SECTION 32.

No change

SECTION 33.

No change

SECTION 34.

No change

SECTION 35 (p. 20 l. 10)

Add after "---of injury" and before ";" a phrase to read:

"up to the amount which when added to all other components of gross earnings brings gross weekly earnings up to the state's average weekly wage "

SECTION 35 (p. 20 l. 19-21)

Should be amended to read:

"and (b) the amount that is or would be deducted or withheld as of January 1, preceding the injury under the Social Security Act of 1935 from the earnings of"

SECTION 36.

Remove and insert new section to read:

SEC. 23.30.145 (a) is amended to read as follows:

Fees for legal services rendered in respect to a claim are not valid unless approved by the Board, and the fees may not be less than 25 percent on the first $1,000 of compensation or part of the first $1,000 of compensation, and 10 percent of all sums in excess of $1,000 of compensation. When the Board advises that a claim has been controverted, in whole or in part, the Board may direct that the fees for legal services be paid by the employer or carrier in addition to compensation awarded; the fees may be allowed only on the amount of compensation controverted and awarded. For purposes of this section a hearing before the Board on the propriety of a rehabilitation program pursuant to AS 23.30.097 is not a controversion of a claim. When the Board advises that a claim has not been controverted, but further advises that bonafide legal services have been rendered in respect to the claim, then the Board shall direct the payment of the fees out of the compensation awarded. In determining the amount of fees the Board shall take into consideration the nature, length and complexity of the services performed, transportation charges, and the benefits resulting from the services to the compensation beneficiaries.

SECTION 37.

Add sections to be repealed as follows:

23.30.040(e)
23.30.191

SECTION 38.

Remove

SECTION 39.

Add new section to read:

SEC. 23.30.125 add new subsection

23.30.125 (c) An order of determination of the propriety of a rehabilitation program pursuant to AS 23.30.097 issued by the Commissioner or his designated representative acting alone, may be heard before a full panel upon the petition of employee or employer filed within 10 days after issuance of the order.

The Board shall give priority in calendaring its cases for hearing to hearings to determine the propriety of a rehabilitation program pursuant to AS 23.30.097.

SECTION 39.

This Act shall take effect October 1, 1982, and shall effect only claims occurring on or after the effective date hereof.

ARCTIC SLOPE AS/AG ALASKA GENERAL

ARCTIC SLOPE ALASKA GENERAL CONSTRUCTION COMPANY, INC.

April 29, 1982

Representative Terry Martin
Pouch V
Juneau, AK 99811

Dear Representative Martin:

Just this morning I was alerted to the possibility of the State Legislatures voting to make changes in the Workmen's Compensation Act.

Due to the finality of legislative changes in the Act, full public understanding of all changes (and how they affect employees and employers alike) is extremely important.

Since this cannot be done before adjournment,I am asking you to help defeat passage and re-submit this bill in the next session.

Very truly yours,

ARCTIC SLOPE ALASKA GENERAL

Cliff Tomlinson

Cliff Tomlinson
Senior Vice President

TELEPHONE: (907) 279-5486 • TELEX: 090-26-369 • TELECOPIER: 907-274-2168
P.O. BOX 6223 • 536 EAST 48TH AVENUE • ANCHORAGE, ALASKA 99502

ARCTIC SLOPE ALASKA GENERAL CONSTRUCTION COMPANY, INC.

April 29, 1982

Representative Terry Martin

Pouch V
Juneau, Ak 99811

Dear Representative Martin:

I have just learned that HB 159 is scheduled for a vote this session. Certainly a bill of this magnitude should be given more time and consideration.

With the session so close to adjournment, we feel that defeat of this bill is the only sensible course of action for you to take.

Please do not consider voting on HB 159 this session.

Sincerely,

ARCTIC SLOPE ALASKA GENERAL

C. L. Conger

C. L. Conger
Executive Vice President

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ARCTIC SLOPE ALASKA GENERAL CONSTRUCTION COMPANY, INC.

April 29, 1982

Representative Terry Martin
Pouch V
Juneau, Ak 99811

Dear Representative Martin:

I hope this letter reaches you before HB 159 comes up for passage or defeat.

Any change in the Alaska Workmen's Compensation Act should be carefully considered, changes or amendments debated then compromised.

Voting on this bill at this late date (when adjournment is receiving much publicity) would not be in the best interests of workers or their employers.

I ask you to vote for defeat of this bill.

Very truly yours,

ARCTIC SLOPE ALASKA GENERAL

Irene Bartee

Irene Bartee
Office Manager

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P.O. BOX 6223 • 536 EAST 48TH AVENUE • ANCHORAGE, ALASKA 99502

ARCTIC SLOPE ALASKA GENERAL CONSTRUCTION COMPANY, INC.

April 29, 1982

Representative Terry Martin
Pouch V
Juneau, AK 99811

Dear Representative Martin:

I understand HB 159 is scheduled for a vote this session of the Legislature. Certainly more careful study must be given to a bill of this nature.

Both employers and employees must be given time to study and consider a bill of this type.

I ask for immediate defeat of HB 159 should it come up for vote in this session.

Sincerely,

ARCTIC SLOPE ALASKA GENERAL

Kelly Crick

Kelly Crick
Vice President

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P.O. BOX 6223 • 536 EAST 48TH AVENUE • ANCHORAGE, ALASKA 99502

ARCTIC SLOPE
AS/AG
ALASKA GENERAL

ARCTIC SLOPE ALASKA GENERAL CONSTRUCTION COMPANY, INC.

April 29, 1982

Representative Terry Martin
Pouch V
Juneau, AK 99811

Dear Representative Martin:

Before HB 159 comes up for vote in this session (if in fact it does get out of committee) I wish to enlist your help to defeat this bill in its entirety.

I am in the Safety field and after several calls to other people that also deal in Workmen's Compensation Cases, none of us have any idea of what the bill encompasses.

I know there has been a lot of pressure to adjourn, and I don't want a bill that affects the future of so many to be rushed through.

Please defeat this bill if it comes up for vote.

Very truly yours,

ARCTIC SLOPE ALASKA GENERAL

Leo Gilbert

Leo Gilbert
Safety Manager

TELEPHONE: (907) 279-5486 • TELEX: 090-26-369 • TELECOPIER: 907-274-2168
P.O. BOX 6223 • 536 EAST 48TH AVENUE • ANCHORAGE, ALASKA 99502

ARCTIC SLOPE
AS/AG
ALASKA GENERAL

ARCTIC SLOPE ALASKA GENERAL CONSTRUCTION COMPANY, INC.

April 29, 1982

Representative Terry Martin
Pouch V
Juneau , Ak 99811

Dear Representative Martin:

Defeat of HB 159 is of utmost importance for this session.

Proper time and investigation must be given to a bill affecting so many people.

With adjournment such an imminent possibility, we ask you to defeat HB 159 for this session.

Sincerely,

ARCTIC SLOPE ALASKA GENERAL

Dick McMillian

Dick McMillian
Vice President

TELEPHONE: (907) 279-5486 • TELEX: 090-26-369 • TELECOPIER: 907-274-2168
P.O. BOX 6223 • 536 EAST 48TH AVENUE • ANCHORAGE, ALASKA 99502

Scott Wetzel Services Incorporated

An Affiliate of The Home Group, Inc

741 Sesame Street • Suite 1A • Anchorage, Alaska 99503

Phone: (907) 276-2111

February 9, 1982

The Honorable Terry Martin
Alaska State House of Representatives
Pouch V
Juneau, Alaska 99811

Re: David Butler/Municipality of Anchorage

Dear Mr. Martin:

The attached decision from the Workers' Compensation Board is a classic example of the serious problems inherent in our current Workers' Compensation laws.

This employee, who had a minor hearing loss, basically corrected by a hearing aid, was kept on full salary through non-cashable sick leave for the period 4/1/80 through 12/8/80 while he was awaiting action on his request for retirement from the Municipality, which was subsequently granted. After he was retired and after he had received full payment in the amount of $27,658.67 from his employer for the period 4/1/80 through 12/8/80, he filed for worker's compensation for the same period of time and the Board has now ruled that the employer must also pay him compensation benefits of an additional $21,668.04 for the exact same period of time loss. The employee has therefore recovered in excess of 200% of his normal salary for a period of 9 months. Full payment by an employer, regardless of what fund it is paid from, or what they call it, should certainly satisfy the requirements of the Workers' Compensation Board.

Your comments will be appreciated.

Very truly yours,

SCOTT WETZEL SERVICES, INC.

Renee Murray
Claims Manager

RM/vb

cc: Ed Hite - Daryl Cody & Assoc.
Harry Sjoberg - MOA

P. O. Box 1149 Juneau, Alaska 99811

DAVID W. BULTER,
Employee,
Applicant,

vs.

MUNICIPALITY OF ANCHORAGE
(Self-Insured),
Employer,
Defendant.

DECISION AND ORDER
Case No. 80-04-0548.

On December 10, 1981 the defendant requested modification of the Board's November 19, 1981 Decision and Order. No opposition was submitted by the employee and the Board deemed the record closed on January 15, 1982.

Defendant alleges the Board erred in a determination of fact. The defendant asserts that employee is not entitled to compensation between April 1, 1980 and December 8, 1980 because he was being paid his full salary.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

There was no mistake in a factual determination. Evidence was presented at the November 12, 1981 hearing that employee received sick leave payments in the amount of his full salary between April 1, 1980 and December 8, 1980. Evidence was also presented, and the defendant does not dispute, that employee was disabled.

There is no provision in the Alaska Workers' Compensation Act permitting for offsets of amounts received by an injured worker from any private source as a result of the same injury. A special exception is made for Social Security payments. See AS 23.30.225

In the instant case the employee was paid his full salary from his non-cashable sick leave reserve. We have no knowledge of the terms of the Municipality's sick leave program nor do we have jurisdiction over it. If sick leave payments were made to the employee in error the defendant must seek another forum for his recovery.

ORDER

Defendant's petition for Modification is denied and dismissed.

Dated at Anchorage, Alaska, this 4th day of February 1982.

ALASKA WORKERS' COMPENSATION BOARD

/s/ William F. Reeves
William F. Reeves, Designated Chairman

/s/ Jim Robison
Jim Robison, Member

/s/ Ann Pittenger
Ann Pittenger, Member

WFR/cw

APPEAL PROCEDURES

A compensation order may be appealed through proceedings in Superior Court brought by a party in interest against the Board and all other parties to the proceedings before the Board, as provided in the Rules of Appellate Procedure of the State of Alaska.

A compensation order becomes effective when filed in the office of the Board, and unless proceedings to appeal it are instituted, it becomes final on the 31st day after it is filed.

CERTIFICATION

I hereby certify that the foregoing is a full, true and correct copy of the Decision and Order in the matter of David Bulter, employee/applicant; vs. Municipality of Anchorage/Police Department employer; Case No. 80-04-0548; dated and filed in the office of the Alaska Workers' Compensation Board in Anchorage, Alaska, this 4th day of February 1982.

Cynthia Williams
Clerk

David Cottrell, C.P.A. Special Master
3301 Denali
Anchorage, Alaska 99503

January 31, 1982

Dear Mr. Cottrell:

As advised by my attorney, I am submitting to you, a claim for Compensation forte settlement, as a former employee of the Southcentral Regional Resource Center in the amount of $7,826.63.

$4,175.32	Salary: bounced payroll check, October wages, 30 day difference in pay — from 9/80
1,604.00	tax Sheltered annuities - payroll "deduction"
603.31	attorney fees, to collect wages
336.84	T.S.A. interest @ 14.00% - Comm. Mutual
1,034.76	Salary interest @ 17.38 Merrill Lynch Ready Assets Annualized Interest Rate.
72.40	lawyers fee. interest @ 10.00%.
$7,826.63	

Christine Talasz

c.c. ✓ Terry Martin, Representative
Joe Montgomery, Representative
Hliss Sturgulewski, Senator

Christine Talasz
4101 Resurrection Dr.
Anchorage, Alaska 99504
337-5578 (home)

Terry - Although the legislature has appropriated $300,000 the word I've gotten so far is that "there isn't enough money to pay me my claim." I've been offered $4,000+ if I'll sign a release. I'm told, if I don't sign the release, I may not get any money. Since the claim in this letter is [illegible]

just a portion of my loss, I don't feel I should accept any less. (I wonder where all the money has gone??) There will be a hearing to try to settle outstanding employee claims which will be on either Feb. 18th or 19th in Anchorage. I'm ready to do battle!

Wish me luck. Do you have any other suggestions on how I can get my money?

Chris

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PUBLIC NOTICE

NOTICE OF PROPOSED CHANGES IN REGULATIONS OF THE DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

Notice is hereby given that the Department of Commerce and Economic Development, Division of Banking and Securities, under authority vested in AS 06.01.020 and AS 06.30.030, proposes to adopt regulations to Title 3, Chapter 5 of the Alaska Administrative Code to implement AS 06.30.500 and AS 06.30.530 as follows:

> 3 AAC is amended by adding new provisions that allow savings associations to participate in conventional loans or pools of conventional loans secured by a mortgage on a one-to-four family residence where the mortgaged property is located outside the state.

Notice is also given that any person interested may present oral or written statements or arguments relevant to the action proposed at hearings to be held in the Commissioner's Conference Room, Ninth Floor, State Office Building, Juneau, Alaska, at 1:00 p.m., Tuesday, February 9, 1982.

Written testimony may also be submitted to the Division of Banking and Securities so long as it is received by 4:30 p.m., on February 9, 1982.

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STATE OF ALASKA

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The Department of Commerce and Economic Development, upon its own motion or at the insistence of any interested person, may, at the hearing or after it, adopt the proposals substantially as described above without further notice or may decide to take no action on them.

Charles R. Webber, Commissioner

12/22/81
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CHAPTER 5. SAVINGS ASSOCIATIONS

ARTICLE 2. ASSOCIATION PRACTICES

Section
110. Communication between members
120. Service charges on dormant accounts
130. Redemption of savings accounts
140. General reserve account
150. Net worth requirements
160. Alternative mortgage instruments
170. NOW accounts
180. Participation in first mortgages where property is located outside of State

3 AAC 05 is amended by adding one new section to read:

3 AAC 05.180. PARTICIPATION IN FIRST MORTGAGES WHERE MORTGAGED PROPERTY IS LOCATED OUTSIDE OF STATE. An association may participate in conventional loans or pools of conventional loans secured by a mortgage on a one-to-four family residence where the mortgaged property is located outside the State.
(Eff. / / , Reg.)

Authority: AS 06.01.020
AS 06.30.030
AS 06.30.500(3)
AS 06.30.530

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NOTICE OF PROPOSED CHANGES IN REGULATIONS OF THE DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

Notice is hereby given that the Department of Commerce and Economic Development, under authority vested by AS 06.05.005, AS 06.15.010, AS 06.20.340, AS 06.25.315, AS 06.30.025, AS 06.30.030, AS 06.40.180 and AS 06.45.010, proposes to adopt regulations to Title 3, Chapter 1 of the Alaska Administrative Code to implement AS 06.05.060 as follows:

3 AAC is amended by adding new provisions that provide for the confidentiality of the records, reports and correspondence files of the Division of Banking, Department of Commerce & Economic Development.

Notice is also given that any person interested may present oral or written statements or arguments relevant to the action proposed at a hearing to be held in the Conference Room of the Commissioner of Commerce & Economic Development, Room 203, Michael Building, 610 East Tenth Street, Anchorage, Alaska, at 10:00 a.m., Tuesday, February 16, 1982.

Written testimony may also be submitted to the Division of Banking and Securities so long as it is received by 4:30 on February 16, 1982.

Copies of the proposed regulations may be obtained by writing to:

Division of Banking & Securities
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Juneau, Alaska 99811-0800

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The Department of Commerce and Economic Development, upon its own motion or at the insistence of any interested person, may, at the hearing or after it, adopt the proposals substantially as described above without further notice or may decide to take no action on them.

Charles R. Webber

Charles R. Webber, Commissioner

Date: 12/24/81

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CHAPTER 1. FINANCIAL INSTITUTION GENERAL ADMINISTRATION

ARTICLE 4. GENERAL PROVISIONS

Section
905. Records; disclosure and limitation on disclosure
910. Definitions

3 AAC 01 is amended by adding one new section to read:

3 AAC 01.905. RECORDS; DISCLOSURE AND LIMITATION ON DISCLOSURE. (a) The records, reports and correspondence files of the division shall not be public documents, shall not be subject to subpoena nor shall they be open for inspection by the public. Neither the commissioner, the director nor any member of their respective staffs may disclose any information obtained in the discharge of official duties to any person not connected with the division, except that the commissioner may disclose such information:

(1) to representatives of federal agencies insuring accounts in the financial institution;

(2) to representatives of federal agencies, other states and foreign countries having supervisory authority over the activities of the financial institution or enterprises or similar financial institutions or enterprises if such representatives are permitted to and do upon request of the commissioner disclose similar information respecting those financial institutions under their supervision;

(3) to the attorney general of this state; and

(3) prepare and circulate reports provided by law.

(c) Nothing in this section shall prevent any person or a financial institution covered under this chapter from access to records, reports and correspondence which apply to him or the institution to the extent that those portions of the records, reports and correspondence which do so apply are reasonably segregable from the portions of the records, reports and correspondence which do not apply to him or the institution and also to the extent that federal laws and statutes do not proscribe the disclosure. (Eff. / / , Reg.)

Authority: AS 06.05.005
AS 06.05.060
AS 06.15.010
AS 06.20.340
AS 06.25.315
AS 06.30.025
AS 06.30.030
AS 06.40.180
AS 06.45.010

3 AAC 01.910 is amended by adding new sections to read:

(6) "director" means the director of banking, securities, small loans and corporations or his designee;

(7) "division" means the Division of Banking, Securities, Small Loans and Corporations. (Eff. / / , Reg.)

Authority: AS 06.05.005
AS 06.15.010
AS 06.20.340
AS 06.25.315
AS 06.30.025
AS 06.40.180
AS 06.45.010

B. as democracy.
Committee is a catalyst. ——
However there are some over riding public concerns.
that we a leg. must consider —
You need to compromise and at times the
leg. must bite the bullet..

FLORIDA'S NEW WORKERS' COMPENSATION SYSTEM: AN INTERIM REPORT

March 1981

(WITH OCTOBER 1981 ADDENDUM)

Prepared By:

BUREAU OF ECONOMIC ANALYSIS
DIVISION OF ECONOMIC DEVELOPMENT
FLORIDA DEPARTMENT OF COMMERCE

ADDENDUM

October 1981

Since the completion of this report in March 1981 there has been a second Workers' Compensation premium reduction ordered by the State Insurance Commissioner. This reduction can be described briefly.

The effective date of the rate reduction was July 1, 1981. On average, Workers' Compensation premiums paid to private insurance carriers were decreased 15.6%. Since the volume of premiums paid in a year in Florida is about $1 billion, that would mean a savings of $156 million for Florida employers annually.

The actual premium reduction varied by employment class. All 600 classes were guaranteed at least a 5% reduction. The manufacturing classes averaged a 22.7% decrease with rates for some manufacturing classes falling by as much as 48%.

This latest action was the third Workers' Compensation premium decline since the 1979 reforms. The first, a 15% across-the-board reduction was enacted by the Legislature as a part of the 1979 reform package. The Insurance Commissioner ordered an 11.4% rate reduction in January 1981 which actually translated into a 5.1% premium dollar reduction when other changes were considered.

Cumulatively, the impact of these premium reductions has been to lower premium rates by 36.4% and save Florida employers $325 million annually in premiums. The average Workers' Compensation premium rate is now at its lowest point since September 1975 and places the State only 23rd highest in the nation. Before the reforms, Florida had ranked among the five most expensive states in this regard.

Further premium reductions may be in the offing. As is indicated on pages 21-24 of this report, early indications of claims activity, total claim costs, attorney involvement and other factors are quite promising. The State Insurance Commissioner has requested another Workers' Compensation premium rate filing later this year to take effect January 1, 1982.

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I. OVERVIEW

At one time, Florida's Workers' Compensation program was a system seriously in need of fundamental reform. Injured workers genuinely entitled to assistance received inadequate benefits. Employers were overburdened with premiums while insurance carriers lost millions of dollars annually attempting to provide Workers' Compensation coverage. The State's efforts to attract new industry were severely hampered by the reputation of the Florida Workers' Compensation system as extremely costly to employers.

Study of the system indicated that its very structure encouraged subjectivity in benefit determination. This fact, in turn, provided incentives for exaggerated if not invalid claims, and for the unusually frequent involvement of attorneys and medical specialists. The inadequate authority and resources accorded those government agencies charged with overseeing Workers' Compensation further contributed to the problem.

These problems were directly addressed in sweeping changes to the Workers' Compensation law effective August 1, 1979. These reforms were aimed at making Florida's Workers' Compensation system affordable, equitable and efficient. Perhaps the most important change was a switch to the "wage-loss" concept in benefit determination. Under this concept, a worker disabled by an injury on the job would receive (in addition to coverage of his medical expenses) compensation based on the actual decrease in average wages he suffered as a result of his disability.

Among the more important additional changes were: 1) an increase in statutory benefit levels for injured workers; 2) fundamental revisions in the authority and responsibilities of the Bureau of Workers' Compensation; 3) an enhancement of the ability of both the citizenry and its government to participate in the rate-making process; 4) a shift, to the claimant, of responsibility for paying attorneys' fees; 5) the discouragement of lump sum settlements of claims; and, 6) an across-the-board 15 percent reduction in premium rates with further reductions anticipated as experience was gained under the new law.

Any future reductions in Workers' Compensation premium rates are likely to be ordered by the Florida Insurance Commissioner based on his evaluation of rate filings made by the insurance industry. (Direct action by the Legislature is always a theoretical possibility.) Not until June 1981 will the insurance industry make its first premium rate adjustment filing based directly on experience under the new law.

Nevertheless, the early indications are quite positive in regard to the Legislative objective of reducing the cost of the Workers' Compensation system. Substantial progress already has been made; available information encourages the belief that further premium rate reductions are a distinct possibility. At this point, the following observations are warranted:

1. The Workers' Compensation insurance industry has been able to absorb two sizable premium rate reductions. Estimates made at the time these rate reductions were put into effect suggest that they will result in combined premium savings of approximately $170 million annually for Florida employers. The two rate reductions marked the reversal of a long-term trend of rapidly increasing Workers' Compensation premiums in the State. Before the 1979 legislative action, Florida ranked 5th in the nation in terms of its premium rates for Workers' Compensation coverage. It now has fallen to 13th.

2. These significant premium reductions have occurred even while statutory benefits available to injured workers were being increased substantially. The maximum weekly benefit amount has gone from $130 in 1978 to $228 in 1981, moving Florida's rank among the states from 41st to 18th. The maximum period for benefit collection has been extended; the inflation adjustment used in benefit calculation, increased; and the schedule of fees for medical services, revised upward by nearly 30 percent.

3. Available analyses suggest that the new law is having its intended effects in terms of the costliness of Workers' Compensation claims.

   - A study commissioned by the Insurance Committee of the Florida House of Representatives found that, during the first five months of operation of the new law, the percentage of claims of the particularly expensive "permanent partial" injury type had declined significantly. So too had indemnity costs and the percentage of claims involving attorney representation. The proportion of workers returning to their same employer after recovery from their injury had increased.

   - A November 1980 analysis by the National Council on Compensation Insurance (NCCI) also found a decrease in the frequency of permanent partial injury claims. While concluding that available data did not yet provide an adequate basis for a premium rate adjustment decision, one preliminary finding was an indication of significant insurance carrier cost reductions resulting from experience under the new law.

   - A Division of Workers' Compensation comparison of 1979 and 1980 data revealed that, during the first full year under the new law, there was a 4 percent reduction in total premiums paid by employers in the State. The number of formal claims declined by 48 percent. The number of joint petition settlements of Workers' Compensation claims fell by 36 percent while benefits paid in these claims dropped by 18 percent--a savings of $15.7 million. The amount of attorneys' fees awarded in Workers' Compensation cases decreased by 10.6 percent.

As the first state in the nation to adopt the wage-loss concept as the basis for determining permanent disability benefits for injured workers, Florida is serving as an experimental model watched closely by other states. Perhaps the best guarantee that Florida's Workers' Compensation reforms will succeed is the number of determined and careful monitoring programs being conducted both inside and outside government.

II. WORKMEN'S COMPENSATION IN FLORIDA (1935-1979)

A System in Need of Reform

In 1935, the State of Florida established a Workmen's Compensation system designed to lend stability and predictability to an employer's obligations to his injured employees while, at the same time, insuring that the injured worker would receive prompt and adequate compensation for his injury.[1] By the 1970s, Workmen's Compensation had evolved into a system which was unsatisfactory from virtually every perspective.

Consider the plight of the parties directly involved in the Workmen's Compensation system prior to its reform in 1979:

The Injured Worker--The benefits available to the average injured worker in Florida were quite low compared to those available in other states. An analysis conducted by the National Council on Compensation Insurance (NCCI) revealed that Florida's "statutory benefits", that is the maximum benefit amounts and collection periods set by law, ranked the state 37th in the nation.[2] For example, while in most states an injured worker received 66-2/3 percent of his average weekly wage while disabled, in Florida he received 60 percent.

Furthermore, compensation claims were taking a long time to resolve. The Miami Herald, in a comprehensive analysis of Florida's Workmen's Compensation system, reported that many injured workers were forced to hire attorneys because their legitimate claims were not being paid on time.[3]

The Employer--The cost to Florida employers of carrying the required Workmen's Compensation insurance was extremely high. Florida's premium rates (the decimal fractions applied to payrolls to calculate premiums due) were the fifth highest in the nation in 1979 according to NCCI data.[4] These premium rates had increased 229 percent from 1970 to 1978 and further rate increases were being requested by the insurance industry.[5] In 1979, the total premiums paid by Florida employers ranked it seventh in the nation according to figures from the National Association of Insurance Commissioners.[6]

These ever-increasing premiums did more than just force up the cost of doing business in Florida. They also put the State's businesses at a disadvantage when bidding for contracts against out-of-state firms. Bids submitted by Florida firms reflected the unusually high Workmen's Compensation premiums.[7]

The Insurance Companies--During the five-year period extending from 1973 through 1977, insurance companies offering Workmen's Compensation coverage in the State experienced $205.1 million in net losses according to NCCI data.[8] Although investment returns did result in a 3 percent net profit in 1978, there had not been an underwriting profit in Florida Workmen's Compensation since the 1950s.[9]

The impact of this unsatisfactory system extended beyond those directly involved. Ultimately, all Floridians felt the effects of the escalating premiums. Producers of goods and services passed their increased operating costs on to consumers.

State efforts to diversify the Florida economy, to further develop the industrial base, were severely hampered by the costly Workmen's Compensation system. Premium rates paid by Florida employers were nearly triple those paid by Alabama, North Carolina and South Carolina--states very much in competition with Florida in efforts to attract new industries. The NCCI reported that the cost of claims from permanently and totally disabled Florida workers was double that of seven other southern states.[10] An "Economic Development Study" prepared by the Fantus Company for the Florida Council of 100 cited high Workmen's Compensation premium rates as a competitive disadvantage for the State in its effort to recruit industry.[11]

In their efforts to attract new industry to Florida, officials often were confronted with questions about the reputation of Florida's Workmen's Compensation system. Former Commerce Department Secretary Phil Ashler once described a standard industrial recruitment scenario demonstrating the obstacle posed by Florida's high Workmen's Compensation premiums. According to Ashler, a prospective employer typically would ask a series of questions about the adequacy of labor supply and other business conditions. As State officials responded to these questions, the attractiveness of Florida to the prospect would grow--until the issue of Workmen's Compensation was encountered. At that point, Florida's image suffered a setback.[12]

The Miami Herald reported that the Governor and Lieutenant Governor had similar experiences. While delivering a promotional speech in Chicago, Governor Bob Graham was interrupted by a firm's indignation over Florida's Workmen's Compensation rates. Lieutenant Governor Wayne Mixson lamented the effects of a costly Workmen's Compensation system on industrial recruitment.

> Several prospects that we've had, specific prospects that we've talked to in other states that have had the kind of industry or business that we would desire to locate in Florida, have been reluctant to make any commitment because of that, the workmen's comp.[13]

Further Defining the Problem

Florida's Workmen's Compensation system was costing employers and insurance companies far more than the typical benefits paid to the vast majority of injured workers warranted. Why was this the case?

In 1978, a study was conducted by the National Council on Compensation Insurance (NCCI) with the results printed by the Florida Association of Insurance Agents.[14] This analysis, which compared Florida's claim and benefit figures to those of Alabama and Georgia, identified the major elements of Florida's Workmen's Compensation problem.

1. Total medical benefits paid to injured workers in Florida were significantly higher than those paid in other states.[15] The average medical benefits paid, the proportion of cases in which specialized medical practitioners were used, the frequency with which injured workers were confined to a hospital and the average hospital bill in Florida were invariably higher than in Alabama and Wisconsin.

2. Benefits paid for impairment or disability in Florida were higher than for Alabama and Wisconsin despite Florida's comparatively low statutory benefits.

3. Workmen's Compensation activity in Florida featured an unusually great amount of litigation. The percentage of Florida cases in which attorneys were involved on the plaintiff side (20.8 percent) was far above that of Alabama (2.8 percent) and Wisconsin (3.0 percent). Attorneys typically became involved at an earlier point in Florida cases; Florida cases normally took a longer time to be resolved; and, a greater number of cases were reopened by plaintiff attorneys. According to the Division of Workers' Compensation, Florida Compensation lawyers took in $19.7 million in fees during 1978.[16]

4. The proportion of cases which involved "permanent partial" disabilities was far higher in Florida than in Alabama or Wisconsin. Furthermore this injury category was responsible for a disproportionately large share of the Workmen's Compensation benefits paid in the State.

Because this fourth item was perhaps the key finding, it deserves more detailed attention. In the table below, Florida's

distribution of Workmen's compensation by injury type is compared to those of Alabama and Wisconsin.

TABLE 1

PERCENTAGE DISTRIBUTION OF RESOLVED WORKMEN'S COMPENSATION CASES BY INJURY TYPE: FLORIDA, ALABAMA AND WISCONSIN (November-December 1977)

Injury Type	Florida	Alabama	Wisconsin
Death	0.4	0.2	0.4
Permanent Total	0.8	0.1	0.5
Permanent Partial	30.0	7.1	9.0
Temporary Total	68.5	90.6	89.0
Temporary Partial	0.3	2.1	1.2

SOURCE: Florida Association of Insurance Agents, 1977 Workmen's Compensation Closed Claim Study, conducted by the National Council on Compensation Insurance, March, 1978.

Note that the proportion of resolved Florida cases which fall into the permanent partial category was more than three times the proportion recorded in Wisconsin and more than four times the Alabama figure.

The disproportionately large role of permanent partial injuries is just as striking when the distribution of benefits by injury type is examined as in Table 2.

TABLE 2

PERCENTAGE DISTRIBUTION OF BENEFITS PAID IN RESOLVED WORKMEN'S COMPENSATION CASES BY INJURY TYPE: FLORIDA, ALABAMA AND WISCONSIN (November-December 1977)

Injury Type	Florida	Alabama	Wisconsin
Death	1.6	2.1	5.4
Permanent Total	10.8	1.9	2.2
Permanent Partial	67.2	37.5	40.8
Temporary Total	20.3	57.4	50.8
Temporary Partial	0.0	1.0	0.8

SOURCE: Florida Association of Insurance Agents, 1977 Workmen's Compensation Closed Claim Study, conducted by the National Council on Compensation Insurance, March, 1978.

As the table reveals, permanent partial injury cases accounted for 67.2 percent of medical and indemnity benefits paid in Florida but only 37.5 percent and 40.8 percent of Alabama and Wisconsin benefits, respectively.

Causes Underlying the Problems

The responsibility for these problems appeared to rest with the structure of Florida's Workmen's Compensation system itself. More specifically, it was a system which placed too much reliance on the subjective judgments required of doctors and of Judges of Industrial Claims. It was a system which encouraged the active involvement of attorneys and the granting of lump sum settlements by insurance companies. It was a system which provided government agencies with insufficient authority and resources with which to regulate the program in the public interest. Finally, it was a system which provided indemnity benefits to injured workers who had not actually suffered any loss in wages.

The subjectivity of procedures was most evident at the point of "maximum medical improvement" or MMI, i.e., the point of which a doctor decided that the injured worker had recovered to the greatest extent possible. At that point, it would be determined whether the worker had either: 1) no disability, 2) a partial disability which was nonetheless permanent (permanent partial), or 3) a permanent and total disability (permanent total).

As noted previously the permanent partial category was responsible for an unusually large number of cases and a disproportionately high level of benefits in Florida. If a worker had received a permanent partial disability in the form of an injury specified in the Florida Statutes (a "scheduled" injury), he received a specific number of weeks of compensation at 60 percent of his average weekly wage. These benefits were paid whether or not the worker had been able to resume employment at his previous wage or even higher.

For "unscheduled" injuries within the permanent partial category, a doctor assigned a percentage disability rating to the worker. This percentage disability rating then was multiplied first by a specified number of weeks (175 for a 1-to-10 percent rating, 350 for an 11-to-50 percent rating, and 525 for a 51-to-100 percent rating) and then by 60 percent of the worker's average weekly wage.

This rating system was not only highly judgmental, it also provided a strong incentive for attempting to increase the disability rating. Fred Karl, speaking for the Florida Association of Insurance Agents, provided an example of this. At the time his example was formulated, the maximum weekly benefit amount available to an injured worker was $130. Note the difference in benefits paid if the worker's disability rating were to be raised from 10 percent to 11 percent.

10% x 175 weeks @ $130 per week = $2,275
11% x 350 weeks @ $130 per week = $5,005

A one percentage point revision in the disability rating raised the benefits paid to twice the original amount. This was because, as was explained earlier, the 11 percent disability rating marked a threshold in the benefit structure. The disability rating increased by one percentage point, but, more significantly, the number of weeks of benefits paid jumped from 175 to 350. This latter change was primarily responsible for the huge jump in the benefit amount. A similar threshold existed at the 51 percent rating level.

The subjectivity did not stop with the doctor's disability rating however. In recognition of the fact that the same injury could affect the careers of two people in different occupations to a much different extent (for example, compare the ramifications of the loss of a finger to a lawyer as opposed to a pianist), the system had a second form of disability rating, wage diminution. The worker's lifelong wage earning capacity could be diminished by his injury. This contention would be presented to a Judge of Industrial Claims who would determine a diminution of wage earning capacity rating based on such factors as the age, occupation, education of the worker and other circumstances. In the end, the higher of the two disability ratings, the wage diminution rating from the judge or the physical disability (impairment) rating from the doctor, would determine the worker's benefits.

In other words, the system provided the injured worker with an incentive to obtain a higher disability rating. This incentive, combined with the subjectivity of the ratings themselves, resulted frequently in the use of legal counsel and the involvement of medical specialists. The NCCI study of two months' of resolved permanent partial cases in 1977 revealed that 71 percent of injured Florida workers were represented by an attorney. This proportion was more than twice the Alabama figure and four times that of Wisconsin.[17] Medical specialists, as opposed to general practioners, were involved in 63.4 percent of the Florida cases in which physicians were consulted. The corresponding percentages for Alabama and Wisconsin were 30.8 percent and 39.3 percent, respectively.[18] This suggested what the Miami Herald called "doctor shopping", an attempt to find the physician who would give a higher disability rating.[19]

While the role of subjective judgments in benefit determination was perhaps the most central deficiency in the system, there were other, often related problems.

1. Attorneys' fees were related to benefit and settlement amounts. Until 1978, the claimant paid no attorney's fees. Legislation in that year required that claimants pay 25 percent of the fees with certain exceptions. Thus, attorneys had an incentive to strive for the largest award possible unencumbered by concern about the claimant's ability to pay an attorney's fee.

2. According to the Miami Herald, many Judges of Industrial Claims tended to give the benefit of the doubt to the Workmen's Compensation claimants. That publication reported instances of compensation awards when there was, in fact, no injury.[20]

3. Insurance companies frequently faced lengthy and costly litigation. To extricate themselves, they tended to offer lump sum settlements or washouts of medical expenses to injured workers.[21]

4. The government agencies involved lacked the authority and resources to remedy the situation. The Bureau of Workmen's Compensation was too overwhelmed with paperwork to advise claimants on rights and procedures or to see that benefits were paid equitably and in a timely manner. The Department of Insurance had to rely on the National Council on Compensation Insurance, an insurance industry organization, to provide the statistical basis for evaluating rate adjustment requests.[22]

III. THE MAJOR ELEMENTS OF THE 1979 CHANGES TO THE WORKMEN'S COMPENSATION LAW

The Intent of the Legislature

It had become clear that rather fundamental changes were needed in Florida's Workmen's Compensation system. A joint Senate-House Select Committee was appointed and the Workmen's Compensation issue was identified as the key issue facing the 1979 Legislature.[23]

The overall goal of the legislative effort was to reduce the cost of Workmen's Compensation to employers. However, the aims of restoring equity in benefit awards and of reducing the delays in claims resolution were also important. In other words, it was hoped that the system could be made affordable, efficient and equitable.

Two major targets of reform were identified. The first was comprised of the indemnity benefit determination provisions in the existing law which required subjective estimates of disability by doctors and by Judges of Industrial Claims. This subjectivity had led to extensive litigation which, in turn, had been a major factor in the high cost of the system. The second target consisted of the administrative provisions used in handling a claim. The ineffectiveness of these provisions had resulted in delays in claims processing and had contributed to the extensive litigation characteristic of the system. An improved administrative structure was seen as increasing the equity of benefit determination by reducing the system's dependence on ". . .the vagaries of the adversary process."[24]

The Changes in the Law

By the end of the 1979 Legislative sessions, Florida had a new "Workers'" Compensation law. The major changes were the following.[25]

1. Florida became the first state to adopt a "wage-loss" concept for a considerable proportion of Workers' Compensation benefit determination. The switch to a wage-loss concept was intended to decrease dramatically the subjectivity involved in benefit determination.

   This change concerned the indemnity component rather than the medical services component of Workers' Compensation benefits. Recall that, under the old system, injured workers suffering a permanent and partial disability either were eligible for benefits specified by statute (scheduled injuries) or were compensated based on a disability rating (unscheduled injuries). Within the unscheduled category, workers received the higher of the physical impairment and the diminution of earning capacity ratings.

Under the new system, impairment benefits would be paid for certain severe injuries: amputation, 80 percent loss of vision (after correction), or serious head or facial disfigurement. However, indemnity benefits in the majority of cases were to be determined solely by the actual loss in wages experienced by the injured worker due to his disability.[26] Under the wage-loss concept, the injured worker would receive 95 percent of the difference between 85 percent of his pre-injury wages and his wages after maximum medical improvement. This rule translates into the proposition that the worker must have experienced at least a 15 percent wage loss. After the worker had collected wage-loss benefits for two years, his post-injury wages would be discounted to adjust for inflation.

2. The statutory benefit levels for injured workers were raised. The maximum weekly benefit amount was increased from 66-2/3 percent of the statewide average weekly wage to 100 percent of that figure.

3. The structure and authority of the agency responsible for overseeing the operation of the Workers' Compensation were changed in the interest of making that agency more administratively effective. The Bureau of Workmen's Compensation was upgraded to a Division within the Department of Labor and Employment Security. This Division was instructed to ". . .assume an active and forceful role" in administering the system.[27] Under the new law, the employer would report employee injuries directly to the Division rather than indirectly to the Division through the insurance carrier. Steps were to be taken to ensure that injured workers were fully and promptly informed of proper procedures and their rights under the law. For example, injured workers were to be mailed an informational brochure while those suffering injuries which might permanently disable them were to be contacted personally. The Workers' Compensation Division would become more actively involved in controverted claims issuing advisory opinions as to benefits payable in each case. The judges of industrial claims were retitled deputy commissioners. Appeals of rulings by the deputy commissioners would now go to the First District Court of Appeals rather than to the Industrial Relations Commission, abolished by the 1979 legislation. The main burden of workers rehabilitation was shifted from the Division to the insurance carrier and employer. Finally, the Division was required to examine claims files, report annually on carrier promptness of payment and notify the Department of Insurance of patterns of questionable claims handling techniques by carriers.

4. The ability of citizenry and government to participate in the rate-making process was increased. A Bureau of Workers' Compensation Rating was established within the Department of Insurance to provide analytical support to the Insurance Commissioner in his review of insurance industry rate filings. Insurance company reporting requirements were changed in order to facilitate analysis by the Department of Insurance. Meetings by insurance industry rate-making authorities were required to take place in Florida and in the "sunshine." Excessive profits by insurance companies were prohibited.

5. The responsibility for paying attorneys' fees was shifted entirely to the claimants. Previously the claimant was to pay 25 percent of the fees while the remaining 75 percent was paid by the employer or insurance carrier. Certain exceptions to the rule of claimant payment were set forth. For example, attorneys' fees for recovery of medical benefits were to be paid by the employer or insurance carrier.

6. "Washouts" of benefits were to be strongly discouraged. Prior to the 1979 legislation, all parties could agree to a one-time payment to the claimant for benefits, thereby ending or "washing out" the employer's liability. Washouts of medical benefits would be prohibited. Lump sum settlements of disability benefits would be barred until six months after maximum medical improvement and then permitted only in special circumstances.

7. A 15 percent, across-the-board reduction in premium rates was mandated by the statute. The Legislature expected changes in the Workers' Compensation law--particularly the switch to a wage-loss system of disability benefit determination--to result in a substantial decline in insurance carrier costs. This decline was expected to more than counter-balance the increases called for in compensation benefits. To avoid excessive insurance carrier profits, the 15 percent premium rate reduction was ordered.

IV. THE EARLY PERFORMANCE OF FLORIDA'S NEW WORKERS' COMPENSATION SYSTEM

Examining the Impact

The fundamental reforms made in the Workers' Compensation law in 1979 were intended to make the system more equitable and efficient in meeting the genuine needs of injured workers while at the same time, making the system less costly to employers and insurance carriers. The reforms have been in effect for twenty months as of this writing. Although the new system will not have been given a fair test until it has been in operation for a number of years, an examination of the early performance of the law is warranted. Essentially, the question to be asked is this: Does the new Workers' Compensation law appear to be having its intended effects?

The scope of this analysis will be limited to the effects on employer costs (which reflect insurance carrier costs to a substantial extent). Certainly, the new system will not be considered a success unless it results in the fast, efficient and equitable delivery of compensation and services to the injured worker. However, an evaluation of that aspect of the system's performance is considerably more complicated than an assessment of the impact of the new law on employer costs. An examination of available statistics--benefits paid, numbers of claimants, premium rates and amounts--can provide a good preliminary indication of the impact of the new law on costs.

Reductions Already Accomplished in Employer Premiums

As was reported in Section III, one element of the 1979 legislation was a 15 percent, across-the-board reduction in Workers' Compensation premium rates. Simplifying somewhat, premium rates are multiplied by the employer's payroll to determine his Workers' Compensation insurance premium. At the time this rate reduction was enacted, a legislative staff analysis estimated that it would save Florida employers $135-142 million annually.[28]

As of yet, the insurance industry has not filed for a premium rate adjustment based directly on performance of Florida's new Workers' Compensation law. Nevertheless, an insurance industry rate filing submitted in December 1980 is worth noting. That filing concerned changes to the expense program used in calculating premiums and to the transition program for switching to a "total payroll" concept in computing premiums. As approved by the State Insurance Commissioner on January 1, 1981, this filing resulted in average premium rate reductions of 11.4 percent overall.[29] The Department of Insurance estimated that this premium rate reduction would result in savings of $34 million to Florida employers.[30] The NCCI determined that Florida's average manual premium rate following this change would rank it 13th among the 45 states permitting private Workers' Compensation insurance in the nation.[31] As was noted earlier, Florida had ranked fifth in the nation prior to the 1979 legislation. While the 11.4 percent rate reduction was

not based directly on experience under the new law, it does seem to suggest an improved economic state for insurance carriers after over a year and a half under the new law.

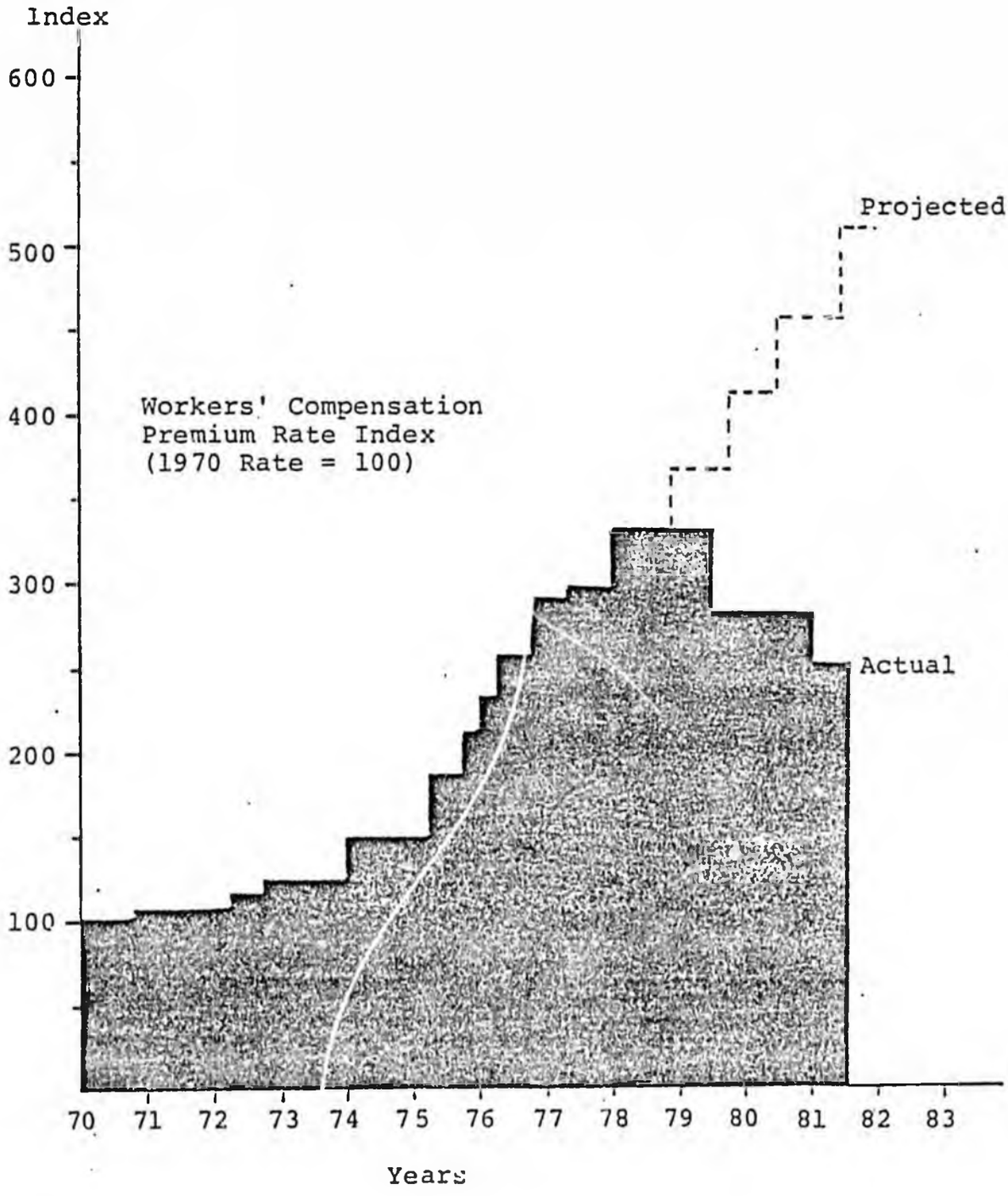
These premium rate reductions give early indication that the long-term trend of ever-increasing Workers' Compensation insurance premiums in Florida has been ended or perhaps even reversed. To demonstrate this development, an index of the overall Workers' Compensation manual premium rate has been developed. The average manual premium rate for all covered Florida employers, excluding those with self-insurance arrangements, as of January 1970 was set equal to 100.[32] Changes in the index over time then were calculated by applying the percentage changes in the overall manual premium rate reported at the time of the legislative action or the approved industry filing.[33] For example, an insurance industry filing for a rate increase was approved by the Insurance Commissioner and made effective August 1, 1970. This increase was estimated to have the effect, on the average, of raising Workers' Compensation premium rates by 7.2 percent. Thus, the value of the index was increased from 100 to 107.2 (100 + 7.2 percent) as of August 1, 1970.

In Figure 1, the trend in the manual premium rate index from 1970 to the present is portrayed. (The actual index trend is portrayed by the darkened area. The dashed lines are explained subsequently.) Note the rapid--even accelerating--rate of increase prior to the 1979 legislation. The 15 percent rate reduction ordered by the legislation was the first rate reduction of the decade. The second rate reduction, effective January 1, 1981, brought the premium rate index to its lowest level since September, 1976.

The reduced premium rate levels stand in stark contrast to what might have been the case had the Workers' Compensation legislation not been enacted. From January 1970 through July 1979, there were eleven premium rate increases affecting most or all classifications. That constitutes an average of one rate increase every 10.5 months. The average rate increase was 11.5 percent, compounded. Assuming that this trend had continued from the date of the final premium rate increase (effective January 1, 1979) prior to the 1979 legislation, the Workers' Compensation premium rate index would have stood at 457.0 in March 1981 rather than at its actual level of 248.3. The dashed-line bars in Figure 1 portray this possible path of the index had the 1979 changes to the Workers' Compensation law <u>not</u> been put into effect.

FIGURE 1

OVERALL TREND IN FLORIDA WORKERS' COMPENSATION PREMIUM RATES, 1970-1982: IMPACT OF NEW LAW



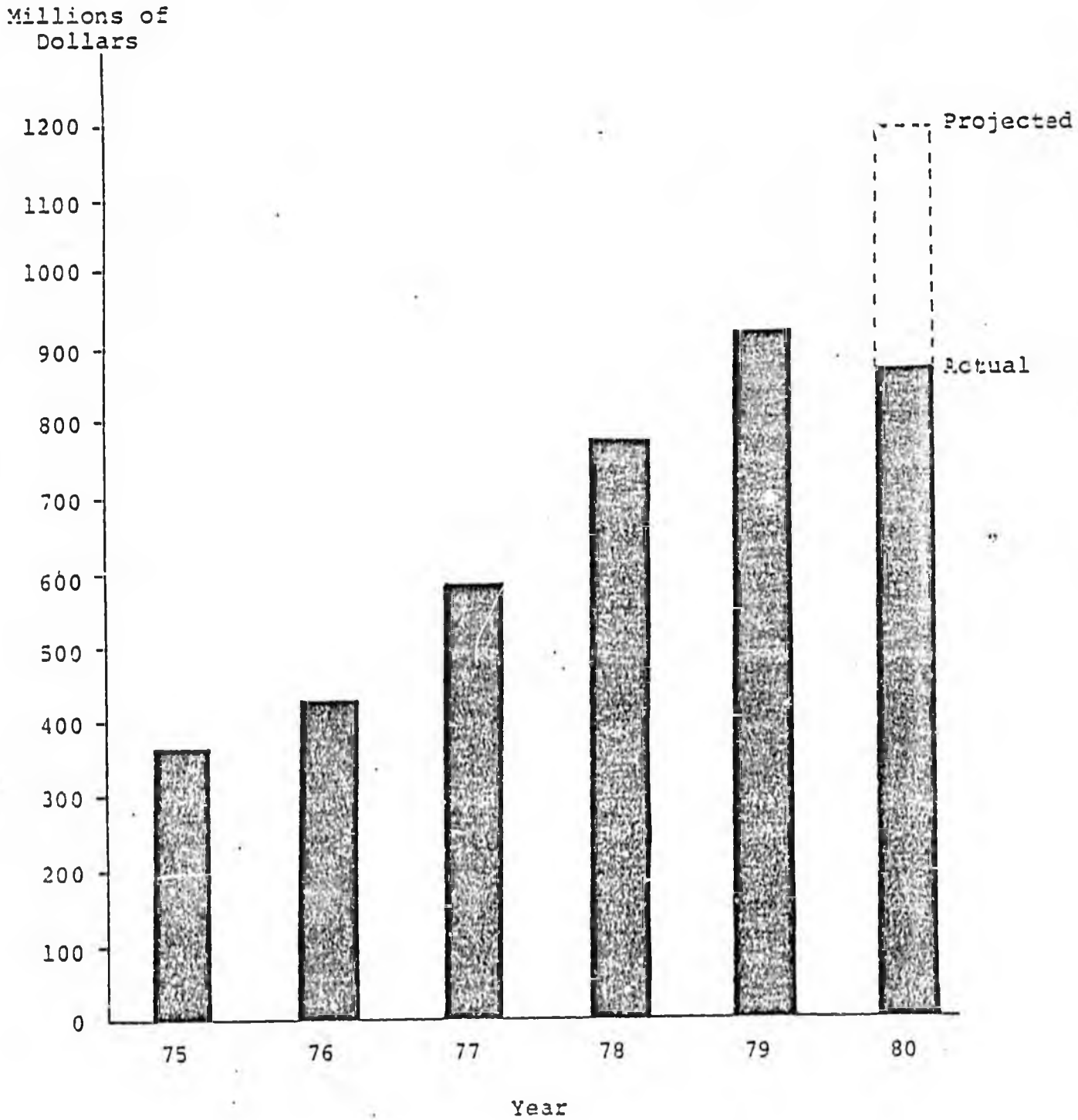
SOURCE: Historical rate increase data series provided upon special request by Bureau of Workers' Compensation Rating, Florida Department of Insurance. All index values, including hypothetical projections, calculated by Bureau of Economic Analysis, Florida Department of Commerce.

These premium rate reductions already have had an effect on actual Workers' Compensation premiums paid by Florida employers. Each year, the Division of Workers' Compensation within the Department of Labor reports the total premiums paid for Workers' Compensation coverage in the State.[34] In Figure 2, the historical trend in total premiums paid is shown. The darkened bars represent the actual premium totals for each year. Note the decrease in total value of premiums reported in 1980--the first full year affected by operation of the new law. This reduction occurred despite a 4.2 percent rise from 1979 to 1980 in the number of employees covered by Workers' Compensation and a 8.1 percent increase in the official average weekly wage in the State.

The dashed-line extension of the 1980 bar represents an estimate of the premium level which would have been attained without the 1979 legislation. The estimate assumes that the average annual percentage increase in premiums paid from 1975 through 1979 would have occurred once more in 1980. That average annual increase was 26.3 percent, compounded. Such an increase would have resulted in a 1980 premium total of $1.2 billion rather than the actual $377.6 million.

FIGURE 2

TREND IN WORKERS' COMPENSATION PREMIUMS REPORTED, 1975-1980: IMPACT OF THE NEW LAW

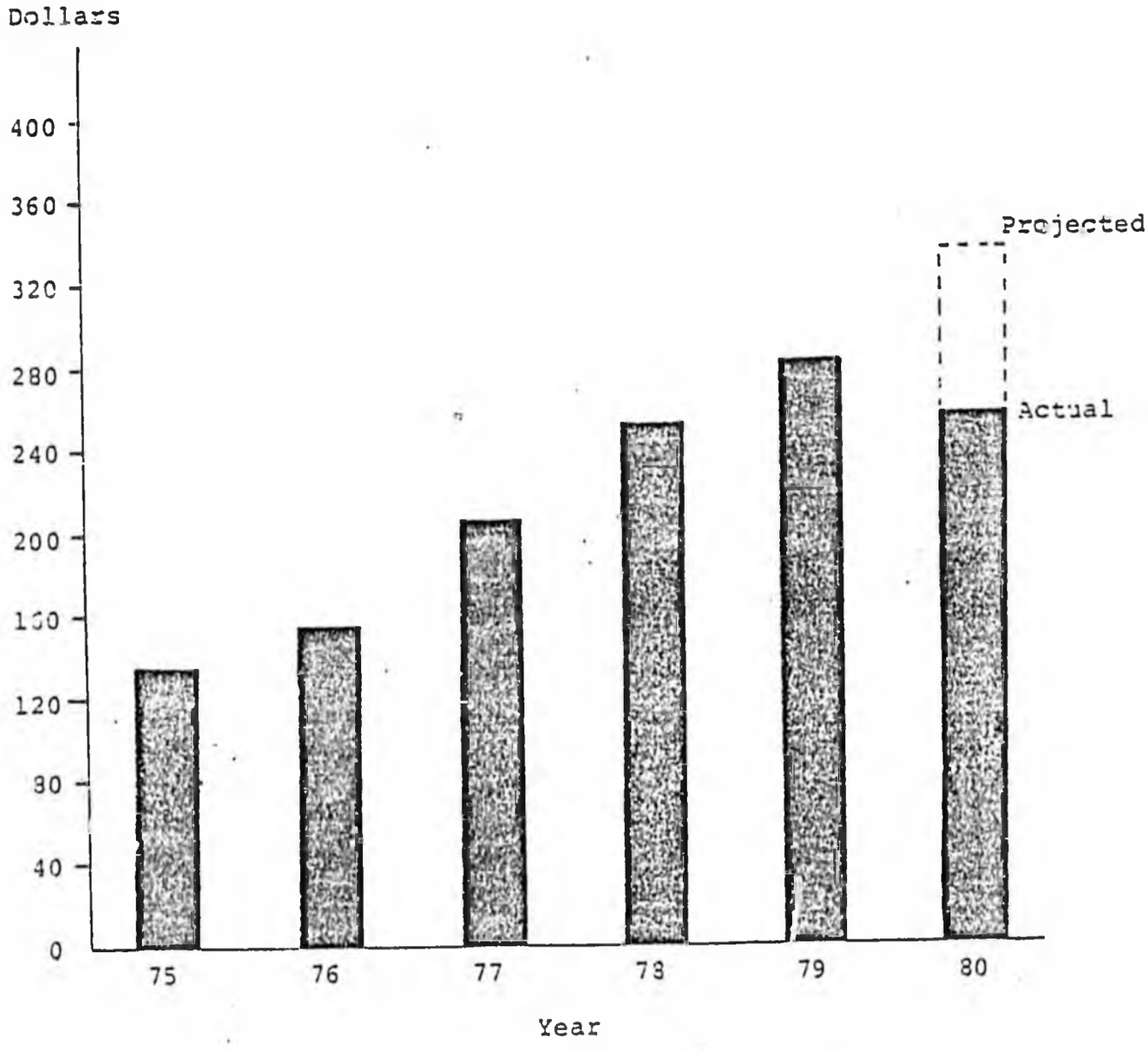


SOURCE: Actual historical data from 1977-1978 Cases Causes Costs, Division of Workers' Compensation, Department of Labor and Employment Security, 1979, p. 214 and by special request. 1980 projection by Bureau of Economic Analysis, Florida Department of Commerce.

Because the number of employees covered by Workers' Compensation is a major determinant of premiums paid, it might be expected that "controlling for" Florida's rapid employment growth might significantly alter the trend in Workers' Compensation costs. However, Figure 3 demonstrates that this is not the case. When the Workers' Compensation premiums paid per covered employee figure is plotted over time, the trend appears quite similar to that of total premiums paid (Figure 2). Once again, the rapid rise in premiums from 1975 to 1979 is clearly evident as is the positive effect of the 1979 legislation. On the average, Florida employers paid substantially less in Workers' Compensation premiums for each of their employees in 1980 than they would have without the new law.[35]

FIGURE 3

TREND IN WORKERS' COMPENSATION
PREMIUMS PER COVERED EMPLOYEE, 1975-1980:
IMPACT OF THE NEW LAW



SOURCE: Actual historical data from 1977-1978, Cases Causes Costs, Division of Workers' Compensation, Department of Labor and Employment Security, 1979, p. 214 and by special request. 1980 projection by Bureau of Economic Analysis, Florida Department of Commerce.

Increasing Benefits While Decreasing Premiums

It is important to note that these positive developments in terms of employer costs have taken place at the same time that benefits available to injured workers were being increased rather dramatically. The fact that the maximum weekly benefit amount was increased from 66-2/3 percent of the statewide average weekly wage to 100 percent of that figure has been mentioned. This maximum benefit amount was increased from $195 to $211 as of January 1, 1980, and increased again to $228 as of January 1, 1981. The NCCI has reported that these changes moved Florida from 37th place to 18th place in the nation in this regard.[36]

Other benefit increases were a direct or indirect result of the 1979 legislation. The maximum period for collecting wage-loss benefits, following maximum medical improvement, was raised from 350 to 525 weeks. The annual inflation adjustment used in calculating wage-loss benefits was increased from 3 percent per annum to 5 percent per annum. An overall 29.3 percent increase was made in the schedule of medical fees.[37] The medical fee schedule is to be revised annually.

Many of these benefit changes concern "maximum" benefits available. They are aimed at ensuring that injured workers receive just and adequate medical benefits and disability compensation for their injuries. Continued monitoring and careful examination of experience of the new law will be necessary in order to determine whether the wage-loss concept and the other benefit changes are indeed achieving the objectives for which they were established.

The Possibility of Further Premium Reductions: Early Signals

It was the hope of the Governor and the Legislature that the 1979 amendments to the Workers' Compensation law would result in further premium reductions in subsequent years. More specifically, the use of an objective wage-loss system of disability benefit determination and the deemphasis of subjective disability ratings were expected to result in considerable cost savings through a reduction in controverted claims, the decreased use of attorneys and medical specialists, a lower frequency of unjustified claims, and so on. These savings would be reflected in the experience of insurance carriers and ultimately result in premium reductions.

Comprehensive data pertaining directly to the possibility of further premium rate reductions will be available in June of this year. At that time, the insurance industry, through the National Council on Compensation Insurance, will make its first "experience filing" under the new law. This request for a rate adjustment (or, if no adjustment is requested, this "informational filing") will reflect 100 percent of the first full calendar year's experience under the new law and 83 percent of the 1979 policy year experience, five month's of which came under the new law.[38] It is, in effect, the average of the experiences during these two conceptual years which will serve as the basis for any rate adjustment. The final determination on any Workers' Compensation premium rate adjustment, unless the Legislature decides to directly mandate a reduction as in 1979, will be made by the State Insurance Commissioner, after considering supporting material submitted by

the NCCI, public comments and the advice of the Workers' Compensation Rating Bureau within the Department of Insurance.

Until those data are available it is necessary to rely on information from other sources to obtain an indication of possible future rate reductions. Three sets of preliminary data were available at the time of this writing.

Data Call by Florida House of Representatives, Committee on Insurance--In January, 1980, the Committee on Insurance of the Florida House of Representatives issued to the top fifteen Workers' Compensation Carrier Groups in the State a request for claims data.[39] Two samples of data were requested, one consisting of 30 percent of the population of time claims with injury dates between August 1, 1979 and December 31, 1979; the second, the same proportion of claims having injury dates ranging between August 1, 1978 and December 31, 1978. The former sample thus concerned the first five months of operation of the new law. The latter sample covered the same months in the preceding year, while the old law was still in effect. The five insurance carriers responding had written 22 percent of Florida's Compensation Insurance. The actuarial consultant hired by the Committee to conduct the study, Dr. Lena Chang, described the sample of respondents as a "good cross representation" with regard to the company size and the mix of mutual versus stock companies.[40]

In her report to the Insurance Committee, Dr. Chang compared the distribution of Workers' Compensation claims under the new law to that under the old law, for a number of different dimensions. She cited several instances in which the comparison indicated that the intent of the new law was being achieved.

1. The percentage or claims of the permanent partial injury type appeared to have decreased dramatically under the new law. Such claims comprised 24.0 percent of all claims for the five-month survey period under the old law (1978), but only 6.7 percent of claims under the new law. As was discussed in Section II, the permanent partial category was the foremost problem area under the old system accounting for an inordinate amount of Workers' Compensation claim costs.[41]

2. Total indemnity costs, including wage-loss and impairment benefits, were 25.8 percent lower in the new law period.

3. The percentage of claims involving attorney representation decreased from 13.0 percent prior to the new law's enactment to 4.1 percent during the first five months of operation under the new law.

4. The time lag from the date of injury to the first reporting date was reduced by seven days. This suggested faster notification and initial processing of Workers' Compensation claims.

5. The proportion of workers returning to their same employer after recovery from their injury increased 9 percent (from 74 percent to 83 percent). Dr. Chang theorized that the new wage-loss system may have been responsible for this development.

Several other findings were presented in Dr. Chang's report. Some further supported the impression that the 1979 amendments were having their intended effects in terms of cost reductions. Other findings showed no definite trend. One comparison, that concerning medical costs, appeared to contradict the intent of the law. However, Dr. Chang attributed at least a part of this unexpected trend to technical adjustments by the insurance companies which would not ultimately affect premium levels.[42]

Early Analysis by the National Council on Compensation Insurance (NCCI)--On November 12, 1980, the NCCI staff presented to the Florida Classification and Rating Committee (an insurance industry board) an analysis of the need for a Workers' Compensation premium rate adjustment.[43] The analysis was based on a supplementary data call to insurance carriers issued during the summer.

On the advice of the NCCI staff, the Classification and Rating Committee decided to postpone a decision on whether to file for a rate adjustment based on experience under the new law until May 1981. The major reason for this was the fact that, at that time, data concerning only 51 percent of experience under Florida's new law was available for analysis. The insurance industry representatives preferred to wait until a more complete picture of the effects of the new law was available.

Despite this decision, the preliminary analysis prepared by the NCCI did include notable findings. First, as with the study prepared for the Florida House of Representatives discussed previously, the data indicated a significant drop in the proportion of Workers' Compensation claims of the permanent partial injury type. According to a NCCI statistical table, the proportion of claims in the permanent partial injury category fell from 20.0 percent prior to enactment of the 1979 legislation to 6.9 percent under the new law. Thus, further evidence was provided of a lower frequency for this particularly costly type of claim. Second, the analysis suggested that, if it were possible to consider experience alone, a 17.3 percent premium level reduction would have been warranted. This indicates considerable claim costs reductions from the perspective of the insurance carriers. However, it is not possible to consider experience alone. At the time the analysis was prepared, it was estimated that the expense of a series of scheduled benefit increases would slightly outweigh the cost savings stemming from claim cost experience.

1980 Data From the Division of Workers' Compensation--The Secretary of the Department of Labor and Employment Security presented a report to the Commerce Committee of the Florida Senate on March 3, 1981. This report included a discussion of the progress made by

the Division of Workers' Compensation in implementing the reforms mandated by the 1979 legislation. It also contained evidence of the effects of the new law on Workers' Compensation claims activity.

This statistical evidence was in the form of comparisons between calendar year 1980 and calendar year 1979 figures.

1. The number of formal Workers' Compensation claims filed fell dramatically from 1979 to 1980.[44] During the former year, 24,082 such claims were reported while only 12,472 were received during the latter year. That is a decline of 11,610 or 48.2 percent.

2. A substantial decrease was also experienced in the number of joint petitions and washouts. The number of such petitions fell from 15,422 in 1979 to 9,806 in 1980--a 36.4 percent drop.

3. The amount of benefits awarded in these joint petitions fell from $91.7 million in 1979 to $76.0 million in 1980. This amounted to an 17.1 percent reduction and a $15.7 million savings in benefits paid.

4. The amount of attorneys' fees awarded in controverted claims for Workers' Compensation fell from $18.9 million in 1979 to $16.9 million in 1980, a 10.6 percent decline.[45] The 1980 figure was 20.3 percent below the highest yearly attorney fee figure ever recorded, $21.2 million in 1977. In 1978, the Legislature began to shift to the claimant the responsibility for attorney fee payment. This trend was continued in the 1979 legislation as has been discussed.

Again, it is important to remember that the further premium rate reductions in all probability will be decided by the State Insurance Commissioner based primarily on his evaluation of a rate filing by the insurance industry. The positive trends suggested by the House Insurance Committee Report, the NCCI analysis and the 1980 data from the Division of Workers' Compensation will not necessarily translate into further rate reductions when all factors are considered. Nevertheless, those desiring further Workers' Compensation premium rate reductions in Florida should be encouraged by the data available at this point.

V. THE FUTURE OF FLORIDA'S WORKERS' COMPENSATION SYSTEM: MAKING SURE IT WORKS

Florida as a Model

The 1979 amendments to Florida's Workers' Compensation law were fundamental reforms to the system. As has been noted, Florida became the first state to adopt the wage-loss concept as the basis for long-term disability benefits for injured workers.

The nature of such reforms has given the Florida Workers' Compensation system the status of an experimental model. The ultimate success of that model is of great interest to other states. Representatives from the States of Washington, California and Delaware have visited Florida to observe the Workers' Compensation system in operation. The Director of the Division of Workers' Compensation has been invited to appear before legislative committees in several states to explain the wage-loss system and administrative reforms.[46]

Monitoring the System's Effectiveness

Perhaps the most important factor in determining the ultimate success of Florida Workers' Compensation system will be the determination of those who participated in its reforms--both inside and outside government--to monitor closely its operation. The Florida Legislature assured continued monitoring of the Workers' Compensation system by statute and by the Legislature's own activities. Several business, professional and labor organizations also have demonstrated their intent to continue their scrutiny of the system.

An example of a monitoring program established by statute is the Medical Utilization and Peer Review program.[47] Under this program, Workers' Compensation claim histories would be examined for possible instances of needless medical tests or treatment and of excessive charges for medical services. Ultimately, physicians involved in over-utilization of medical services would be subject to review by a committee of their peers. By February of this year, the Division of Workers' Compensation was able to report substantial progress toward establishing this program. A program budget had been prepared, positions established and a program director hired. The Division had entered into a contractual agreement with the Florida Medical Foundation to provide peer review services.[48]

The activities of Legislative Committees constitute another form of governmental monitoring of the Workers' Compensation system. Following the passage of the 1979 legislation, the Speaker of the House of Representatives officially charged the Committee on Insurance with the responsibility for legislative oversight of the implementation of the new law. The Insurance Committee Chairman delegated this responsibility to the Subcommittee on Oversight. That subcommittee has met periodically over the months since then obtaining detailed progress reports from the

Division of Workers' Compensation and hearing testimony from other interested parties.[49] The subcommittee has issued two calls for claims data from the insurance carriers. The results of the first call have been discussed in some detail earlier in this report.

The Senate Commerce Committee also has maintained an active program of monitoring the success of the Workers' Compensation system. The Division of Workers' Compensation data reported in Section IV was largely taken from testimony offered before that committee.[50]

Just as important to the success of the new system will be the efforts of organizations outside government. Naturally, the insurance industry, through the National Council on Compensation Insurance, will play a central role in future developments--particularly as regards future premium rate changes. The direct and continuing role of the NCCI has been apparent in the frequent reference to that organization throughout this report.

Associated Industries of Florida, which describes itself as "the voice of business" in the State, was very much involved in the 1979 reforms to the Workers' Compensation law and has remained in close touch with the implementation process. This business association issues periodic newsletters on potential problems in the law and recently has commissioned an analysis of a sample of Workers' Compensation claims filed during the first year of the new law's operation.[51]

The Florida Association of Insurance Agents, very active in promoting the adoption of the wage-loss concept, has begun a two-year program of monitoring the total effectiveness of Florida's Workers' Compensation system. The efficiency of claims processing, rehabilitation services and safety programs are early subjects of study.[52]

Having participated directly in the efforts leading to the 1979 Workers' Compensation legislation, the Florida AFL-CIO has continued its involvement in the Workers' Compensation program. The labor organization's major emphasis has been in monitoring the efficiency and equity with which injured workers have been provided their benefits. The current monitoring technique used is to randomly select case files then to telephone the claimants asking whether they have been satisfied with the way their case has been handled by the employer, the insurance carrier and the Division of Workers' Compensation.[53]

Notes

[1]For an excellent discussion of the theory underlying Florida's Workmen's Compensation system and Worker's Compensation systems in general, see: William E. Sadowski, Jack Herzog, R. Terry Butler and Ruth L. Gokel, "The 1979 Florida Workers' Compensation Reform: Back to Basics," Florida State University Law Review 7 (Fall 1979): 641-649.

[2]"The Payoff for Pain: A Look at Florida's Workmen's Compensation System," reprinted from The Miami Herald, 18 March through 25 March 1979, p. 2.

[3]Ibid., p. 11.

[4]Ibid., p. 2.

[5]Florida Department of Insurance, History of Florida Workers' Compensation Rate Revisions Since 7/1/70, special table prepared for this report, January 28, 1981.

[6]Florida Association of Insurance Agents, Workmen's Compensation Wage-Loss Reform Conferences: January 16-February 9, 1979, p. 10.

[7]"Payoff for Pain," Miami Herald, p. 3.

[8]Ibid., p. 11.

[9]Florida Association of Insurance Agents, Wage-Loss Conferences, p. 14.

[10]"Payoff for Pain," Miami Herald, p. 2.

[11]The Fantus Company, Economic Development Study: The State of Florida (Ft. Lauderdale: The Florida Council of 100, 1978), p. 6.

[12]Florida Association of Insurance Agents, Wage-Loss Conferences, p. 5.

[13]"Payoff for Pain." Miami Herald, p. 5.

[14]National Council on Compensation Insurance, 1977 Workmen's Compensation Closed Claim Study (Tallahassee: Florida Association of Insurance Agents, 1978).

[15]Previously, the comparatively low statutory benefits in Florida were noted. Here, the medical benefits paid to injured workers are described as ". . .unusually high compared to those paid in other states." This apparent paradox is resolved by noting that the benefits were claimed more often, and more frequently up to their maximum allowable limits, than in other states. As a result, the total amount of benefits paid was much higher in Florida.

[16]Division of Workers' Compensation, 1977-1978 Cases Causes Costs: Analysis of Work Injuries Covered by Workers' Compensation (Tallahassee: Department of Labor and Employment Security, 1979), p. 23.

[17]NCCI, Closed Claim Study, p. 6.

[18]Much of the discussion of compensation determination is based on an analysis presented by Fred Karl, Florida Association of Insurance Agents, Wage-Loss Conferences, pp. 30-33. The data for medical specialist involvement is from the NCCI Closed Claim Study, p. 2.

[19]"Payoff for Pain," Miami Herald, p. 16.

[20]Ibid, p.2.

[21]Ibid., pp. 11.

[22]Ibid., pp. 19-20, 24.

[23]Ibid., p. 2.

[24]Sadowski et al., "The 1979 Florida Workers' Compensation Reform," p. 650. The preceding discussion of legislative intent is based primarily on this same source, pp. 649-654.

[25]The following discussion of the major changes in the Workers' Compensation law is based on Sadowski et al., "The 1979 Florida Workers' Compensation Reform," pp. 654-686 and two "Staff Analyses and Economic Impact Statements," prepared by the Senate staff, April 18 and June 1, 1979.

[26]Actually, those workers who suffer the impairment injuries previously described would be able to collect wage-loss benefits in addition to their impairment benefits.

[27]Florida Statutes, Section 440.44.

[28]Senate, "Staff Analysis," April 18, 1979, p. 9.

[29]The 11.4 percent reduction in the manual premium rate was partially counter-balanced by other changes affecting other determinants of the premiums paid by employers. When all changes are considered, the actual reductions in premiums paid was an estimated 5.1 percent.

[30]Florida Department of Insurance, "Commissioner Gunter Approves Workers' Compensation Rate Cut of $34 Million," statement released to the press January 6, 1981.

[31]Letter from Bob Hilton of National Council on Compensation Insurance to Florida Insurance Commissioner Bill Gunter, December 2, 1980.

[32]An index is used here rather than the actual average manual premium rate. The National Council on Compensation Insurance estimates the overall premium rate impact, in terms of a percentage change, for each approved rate filing. However, the

National Council is hesitant to provide a calculated average manual rate due to the complications which would arise in attempting to weigh the different premium rates for each of the 500 or so employment classifications and due to the possibility of misleading comparisons with the overall rates of other states. The historical trend of the index used here is, in all probability, identical to the trend of the actual manual rate if that data were available.

[33]Florida Department of Insurance, History of Rate Revisions.

[34]Data provided Bureau of Research and Planning, Division of Workers' Compensation, Department of Labor and Employment Security, Special Request, March 16, 1981.

[35]The hypothetical 1980 value was calculated by applying the average compounded rate of increase from 1975 through 1979 in premium amount paid per employee to the 1979 value for premium per employee.

[36]Letter from Bob Hilton to Bill Gunter, December 2, 1980 (previously cited). This ranking also was confirmed in a letter from Clifford Wess, National Council on Compensation Insurance, to Dennis Harmon, Florida Department of Commerce, March 4, 1981.

[37]National Council on Compensation Insurance, Memorandum to Florida Classification and Rating Committee: Exhibit I, November 12, 1980.

[38]Ibid.

[39]Memorandum from Lena Chang, Actuarial Consultant, to the Honorable William Sadowski, Chairman, Committee on Insurance, Florida House of Representatives, August 8, 1980, "Preliminary Report on Committee Study of the New Workers' Compensation Law."

[40]Ibid, pp. 2-3.

[41]The decrease in the claims share accounted for by the permanent partial category was accompanied by an increase in the proportion held by the temporary total category. The number of claims in this category also increased absolutely. Historically, the temporary total injury type claim has not had the extreme claim costs associated with it that has the permanent partial category. Nevertheless, trends in this category probably will be closely watched for problems.

[42]Chang memorandum to Sadowski, p. 4.

[43]NCCI Memorandum to Florida' lassification and Rating Committee. This committee is compr ed of representatives of insurance carriers which sell Workers' Compensation insurance in Florida. The insurance industry bases its rate filing decisions on the recommendations of this committee.

[44]A formal claim is a claim filed by an injured worker with the Division of Workers' Compensation. The filing of such a claim indicates that the worker is dissatisfied with the benefits he has received.

[45]If the unrounded data are used, this percentage change is 10.3 percent. This particular data was provided upon special request by the Bureau of Research and Planning, Division of Workers' Compensation, Department of Labor and Employment Security, March 19, 1981.

[46]Testimony of Wallace Orr, Secretary, Department of Labor and Employment Security, before Senate Commerce Committee, "Status of Florida's Workers' Compensation Law," March 3, 1981, pp.3-4.

[47]Section 440.13(3)(C-D), Florida Statutes.

[48]Department of Labor and Employment Security, Division of Workers' Compensation, "Response to the Report of the Subcommittee on Overview, Committee on Insurance, Florida House of Representatives," February 1981, p. 17.

[49]Florida House of Representatives, Committee on Insurance, Subcommittee on Oversight, "Legislative Oversight of the Implementation of the 1979 Reform of Florida's Workers' Compensation Law," April 1980.

[50]Testimony by Secretary Orr, pp. 3-4.

[51]An example is the Special Notice issued by Associated Industries of Florida, February 19, 1981 entitled: "Report to the Governor and Legislature on the Implementation of the New Workers' Compensation Law."

[52]Telephone conversation with Jim Brainerd, Florida Association of Insurance Agents, March 27, 1981.

[53]Telephone conversation with Ken Cooper, Florida AFL-CIO, March 27, 1981.

Alaska National
INSURANCE COMPANY

A policy of service and protection

LEGISLATIVE POSITION PAPER

LEGISLATION: Labor and Management Compromise substitute for CSHB 159

SECTIONS

15 & 32

SUBSTANCE:

These two sections of the bill change the degree to which the presence of alcoholism or drugs can defeat the injured employees rights to compensation.

POSITION:

Support.

ACTION:

No action.

BACKGROUND:

These two sections read together change the burden of proof for the employer with respect to alcoholism from the requirement that they demonstrate liquor solely caused the accident to liquor proximately caused the accident, and adds a similar provision with respect to drugs.

partly probable cause of the accident

We have some cases in which alcoholism was definitely present and a contributing factor to the accident, however, it is clearly the case that no single factor could ever be argued as the sole factor in a accident.

If we could demonstrate that although it wasn't the sole factor it was the proximate cause of the accident it would be useful in defeating some alcoholism and drug related claims.

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Alaska National
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LEGISLATIVE POSITION PAPER

LEGISLATION: Labor and Management Compromise substitute for CSHB 159

SECTION

Twelve

SUBSTANCE:

Requires an injured employee to grant specific authority to release medical information to the employers, carriers and so forth.

POSITION:

OK Favor, but would suggest an improvement.

ACTION:

Seek an improvement in the measure, but support in any event.

BACKGROUND:

When a workers' compensation claim is filed it is necessary for the insurance company to obtain medical information from the treating physicians, examining physicians, or physicians who have rendered medical care in prior cases for the injured worker.

Doctors are understandably reluctant to give out medical information without having a specific release from the employee in order not to violate their responsibilities of privacy.

This statute requires the employee to execute whatever authorities are required by other physicians in order to obtain release of medical information.

We believe that this is an important addition to the workers' compensation statute.

SUGGESTED IMPROVEMENT:

If a provision were placed in the law which had the effect of pro tanto granting the authority would eliminate the need for getting specific written authority and protect the physicians and hospitals.

Further, the authority in the proposed language relates to medical information only relative to his injury.

It is vital that we have access to medical information concerning prior medical treatments.

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For example, it is relevant to any adjustment of a case for injury to the employee to have access to medical records concerning prior injuries or prior illness since it bears on the method of handling the medical treatment of the existing case.

We would suggest the following language:

> "Upon the filing of a claim under this Act an employee thereby authorizes all providers of medical treatment pertaining to the injury or rendered prior to the date of injury to release information to the employer. If requested by the employer, the employee shall execute all releases to facilitate access to that information."

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LEGISLATIVE POSITION PAPER

LEGISLATION: Labor and Management Compromise substitute for CSHB 159

SECTION

Eleven

SUBSTANCE:

Adds a new subsection to give the Board specific definition of permanent impairment.

POSITION:

Not opposed.

ACTION:

No action except to seek modification as indicated.

BACKGROUND:

The Board currently has no specific guidelines for determining the degree of permanent impairment. The proposed section would give the Board authority to establish a schedule for determining the existence and degree of permanent impairment. We believe that the authority to adopt such a schedule is a useful device to add certainty to the system. We would urge however that giving the Board carte blanche authority to adopt a schedule without guidelines is inappropriate.

The Board is currently using, without specific statutory authority to do so, the American Medical Association Guide To Permanent Impairment, a document to which the American Medical Association has devoted a great deal of time and study. We believe this is a satisfactory, impartial, fair, easy to administer, and objective definition of permanent impairment and one with which the medical profession, which must actually render the impairment ratings, is familiar.

We believe that the Board should be directed to use this standard.

SUGGESTED ALTERNATIVE:

We would urge the language be modified as follows:

"(j) the board shall adopt and use the American Medical Association Guide To Permanent Impairments as the basis for determining the existence and degree of permanent impairments".

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LEGISLATIVE POSITION PAPER

LEGISLATION: Labor and Management Compromise substitute for CSHB 159

SECTIONS

Two through Eight

SUBSTANCE:

Substantially modifies the approach to providing rehabilitation benefits.

POSITION:

Opposed.

ACTION:

All of the sections must be removed from the bill. If the sections are not withdrawn from the bills the bill must be opposed. Preventing adoption of these sections is considered of highest priority.

BACKGROUND:

Rehabilitation has always been regarded as an important part of the workers' compensation system, however, there has not been agreement as to what constitutes effective and reimbursable rehabilitation programs.

Typically, rehabilitation is provided where it is believed vocational retraining will return the injured worker to the level of gainful employment enjoyed prior to injury in a work setting as closely approximating his work setting prior to injury as his new physical condition will permit.

On the other hand, there are those who believe that the rehabilitation program ought to be used to reorient the injured worker to a life or work style unnecessarily different from that he enjoyed prior to injury.

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To develop appropriate cost effective and responsive rehabilitation programs, most carriers use professional rehabilitation counselors who determine the need for, and probable value of rehabilitation programs, develop plans and implement them, all at the expense of the employer.

This legislation would usurp the primary responsibility for making professional determinations concerning rehabilitation from the trained professionals operating in and funded by the private sector and transfer that responsibility to a new, unqualified and expensive state bureau at an initial cost of over one quarter of a million dollars.

More particularly:

Section 2 removes any limit for rehabilitation benefits paid from the Second Injury Fund at the same time the Board is granting full temporary total benefits to workers while they are on rehabilitation.

Section 3 establishes a set of principles to guide rehabilitation efforts. While the principles are essentially not objectionable, they are of no value in a statute unless other statutes in fact accomplish those objectives. It is our view that the other sections do not tend toward the intended objectives.

Sections 4, 5, 6 set up the bureaucracy to implement the intended objectives. The Director of the Division of Workers' Compensation testified that the initial cost to the state would be $350,000. It is our belief that the more difficult to assess but substantially larger cost would be in the increased costs to employers to fund unnecessary, premature, redundant, ill conceived or unwelcome rehabilitation programs designed and mandated by state designated rehabilitation specialists.

Section [23.30.041 (b)], further provides that the Rehabilitation Bureau may impose a rehabilitation program when ever it deems it appropriate which could be in every permanent total disability case. The costs which could be imposed under this and following subsections could be astronomical. They include:

a) Extention of the rehabilitation program beyond the first 37 weeks at the direction of the rehabilitation administrator with no defined limit.

b) Travel to and lodging at any location away from the employees residence for the full rehabilitation period.

c) Temporary total benefits for the full period of rehabilitation.

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LEGISLATIVE POSITION PAPER

LEGISLATION: Labor and Management Compromise substitute for CSHB 159

SECTION

One

SUBSTANCE:

Grants specific authority to file and use a deductibl workers' compensation policy.

POSITION:

Not opposed to the substance but redrafting is indicated.

ACTION:

Obtain redrafting of the language then do not oppose.

BACKGROUND:

This company has already filed and obtained approval for a deductible plan; this provision is not objectionable. The provision is more appropriately found in the Insurance Code with some language revisions.

Maybe consider for HB659

SUGGESTED ALTERNATIVE:

SECTION 1: AS.21.42. is amended by adding a new section to read:

> "21.42.165 - An insurer issuing a workers' compensation insurance policy pursuant to AS 23.30.025 may contain a provision requiring the insured to pay a portion of the benefits due under AS.23.30. provided the provision making that requirement has the prior approval of the Director and provided further the policy provides that as to the employee and the Workers' Compensation Board the policy meets all the requirements of 23.30.025 and 23.30.030. Filing for apporval under this section is not a deviation under AS.21.39.070.

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5. AMENDMENTS PROPOSED

A. On page 7, line 24, a stay of revocation provision is included which provides the stay "until the hearing process is completed." This is ambiguous language since no definition provides when the process is completed. We would suggest removing the words "hearing process is completed" and add "the time noted in the order issued by the director following the hearing but not sooner than five days following the order."

B. On page 9, line 5, a requirement for workers compensation insurance groups is the filing and approval of a rating program. Safety groups do not have standing to make such filings, but insurers do. A minor insertion would clarify the situation. Following the word "has," insert the words "through an insurer."

C. On page 16, lines 22-29 and page 17, line 1, AS 23.30.030(7) is revised to change "insurance commissioner" to "director of insurance." The section is however not workable. Form filings are made by a rating organization on behalf of all its member and subscriber companies, so that it is not possible to disapprove the form in the manner outlined. The director of insurance does not presently accept or receive proofs of insurance from any insurer so this language is meaningless. The approach here would penalize all other insured employers of the insurance company and could leave them uninsured. A better approach would be to allow specific penalty to be determined on the basis of the severity of the specific situation. This could range from a fine to suspension of authority. We would suggest the following language:

"(7) If the insurer fails or refuses to pay a final award or judgement (except during the pendency of an appeal) made against it, or its insured, or if it fails or refuses to comply with a provision of this chapter, the director of insurance [COMMISSIONER SHALL REVOKE THE APPROVAL OF THE POLICY FORM, AND MAY NOT ACCEPT FURTHER PROOFS OF INSURANCE FROM IT UNTIL IT HAS PAID THE AWARD OR JUDGEMENT OR HAS COMPLIED WITH THE VIOLATED PROVISION OF THIS CHAPTER, AND HAS RESUBMITTED ITS POLICY FORM AND RECEIVED THE APPROVAL OF THE FORM BY THE INSURANCE COMMISSIONER] may suspend or revoke the insurer's Certificate of Authority pursuant to AS 21.09.150 or impose a fine upon the insurer of not less than $25 and not more than $100 for each day the insurer fails or refuses to pay a final award or judgement (excluding the period permitted for appeal) made against it, or its insured, or it fails or refuses to comply with a provision of this chapter."

D. On page 23, line 28, omit the word "board" and insert the words "director of insurance."

E. On page 25, line 13, following the word "State," add "provided that the contracting agency has obtained proof of self-insurance from the employer designating the contracting agency as a person to receive notice under this section."

5. AMENDMENTS PROPOSED (continued)

F. On page 38, line 21, remove the words "or draft."

G. Provide a different effective date for sections 1, 2, 19, 20, part of 25, part of 26, 29, and part of 64. The effective date for these sections should be July 1, 1982.

The change on page 23, lines 14, 18, 20, 22, 23 and 24 should be effective July 1, 1981.

The change on page 23, lines 17 and 19 should be effective on July 1, 1982.

The change on page 46, lines 19, 21 and 22 should be effective on July 1, 1981.

The change on page 46, line 20 should be effective on July 1, 1982.

THE CHANGE ON PAGE 24, LINES 2, 4, 7 AND 8 SHOULD BE EFFECTIVE ON JULY 1, 1981.

THE CHANGE ON PAGE 23 LINE 28 (SEE PROPOSED AMENDMENT D) SHOULD BE EFFECTIVE ON JULY 1, 1982.

ED HOLDEN

North American Re-Insurance Co.

- will show film on rehabilitation of catastrophic injury cases

Lee Jackson

Brief recap of study

John Leeds

Preliminary report on Benefit Stream

THE LEGISLATURE OF THE STATE OF ALASKA

TWELFTH LEGISLATURE

file copy

FISCAL NOTE

I. REQUEST

Bill/Resolution No. Committee Substitute for House Bill No. 159 (L & C)

Title "An Act relating to workers' compensation, and providing for an effective . . ."

Requested by Labor and Commerce Committee Date 3/1/82

II. FISCAL DETAIL

Agency Affected Labor

Program Category Affected Worker Protection

BRU, Program, or Subprogram(s) Affected Workers' Compensation

(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
100 PERSONAL SERVICES		161.8	178.0	195.8	215.4	236.9
200 TRAVEL		20.0	22.0	24.2	26.6	29.3
300 CONTRACTUAL		122.3	71.3	78.4	86.2	94.9
400 COMMODITIES		3.4	3.7	4.1	4.5	4.9
500 EQUIPMENT		10.4	0	0	0	0
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL	0	317.9	275.0	302.5	332.7	366.0

FUNDING (Thousands of Dollars)

GENERAL FUND	0	(132.3)	(197.2)	(216.9)	(238.6)	(262.5)
FEDERAL FUNDS						
OTHER (Specify Fund Source)						
**Second Injury Fund		450.2	472.2	519.4	571.3	628.5

POSITIONS

FULL TIME	0	4	4	4	4	4
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

It is the intent of the Legislature that an injured worker receive rehabilitation services which enhance returning to work as quickly as possible at earnings as close as possible to the worker's gross earnings at the time of the injury. The implementation of a delivery system to provide timely and adequate rehabilitation services is fundamental in meeting this objective.

This fiscal note provides that the state administrative costs for rehabilitation under the proposed AS 23.30.041 be paid from the Second Injury Fund. This includes the costs of four new positions, plus the cost of four existing positions which entails a transfer in funding source from General Funds to Second Injury Funds.
(Continued page 2)

IV. DATE 3/2/82 PREPARED BY Nico Bus

AGENCY Labor

PHONE 465-2720

Original: Legislative Finance

cc: Budget and Management

Prime Sponsor (First Legislator Named)

1. Assumes an inflation rate of 10% per annum after FY '83.

2. Assumes an effective date of July 1, 1982.

3. The total cost for FY'83 for the four new positions is detailed on attached forms 13. In addition the following items are included in the FY '83 costs.

A Workers' Compensation Officer I reclassification to a Workers' Compensation Officer II with related travel and contractual services. Cost $16.6

100 Personal Services	$ 5.5
200 Travel	5.0
300 Auto, lease, Indirect, etc.	6.1
	$16.6

The data processing operations cost will increase by $14.0 because of enhancements for a tickler system, running two systems parallel and the files expansion to retain the addresses of all claimants.

The printing of 10,000 Workers' Compensation Acts and 25,000 Employee Information booklets. $35.0

The design and printing of new forms. $2.5

Computer program modifications to implement the changes introduced by the bill. $20.0

Equipment expense for computer terminals, panelling, cabinets, and files. $6.0

Included one-time items in FY '83

Equipment	$10.4
Booklets and Acts	35.0
Design and printing of new forms	2.5
Computer programs	20.0
	$67.9

Funding Change

Items included in the FY 83 Governor's budget that will change funding sources from General Fund to the Second Injury Fund.

4 positions (including benefits)	$141.3
Non-personal service costs relating to these 4 existing positions	
200: travel	9.9
300: contractual	25.8
400: commodities	2.3
	179.3

FY'83 Component Breakdown:

	Workers' Compensation Administration	Second Injury Fund
PS		$161.8
Travel		20.0
Contract*	$47.0	75.3
Commodities		[illegible]
Equipment		10.4
TOTAL	$47.0	$270.9

Funding	General Fund	Second Injury
Funding transfer	(179.3)	179.3
Rehabilitation Services/ delivery system	47.0	270.9
	(132.3)	450.2

*$35,000 Workers Compensation Acts and Information Booklets; [illegible]2,000 Data Processing

**Second Injury Fund is currently being reviewed to determine whether revenues are sufficient to cover the cost of rehabilitation. It may be necessary to amend AS 23.30.040 to increase the maximum percentage contribution rate.

	POSITION TITLE			RANGE/STEP	BARG. UNIT.	LOCATION	GOV.	APPROV.	DISAPP.
1	Clerk Typist III			8B	GBU	AVA			
	TYPE OF POSITION	STAFF MONTHS	RP No.	PCN No.	PRIORITY	FORM 12 PAGE/LINE	LEG.		
2	PFT	12	N/A	New Position		N/A			

	TYPE OF EXPENDITURE		1	2	AMOUNT 3
3					
4	PERSONAL SERVICES: SALARY 1530 x 12			18,360	
5	BENEFITS .1592			2,923	
6	SBS .0613			1,125	
7	FIXED BENEFITS 183 x 12			2,196	
8	TOTAL PERSONAL SERVICES	01			24,604
9	TRAVEL	02			
10	CONTRACTUAL	03			7,004
11	COMMODITIES	04			850
12	EQUIPMENT	05			700
13	OTHER				
14	TOTAL COST				33,158

	RECEIPT CODE	FUNDING SOURCE	
15		FED RCPTS. 1002	
16		GF MATCH. 1003	
17	100	GEN. FUND 1004	
18		I-A RCPTS. 1005	
19		PGM RCPTS 1008	
20	841	OTHER Second Injury Fund	33,158
21	CONTINUATION		
22	ADDITION	X	

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4A KEY NUMBER ..... COLUMN NO. ____

JUSTIFICATION:

It is the intent of the Legislature that an injured worker receive rehabilitation services which enhance returning to work as quickly as possible at earnings as close as possible to the worker's gross earnings at the time of the injury. The implementation of a delivery system to provide timely and adequate rehabilitation services is fundamental in meeting this objective.

The Clerk III position will provide clerical assistance to the Workers' Compensation Officer in the Juneau Second Injury Fund office and will be responsible for providing and coordinating distribution of information from the claim files to the other regions.

10. Contractual: Space $3,100 (to be transferred to DOA)
Indirect (11.46% x 18,360 = $2,104)
Other costs which include communications, equipment rental, etc. $1,800

11. Commodities: Cost per position

12. Equipment: Desk, desk chair $700

AGENCY Labor PROGRAM Worker Protection

BRU Workers' Compensation

COMPONENT Second Injury Fund

13 REQUEST FOR NEW POSITION

REVISED DATE ____

FY 83

01-1136 (7/80)

DM-16

	POSITION TITLE				RANGE/STEP	BARG. UNIT.	LOCATION	GOV.	APPROV.	DISAPP.
1	Clerk IV				9B	GBU	EBA			
	TYPE OF POSITION	STAFF MONTHS	RP No.	PCN No.	PRIORITY		FORM 12 PAGE/LINE	LEG.		
2	PFT	12	N/A	New Position			N/A			

	TYPE OF EXPENDITURE		AMOUNT
	1	2	3
3	PERSONAL SERVICES: SALARY 1627 x 12	19,524	
4	BENEFITS .1592	3,108	
5	SBS .0613	1,197	
6	FIXED BENEFITS 183 x 12	2,196	
7	TOTAL PERSONAL SERVICES 01		26,025
8	TRAVEL 02		0
9	CONTRACTUAL 03		7,137
10	COMMODITIES 04		850
11	EQUIPMENT 05		700
12	OTHER		
13	TOTAL COST		34,712

	RECEIPT CODE	FUNDING SOURCE	
14		FED RCPTS. 1002	
15		GF MATCH. 1003	
16	100	GEN. FUND 1004	
17		I-A RCPTS. 1005	
18		PGM RCPTS 1028	
19	841	OTHER Second Injury Fund	34,712
20	CONTINUATION		
21	ADDITION	X	

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4A-KEY NUMBER _____ COLUMN NO. _____

JUSTIFICATION:

It is the intent of the Legislature that an injured worker receive rehabilitation services which enhance returning to work as quickly as possible at earnings as close as possible to the worker's gross earnings at the time of the injury. The implementation of a delivery system to provide timely and adequate rehabilitation services is fundamental in meeting this objective.

The Clerk IV position will provide clerical assistance to the Rehabilitation Administrator and Workers' Compensation Officer and will be responsible for maintaining follow-up on all rehabilitation files.

10. Contractual: Space $3,100 (to be transferred to DOA)
Indirect (11.46% x $19,524 = $2,237)
Other costs which include communications, equipment rental, etc. $1,800

11. Commodities: Cost per position

12. Equipment: Desk and desk chair $700

AGENCY Labor PROGRAM Worker Protection

BRU Workers' Compensation

COMPONENT Second Injury Fund

13 REQUEST FOR NEW POSITION

REVISED DATE _____

FY 83

01-1136 (7/81)

1	POSITION TITLE: Workers Compensation Officer II			RANGE/STEP: 18A	BARG. UNIT: GBU	LOCATION: JBA	GOV.	APPROV.	DISAPP.
2	TYPE OF POSITION: PFT	STAFF MONTHS: 12	RP No.: N/A	PCN No.: New Position	PRIORITY:	FORM 12 PAGE/LINE: N/A	LEG.		

	TYPE OF EXPENDITURE	1	2	AMOUNT 3
	PERSONAL SERVICES:			
4	SALARY 3249 x 12		38,988	
5	BENEFITS .1592		6,207	
6	SBS .0613		2,188	
7	FIXED BENEFITS 183 x 12		2,196	
8	TOTAL PERSONAL SERVICES	01		49,579
9	TRAVEL	02		5,000
10	CONTRACTUAL	03		14,968
11	COMMODITIES	04		850
12	EQUIPMENT	05		1,395
13	OTHER			0
14	TOTAL COST			71,792

	RECEIPT CODE	FUNDING SOURCE	
15		FED RCPTS. 1002	
16		GF MATCH 1003	
17	100	GEN. FUND 1004	
18		I-A RCPTS. 1005	
19		PGM RCPTS 1028	
20	841	OTHER Second Injury Fund	71,792
21	CONTINUATION		
22	ADDITION	X	

FOR B&M USE ONLY

4A KEY NUMBER _____ COLUMN NO. _____

JUSTIFICATION:

It is the intent of the Legislature that an injured worker receive rehabilitation services which enhance returning to work as quickly as possible at earnings as close as possible to the worker's gross earnings at the time of the injury. The implementation of a delivery system to provide timely and adequate rehabilitation services is fundamental in meeting this objective.

The workers' compensation officer is necessary to coordinate with workers, employers, insurers and rehabilation providers to expedite the retraining and reemployment of injured workers. Travel within the Fairbanks and Northern regions will be necessary to coordinate this effort.

9. Travel: $5,000 (10 trips @ $500 per trip)

10. Contractual: Space $3,100 (to be transferred to DOA)
Auto Lease, Maintenance Agreement & Operating Costs $5,600
Indirect Costs (11.46% x 38,988 = $4,468)
Other costs which include communications, equipment rental, etc. $1,800

11. Commodities: Cost per position

12. Equipment: Desk, desk chair, side chair, file, worktable, bookcase $1,395

ENCY Labor PROGRAM Worker Protection

BRU Workers' Compensation

COMPONENT Second Injury Fund

13 REQUEST FOR NEW POSITION

REVISED DATE _____

FY 83

01 1136 (7/81)

	POSITION TITLE			RANGE/STEP	BARG. UNIT.	LOCATION		APPROV.	DISAPP.
1	Workers Compensation Officer II			18A	GBU	JBA	GOV.		
	TYPE OF POSITION	STAFF MONTHS	RP No.	PCN No.	PRIORITY	FORM 12 PAGE/LINE			
2	PFT	12	N/A	New Position		N/A	LEG.		

	TYPE OF EXPENDITURE		AMOUNT
	1	2	3
	PERSONAL SERVICES:		
4	SALARY 3249 x 12	38,988	
5	BENEFITS .1592	6,207	
6	SBS .0613	2,188	
7	FIXED BENEFITS 183 x 12	2,196	
8	TOTAL PERSONAL SERVICES 01		49,579
9	TRAVEL 02		5,000
0	CONTRACTUAL 03		14,968
1	COMMODITIES 04		850
2	EQUIPMENT 05		1,395
3	OTHER		0
4	TOTAL COST		71,792

	RECEIPT CODE	FUNDING SOURCE	
5		FED RCPTS. 1002	
6		GF MATCH. 1003	
7	100	GEN. FUND 1004	
8		I-A RCPTS. 1005	
9		PGM RCPTS 1028	
0	841	OTHER Second Injury Fund	71,792
1	CONTINUATION		
2	ADDITION	X	

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4A KEY NUMBER ..... COLUMN NO. .....

JUSTIFICATION:

It is the intent of the Legislature that an injured worker receive rehabilitation services which enhance returning to work as quickly as possible at earnings as close as possible to the worker's gross earnings at the time of the injury. The implementation of a delivery system to provide timely and adequate rehabilitation services is fundamental in meeting this objective.

The workers' compensation officer is necessary to coordinate with workers, employers, insurers and rehabilitation providers to expedite the retraining and reemployment of injured workers. Travel within the Fairbanks and Northern regions will be necessary to coordinate this effort.

9. Travel: $5,000 (10 trips @ $500 per trip)

10. Contractual: Space $3,500 (to be transferred to DOA)
Auto Lease, Maintenance Agreement & Operating Costs $5,600
Indirect Costs (11.46% x 38,988 = $4,468)
Other costs which include communications, equipment rental, etc. $1,800

11. Commodities: Cost per position

12 Equipment: Desk, desk chair, side chair, file, worktable, bookcase $1,395

ENCY Labor PROGRAM Worker Protection

BRU Workers' Compensation

COMPONENT Second Injury Fund

13 REQUEST FOR NEW POSITION

REVISED DATE

FY 83

01 1136 (7/81)

THE LEGISLATURE OF THE STATE OF ALASKA

TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. CS for House Bill No. 159

Title "An Act relating to workers' compensation, and providing for an effective . . ."

Requested by Labor and Commerce Committee Date 2/18/82

II. FISCAL DETAIL

Agency Affected Labor

Program Category Affected Worker Protection

BRU, Program, or Subprogram(s) Affected Workers' Compensation

(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

		FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
100	PERSONAL SERVICES		161.8	178.0	195.8	215.4	236.9
200	TRAVEL		20.0	22.0	24.2	26.6	29.3
300	CONTRACTUAL		122.3	71.3	78.4	86.2	94.9
400	COMMODITIES		3.4	3.7	4.1	4.5	4.9
500	EQUIPMENT		10.4	0	0	0	
600	LAND & STRUCTURES						
700	GRANTS, CLAIMS, ETC.						
	TOTAL	0	317.9	275.0	302.5	332.7	366.0

FUNDING (Thousands of Dollars)

GENERAL FUND	0	317.9	275.0	302.5	332.7	366.0
FEDERAL FUNDS						
OTHER (Specify Fund Source)						

POSITIONS

FULL TIME	0	4	4	4	4	4
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

It is the intent of the Legislature that an injured worker receive rehabilitation services which enhance returning to work as quickly as possible at earnings as close as possible to the worker's gross earnings at the time of the injury. The implementation of a delivery system to provide timely and adequate rehabilitation services is fundamental in meeting this objective.

1. Assumes an inflation rate of 10% per annum after FY '83.

2. Assumes an effective date of July 1, 1982.

3. The total cost for FY'83 for the four new positions is detailed on attached forms 13. In addition the following items are included in the FY '83 costs.
(Continued page 2)

IV. DATE February 19, 1982 PREPARED BY Nico Bus

AGENCY Labor

PHONE 465-2720

Original: Legislative Finance

cc: Budget and Management
Prime Sponsor (First Legislator Named)

33-001 (Rev. 12/81)

III. Analysis

A Workers' Compensation Officer I reclassification to a Workers' Compensation Officer II with related travel and contractual services. Cost $16.6

100 Personal Services	$ 5.5
200 Travel	5.0
300 Auto, Lease, Indirect, etc.	6.1
	$16.6

The data processing operations cost will increase by $14.0 because of ennancements for a tickler system, running two systems parallel and the files expansion to retain the addresses of all claimants.

The printing of 10,000 Workers' Compensation Acts and 25,000 Employee Information booklets. $35.0

The design and printing of new forms. $2.5

Computer program modifications to implement the changes introduced by the bill. $20.0

Equipment expense for computer terminals, panelling, cabinets, and files. $6.0

Included one-time items in FY '83

Equipment	$10.4
Booklets and Acts	35.0
Design and printing of new forms	2.5
Computer programs	20.0
	$67.9

FY'83 Component Breakdown:

	Workers' Compensation Administration	Second Injury Fund
PS		$161.8
Travel		20.0
Contract*	$47.0	75.3
Commodities		3.4
Equipment		10.4
TOTAL	$47.0	$270.9

*$10,000 Workers Compensation Acts; $25,000 Information Booklet; $12,000 Data Processing

	POSITION TITLE				RANGE/STEP	BARG. UNIT.	LOCATION	GOV.	APPROV.	DISAPP.
1	Rehabilitation Administrator				22A		EBA			
	TYPE OF POSITION	STAFF MONTHS	RP No.	PCN No.	PRIORITY		FORM 12 PAGE/LINE	LEG.		
2	PFT	12	N/A	New Position			N/A			

	TYPE OF EXPENDITURE		1	2	AMOUNT 3
3					
4	PERSONAL SERVICES: SALARY 3714 x 12			44,568	
5	BENEFITS .1592			7,095	
6	SBS .0613			2,188	
7	FIXED BENEFITS 183 x 12			2,196	
8	TOTAL PERSONAL SERVICES	01			56,047
9	TRAVEL	02			10,000
10	CONTRACTUAL	03			15,607
11	COMMODITIES	04			850
12	EQUIPMENT	05			1,600
13	OTHER				
14	TOTAL COST				84,104

	RECEIPT CODE	FUNDING SOURCE	
15		FED RCPTS. 1002	
16		GF MATCH. 1003	
17	100	GEN. FUND 1004	84,104
18		I-A RCPTS. 1005	
19		PGM RCPTS 1028	
20		OTHER	
21	CONTINUATION		
22	ADDITION	X	

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4A KEY NUMBER _____ COLUMN NO. _____

JUSTIFICATION:

It is the intent of the Legislature that an injured worker receive rehabilitation services which enhance returning to work as quickly as possible at earnings as close as possible to the worker's gross earnings at the time of the injury. The implementation of a delivery system to provide timely and adequate rehabilitation services is fundamental in meeting this objective.

The rehabilitation administrator is necessary to develop and implement a workers' compensation rehabilitation program designed to administer and monitor the rehabilitation benefits of industrially injured workers covered by the Alaska Workers' Compensation Act.

Extensive travel within the state is necessary to provide assistance to approximately 12,000 employers in developing programs for re-employment of injured workers and coordinating counselor services with workers, insurers/employers, labor unions, and rehabilitation providers.

9. Travel: $10,000 (20 trips @ $500 per trip)
10. Contractual: Space $3,100 (to be transferred to DOA)
Auto Lease & Operating Costs $5,600
Indirect (11.46% x 44 568 = $5,107)
Other costs which include communications, equipment rental, etc., $1,800
11. Commodities: Cost per position
12. Equipment: Desk, desk chair, side chairs, bookcase, file - $1,600

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	POSITION TITLE				RANGE/STEP	BARG. UNIT	LOCATION	GOV.	APPROV.	DISAPP.
1	Workers Compensation Officer II				18A	GBU	JBA			
	TYPE OF POSITION	STAFF MONTHS	RP No.	PCN No.	PRIORITY		FORM 12 PAGE/LINE	LEG.		
2	PFT	12	N/A	New Position			N/A			

	TYPE OF EXPENDITURE			AMOUNT
	1		2	3
3				
4	PERSONAL SERVICES: SALARY 3249 x 12		38,988	
5	BENEFITS .1592		6,207	
6	SBS .0613		2,188	
7	FIXED BENEFITS 183 x 12		2,196	
8	TOTAL PERSONAL SERVICES	01		49,579
9	TRAVEL	02		5,000
10	CONTRACTUAL	03		14,968
11	COMMODITIES	04		850
12	EQUIPMENT	05		1,395
13	OTHER			0
14	TOTAL COST			71,792

	RECEIPT CODE	FUNDING SOURCE	
15		FED RCPTS. 1002	
16		GF MATCH. 1003	
17	100	GEN. FUND 1004	71,792
18		I-A RCPTS. 1005	
19		PGM RCPTS 1028	
20		OTHER	
21	CONTINUATION		
22	ADDITION	X	

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4A KEY NUMBER _____ COLUMN NO. _____

JUSTIFICATION:

It is the intent of the Legislature that an injured worker receive rehabilitation services which enhance returning to work as quickly as possible at earnings as close as possible to the worker's gross earnings at the time of the injury. The implementation of a delivery system to provide timely and adequate rehabilitation services is fundamental in meeting this objective.

The workers' compensation officer is necessary to coordinate with workers, employers, insurers and rehabilation providers to expedite the retraining and reemployment of injured workers. Travel within the Fairbanks and Northern regions will be necessary to coordinate this effort.

9. Travel: $5,000 (10 trips @ $500 per trip)

10. Contractual: Space $3,100 (to be transferred to DOA)
Auto Lease, Maintenance Agreement & Operating Costs $5,600
Indirect Costs (11.46% x 38,988 = $4,468)
Other costs which include communications, equipment rental, etc. $1,800

11. Commodities: Cost per position

12. Equipment: Desk, desk chair, side chair, file, worktable, bookcase $1,395

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1	POSITION TITLE: Clerk Typist III			RANGE/STEP: 8B	BARG. UNIT: GBU	LOCATION: AWA	GOV.	APPROV.	DISAPP.
2	TYPE OF POSITION: PFT	STAFF MONTHS: 12	RP No.: N/A	PCN No.: *New Position	PRIORITY:	FORM 12 PAGE/LINE: N/A	LEG.		

	TYPE OF EXPENDITURE		1	2	AMOUNT 3
4	PERSONAL SERVICES: SALARY 1530 x 12			18,360	
5	BENEFITS .1592			2,923	
6	SBS .0613			1,125	
7	FIXED BENEFITS 183 x 12			2,196	
8	TOTAL PERSONAL SERVICES	01			24,604
9	TRAVEL	02			
10	CONTRACTUAL	03			7,004
11	COMMODITIES	04			850
12	EQUIPMENT	05			700
13	OTHER				
14	TOTAL COST				33,158

	RECEIPT CODE	FUNDING SOURCE	
15		FED RCPTS. 1002	
16		GF MATCH. 1003	
17	100	GEN. FUND 1004	33,158
18		I-A RCPTS. 1005	
19		PGM RCPTS 1028	
20		OTHER	
21	CONTINUATION		
22	ADDITION	X	

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4A KEY NUMBER _____ COLUMN NO. _____

JUSTIFICATION:

It is the intent of the Legislature that an injured worker receive rehabilitation services which enhance returning to work as quickly as possible at earnings as close as possible to the worker's gross earnings at the time of the injury. The implementation of a delivery system to provide timely and adequate rehabilitation services is fundamental in meeting this objective.

The Clerk III position will provide clerical assistance to the Workers' Compensation Officer in the Juneau Second Injury Fund office and will be responsible for providing and coordinating distribution of information from the claim files to the other regions.

10. Contractual: Space $3,100 (to be transferred to DOA)
Indirect (11.46% x 18,360 = $2,104)
Other costs which include communications, equipment rental, etc. $1,800

11. Commodities: Cost per position

12. Equipment: Desk, desk chair $700

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	POSITION TITLE			RANGE/STEP	BARG. UNIT.	LOCATION	GOV.	APPROV.	DISAPP.
1	Clerk IV			9B	GBU	EBA			
	TYPE OF POSITION	STAFF MONTHS	RP No. / PCN No.	PRIORITY		FORM 12 PAGE/LINE			
2	PFT	12	N/A / New Position			N/A	L&G		

	TYPE OF EXPENDITURE	1	2	AMOUNT 3
4	PERSONAL SERVICES: SALARY 1627 x 12		19,524	
5	BENEFITS .1592		3,108	
6	SBS .0613		1,197	
7	FIXED BENEFITS 183 x 12		2,196	
8	TOTAL PERSONAL SERVICES	01		26,025
9	TRAVEL	02		0
10	CONTRACTUAL	03		7,137
11	COMMODITIES	04		850
12	EQUIPMENT	05		700
13	OTHER			
14	TOTAL COST			34,712

	RECEIPT CODE	FUNDING SOURCE	
15		FED RCPTS. 1002	
16		GF MATCH. 1003	
17	100	GEN. FUND 1004	34,712
18		I-A RCPTS. 1005	
19		PGM RCPTS 1028	
20		OTHER	
21	CONTINUATION		
22	ADDITION	X	

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4A KEY NUMBER _____ COLUMN NO. _____

JUSTIFICATION:

It is the intent of the Legislature that an injured worker receive rehabilitation services which enhance returning to work as quickly as possible at earnings as close as possible to the worker's gross earnings at the time of the injury. The implementation of a delivery system to provide timely and adequate rehabilitation services is fundamental in meeting this objective.

The Clerk IV position will provide clerical assistance to the Rehabilitation Administrator and Workers' Compensation Officer and will be responsible for maintaining follow-up on all rehabilitation files.

10. Contractual: Space $3,100 (to be transferred to DOA)
Indirect (11.46% x $19,524 = $2,237)
Other costs which include communications, equipment rental, etc. $1,800

11. Commodities: Cost per position

12. Equipment: Desk and desk chair $700

AGENCY Labor PROGRAM Worker Protection

BRU Workers' Compensation

COMPONENT Second Injury Fund

13 REQUEST FOR NEW POSITION

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