

C S S B

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HOUSE COMMITTEE REPORT

(11)

Date referred: 4/28/88

FURTHER REFERRALS:

DATE: 4/29/88

The Finance Committee has considered CSSB 322(L&C)

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

RECOMMENDS:

- replace with HCS CSSB 322 (Jud) the same title
- attached amendment(s) a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(s):

- fiscal impact same as previous fiscal note published 3/17/88
- zero fiscal note same as previous zero fiscal note published _____
- zero with analysis

SIGNING DO PASS:

LEWIS Rob Jarm

7117 Mike Davis

SIVACK [Signature]

FRANK [Signature]

SIGNING OTHER RECOMMENDATIONS:

ADAMS Al Adams - DO NOT PASS

BOYER Max Boyer NO REC.

Al Adams
Chairman's signature

STATE OF ALASKA
1988 LEGISLATIVE SESSION

BILL VERSION: HCS CS SB322(L&C)
PUBLISH DATE: _____

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Labor
Title: "An Act relating to Worker's Compensation" BRU: Worker's Compensation
Sponsor: Senate Labor & Commerce Components: _____
Requestor: House Labor & Commerce Worker's Compensation

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL		124.0	49.7	49.7	49.7	49.7
SUPPLIES						
EQUIPMENT						
LAND&STRUCTURES						
GRANTS,CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	124.0	49.7	49.7	49.7	49.7

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)

GENERAL FUND			(74.3)	(74.3)	(74.3)	(74.3)
FEDERAL FUNDS						
OTHER *		124.0	124.0	124.0	124.0	124.0
TOTAL	0.0	124.0	49.7	49.7	49.7	49.7

* Second Injury Fund

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

(See Attached)

Prepared by: Jacqueline McClintock Phone: 465-2790
Division: Worker's Compensation Date: 3/16/88

Approved by Commissioner: Jim Sampson Date: 3/16/88
Agency: Department of Labor

Distribution (by preparer) :
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

RECEIVED
MAR 23 1988

Analysis of Fiscal Note

For HCS CS SB 322(L&C)

This bill would require the Department of Labor to keep track of certain Workers' Compensation information it is not currently tracking, and would also require an annual cost of living survey of the 50 states and 10 foreign countries. Details of these two additional costs are as follows:

1. Additional Information Requirements

As a result of this bill, additional detail on information items for each workers' compensation claim would have to be reported by employers/ insurers on a by claim and annual basis. This additional information would be input into our computer database which would require a change in the computer programs associated with that system. Estimated costs are \$57,500 to modify the programs, and an additional \$13,000 in CPU time to test and verify the modifications. The total one-time data processing cost would therefore be \$70,500.

2. Annual Cost of Living Survey

An annual cost of living survey would be required to adjust the compensation to those workers compensation recipients who move from Alaska. We estimate that 250 locations (an average of 5 per state) would have to be surveyed each year. In addition, we estimate that 10 foreign locations would have to be surveyed each year at an approximate cost of \$350 per site. At \$200 per site, the total cost the first year would be \$53,500. The cost of the survey in future years would decrease slightly to an estimated \$49,700 a year.

Assumptions:

1. An effective date of July 1, 1988.

2. Per the bill, Second Injury Funds will now be utilized to pay the administrative costs associated with the Second Injury program. The savings to the existing general funds in the Worker's Compensation BRU will then be available to fund the costs of this bill.

Original sponsor: Labor and Commerce
Committee

1 IN THE SENATE

BY THE JUDICIARY COMMITTEE

2 HOUSE CS FOR CS FOR SENATE BILL NO. 322 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

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

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

9 * Section 1. LEGISLATIVE INTENT. (a) It is the intent of the legisla-
10 ture that AS 23.30 be interpreted so as to ensure the quick, efficient,
11 fair, and predictable delivery of indemnity and medical benefits to injured
12 workers at a reasonable cost to the employers who are subject to the pro-
13 visions of AS 23.30.

14 (b) The legislature declares that the workers' compensation laws must
15 not be construed by the courts in favor of any party. It is the specific
16 intent of the legislature that workers' compensation cases be decided on
17 their merits, except when otherwise provided by statute. It is also the
18 intent of the legislature that the board possess the greatest possible
19 authority in the exercise of its fact finding responsibilities and that the
20 board's decisions be conclusive unless the court finds that a reasonable
21 person could not have reached the conclusion made by the board.

22 (c) It is the intent of the legislature in amending AS 23.30.175
23 regarding benefits payable to recipients not residing in the state to

24 (1) recognize the levels of workers' compensation benefits
25 brought about by the high cost of living that exists in the state as com-
26 pared to other localities;

27 (2) increase the incentives to return to work; and

28 (3) remove obstacles to the utilization of vocational rehabili-
29 tation that may be brought about by the payment of workers' compensatio

1 benefits at the high levels provided by the Alaska workers' compensation
2 law to individuals residing in localities with living costs lower than
3 those in Alaska.

4 (d) It is the intent of the legislature to encourage employers to
5 improve safety practices in the workplace and to use improved safety prac-
6 tices to reduce work related injuries.

7 (e) It is the intent of the legislature in amending AS 23.30.075(b)
8 and 23.30.155 that the division of workers' compensation, division of
9 insurance, and Department of Law strictly enforce the punishment authorized
10 under AS 23.30.075(b) and the reporting requirements and penalties for
11 noncompliance under AS 23.30.155. Strict enforcement is necessary because

12 (1) the state has failed to impose the punishment authorized
13 under AS 23.30.075(b) against those employers who fail to obtain workers'
14 compensation insurance or to qualify as a self-insurer; and

15 (2) there is a lack of specific data from the division of work-
16 ers' compensation and division of insurance to adequately assess the effi-
17 ciency and costs of the workers' compensation system.

18 * Sec. 2. AS 21.39.155 is amended by adding a new subsection to read:

19 (c) An insurer may not impose a surcharge for assigned risk pool
20 insurance unless the insured has received an experience modification
21 debit. After the insured has received an experience modification
22 debit, the insurer may impose a surcharge if the percentage of the
23 surcharge does not exceed the percentage applied as an experience
24 modification debit or 25 percent of the premium developed after appli-
25 cation of the experience modification factor, whichever is less.

26 * Sec. 3. AS 21.89 is amended by adding a new section to read:

27 Sec. 21.89.015. WORKPLACE SAFETY PROGRAM. An insurer who pro-
28 vides workers' compensation insurance in this state shall establish
29 and maintain a workplace safety rate reduction program available

Original sponsor: Labor and Commerce
Committee

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29 and maintain a workplace safety rate reduction program available

1 all insureds. The program must include

2 (1) a reduction in future workers' compensation premiums
3 based on the insured's documented and successful implementation of a
4 safety program; and

5 (2) consulting services available to the insured to estab-
6 lish a workplace safety program; an insurer may charge a fee separate
7 from the premium for services requested under this paragraph.

8 * Sec. 4. AS 23.30.005(h) is amended to read:

9 (h) The department shall [MAY] adopt [IDENTICAL] rules for all
10 panels, and procedures for the periodic selection, retention, and re-
11 moval of both rehabilitation specialists and physicians under AS 23.-
12 30.041 and 23.30.095, and shall [MAY] adopt regulations to carry out
13 the provisions of this chapter. Process and procedure under this
14 chapter shall be as summary and simple as possible. The department,
15 the board or a member of it may for the purposes of this chapter
16 subpoena witnesses, administer or cause to be administered oaths, and
17 may examine or cause to have examined the parts of the books and
18 records of the parties to a proceeding that relate [WHICH RELATED] to
19 questions in dispute. The superior court, on application of the
20 department, the board or any members of it, shall enforce the atten-
21 dance and testimony of witnesses and the production and examination
22 books, papers, and records.

23 * Sec. 5. AS 23.30.020 is amended by adding a new subsection to read:

24 (b) An employee who knowingly makes a false statement as to
25 employee's physical condition on an employment application or emp-
26 loyment questionnaire may not receive benefits under this *chapter.*

27 (1) the employer relied upon the false representation
28 this reliance was a substantial factor in the hiring; and

29 (2) there was a causal connection between

1 representation and the injury to the employee.

2 * Sec. 6. AS 23.30.025 is amended by adding a new subsection to read:

3 (c) An insurer extending coverage required under this chapter by
4 specifying Alaska in the other states section or similar provision of
5 the insurance policy shall provide notice to the department under
6 AS 23.30.085.

7 * Sec. 7. AS 23.30.030 is amended by adding a new paragraph to read:

8 (8) An annual insurance premium that exceeds \$2,000 may be
9 paid on an installment basis of not fewer than two payments, if re-
10 quested by the insured. Premiums paid by installment must be struc-
11 tured to reflect seasonal peaks in the basis of the premium. The
12 insurer shall include this provision in the insurance policy in a
13 manner that clearly informs the insured of the provision.

14 * Sec. 8. AS 23.30.040(b) is amended to read:

15 (b) If an employee suffers a compensable injury that results in
16 temporary total disability, temporary partial disability, permanent
17 partial disability, or permanent total disability, the employer or
18 insurance carrier shall contribute to the second injury fund. The
19 contribution shall be made annually at the time of the report filing
20 required by AS 23.30.155(m) [BY ONE YEAR FROM THE DATE OF THE INJURY
21 OR ON TERMINATION OF THE EMPLOYEE'S CLAIM, WHICHEVER IS SOONER. IF
22 THE CLAIM IS NOT TERMINATED WITHIN ONE YEAR, SUBSEQUENT CONTRIBUTIONS
23 SHALL BE MADE YEARLY UNTIL THE TERMINATION OF THE EMPLOYEE'S CLAIM].
24 The amount of the contribution is the product of the compensation to
25 which the employee is entitled for temporary total disability, tempo-
26 rary partial disability, permanent partial disability, or permanent
27 total disability and the applicable contribution rate set out in
28 column A of this subsection. Payment need not be made to the second
29 injury fund if the total contribution under this subse.

1 than \$20. By December 15 of each year the commissioner shall deter-
 2 mine and make available to the public the applicable contribution rate
 3 for the following calendar year according to the reserve rate of the
 4 second injury fund in column B of this subsection:

Column A Second Injury Fund Contribution Rate (Percent)	Column B Reserve Rate At Least But Less Than (Percent)	
6	0	50
5	50	75
4	75	100
3	100	125
2	125	150
1	150	175
0	175	

16 * Sec. 9. AS 23.30.040(h) is amended to read:

17 (h) Administration expenses of the state under this section and
 18 AS 23.30.205 must [SHALL] be paid from the second injury [GENERAL]
 19 fund.

20 * Sec. 10. AS 23.30.041 is repealed and reenacted to read:

21 Sec. 23.30.041. REHABILITATION OF INJURED WORKERS. (a) The
 22 board shall select and employ a reemployment benefits administrator.
 23 The board may authorize the administrator to select and employ addi-
 24 tional staff. The administrator is in the partially exempt service
 25 under AS 39.25.120.

26 (b) The administrator shall perform the following functions:

27 (1) enforce regulations adopted by the board to implement
 28 this section;

29 (2) recommend regulations for adoption by

1 establish performance and reporting criteria for rehabilitation spe-
2 cialists;

3 (3) enforce the quality and effectiveness of reemployment
4 benefits provided for under this section;

5 (4) review on an annual basis the performance of rehabili-
6 tation specialists to determine continued eligibility for delivery of
7 rehabilitation services;

8 (5) submit to the department, on or before January 1 of
9 each year, a report of reemployment benefits provided under this
10 section for the previous fiscal year; the report must include a gener-
11 al section, sections related to each rehabilitation specialist em-
12 ployed under this section, and a statistical summary of all reha-
13 bilitation cases, including

14 (A) the estimated and actual cost of each active
15 rehabilitation plan;

16 (B) the estimated and actual time of each rehabilita-
17 tion plan;

18 (C) a status report on all individuals completing or
19 terminating a reemployment benefits program including a return to
20 work date;

21 (D) the cost of reemployment benefits;

22 (6) maintain a list of rehabilitation specialists who meet
23 the qualifications established under this section;

24 (7) promote awareness among physicians, adjusters, injured
25 workers, employers, employees, attorneys, training providers, and
26 rehabilitation specialists of the reemployment program established in
27 this subsection.

28 (c) If an employee suffers a compensable injury that may perma-
29 nently preclude an employee's return to the employee's occupation at

1 the time of injury, the employee or employer may request an eligibil-
2 ity evaluation for reemployment benefits. The employee shall request
3 an eligibility evaluation within 90 days after the employee gives the
4 employer notice of injury unless the administrator determines the
5 employee has an unusual and extenuating circumstance that prevents the
6 employee from making a timely request. The administrator shall, on a
7 rotating and geographic basis, select a rehabilitation specialist from
8 the list maintained under (b)(6) of this section to perform the eli-
9 gibility evaluation.

10 (d) Within 30 days after the referral by the administrator, the
11 rehabilitation specialist shall perform the eligibility evaluation and
12 issue a report of findings. The administrator may grant up to an
13 additional 30 days for performance of the eligibility evaluation upon
14 notification of unusual and extenuating circumstances and the re-
15 habilitation specialist's request. Within 14 days after receipt of
16 the report from the rehabilitation specialist, the administrator shall
17 notify the parties of the employee's eligibility for reemployment
18 preparation benefits. Within 10 days after the decision, either party
19 may seek review of the decision by requesting a hearing under AS 23.-
20 30.110. The hearing shall be held within 30 days after it is re-
21 quested. The board shall uphold the decision of the administrator
22 except for abuse of discretion on the administrator's part.

23 (e) An employee shall be eligible for benefits under this sec-
24 tion upon the employee's written request and by having a physician
25 predict that the employee will have permanent physical capacities that
26 are less than the physical demands of the employee's job as described
27 in the United States Department of Labor's "Selected Characteristics
28 of Occupations Defined in the Dictionary of Occupational Titles" for

29 (1) the employee's job at the time of injury; or

1 (2) other jobs that exist in the labor market that the
2 employee has held or received training for within 10 years before the
3 injury or that the employee has held following the injury for a period
4 long enough to obtain the skills to compete in the labor market,
5 according to specific vocational preparation codes as described in the
6 United States Department of Labor's "Selected Characteristics of Occu-
7 pations Defined in the Dictionary of Occupational Titles."

8 (f) An employee is not eligible for reemployment benefits if

9 (1) the employer offers employment within the employee's
10 predicted post-injury physical capacities at a wage equivalent to at
11 least the state minimum wage under AS 23.10.065 or 75 percent of the
12 worker's gross hourly wages at the time of injury, whichever is great-
13 er, and the employment prepares the employee to be employable in other
14 jobs that exist in the labor market;

15 (2) the employee has been previously rehabilitated in a
16 former workers' compensation claim and returned to work in the same or
17 similar occupation in terms of physical demands required of the em-
18 ployee at the time of the previous injury; or

19 (3) at the time of medical stability no permanent impair-
20 ment is identified or expected.

21 (g) Within 10 days after the employee receives the adminis-
22 trator's notification of eligibility for benefits, an employee who
23 desires to use these benefits shall give written notice to the em-
24 ployer of the employee's selection of a rehabilitation specialist who
25 shall provide a complete reemployment benefits plan. If the employer
26 disagrees with the employee's choice of rehabilitation specialist to
27 develop the plan and the disagreement cannot be resolved, then the
28 administrator shall assign a rehabilitation specialist. The employer
29 and employee each have one right of refusal of a rehabilitation

1 specialist.

2 (h) Within 90 days after the rehabilitation specialist's selec-
3 tion under (g) of this section, the reemployment plan must be formu-
4 lated and approved. The reemployment plan must include at least the
5 following:

6 (1) a determination of the occupational goal in the labor
7 market;

8 (2) an inventory of the employee's technical skills, phys-
9 ical and intellectual capacities, academic achievement, emotional
10 condition and family support;

11 (3) a plan to acquire the occupational skills to be employ-
12 able;

13 (4) the cost estimate of the reemployment plan, including
14 provider fees; the amount of tuition, books, tools, and supplies;
15 transportation; temporary lodging; or job modification devices;

16 (5) the estimated length of time that the plan will take;

17 (6) the date the plan will commence;

18 (7) the estimated time of medical stability as predicted by
19 the physician;

20 (8) a detailed description and plan schedule; and

21 (9) a finding by the rehabilitation specialist that the
22 inventory under (2) of this subsection indicates that the employee can
23 be reasonably expected to satisfactorily complete the plan and perform
24 in a new occupation within the time and cost limitations of the plan.

25 (i) Reemployment benefits shall be selected from the following
26 in a manner that ensures remunerative employability in the shortest
27 possible time:

28 (1) on the job training;

29 (2) vocational training;

1 (3) academic training;

2 (4) self-employment; or

3 (5) a combination of (1) - (4) of this subsection.

4 (j) The employee, rehabilitation specialist, and the employer
5 shall sign the reemployment benefits plan. If the employer and em-
6 ployee fail to agree on a reemployment plan, either party may submit a
7 reemployment plan for approval to the administrator; the adminis-
8 trator shall approve or deny a plan within 14 days after the plan is
9 submitted; within 10 days of the decision, either party may seek
10 review of the decision by requesting a hearing under AS 23.30.110; the
11 board shall uphold the decision of the administrator unless evidence
12 is submitted supporting an allegation of abuse of discretion on the
13 part of the administrator; the board shall render a decision within 30
14 days after completion of the hearing.

15 (k) Benefits related to the reemployment plan may not extend
16 past two years from date of plan approval or acceptance, whichever
17 date occurs first, at which time the benefits expire. If an employee
18 reaches medical stability before completion of the plan, temporary
19 total disability benefits shall cease and permanent impairment bene-
20 fits shall then be paid at the employee's temporary total disability
21 rate. If the employee's permanent impairment benefits are exhausted
22 before the completion or termination of the reemployment plan, the
23 employer shall provide wages equal to 60 percent of the employee's
24 spendable weekly wages but not to exceed \$525, until the completion or
25 termination of the plan. A permanent impairment benefit remaining
26 unpaid upon the completion or termination of the plan shall be paid to
27 the employee in a single lump sum. The fees of the rehabilitation
28 specialist or rehabilitation professional shall be paid by the em-
29 ployer and may not be included in determining the cost of the

1 reemployment plan.

2 (1) The cost of the reemployment plan incurred under this sec-
3 tion shall be the responsibility of the employer, shall be paid on an
4 expense incurred basis, and may not exceed \$10,000.

5 (m) Only a rehabilitation specialist may accept case assignments
6 as a case manager and sign eligibility determinations and reemployment
7 plans. A person who is not a rehabilitation specialist may perform
8 rehabilitation casework if the work is performed under the direct
9 supervision of a rehabilitation specialist employed in the same firm
10 and location.

11 (n) After the employee has elected to participate in reemploy-
12 ment benefits, if the employer believes the employee has not coop-
13 erated the employer may terminate reemployment benefits on the date of
14 noncooperation. Noncooperation means unreasonable failure to

15 (1) keep appointments;

16 (2) maintain passing grades;

17 (3) attend designated programs;

18 (4) maintain contact with the rehabilitation specialist;

19 (5) cooperate with the rehabilitation specialist in devel-
20 oping a reemployment plan and participating in activities relating to
21 reemployability on a full-time basis;

22 (6) comply with the employee's responsibilities outlined in
23 the reemployment plan; or

24 (7) participate in any planned reemployment activity as
25 determined by the administrator.

26 (o) Upon the request of either party, the administrator shall
27 decide whether the employee has not cooperated as provided under (n)
28 of this section. A hearing before the administrator shall be held
29 within 30 days after it is requested. The administrator shall issue a

1 decision within 14 days after the hearing. Within 10 days after the
2 administrator files the decision, either party may seek review of the
3 decision by requesting a hearing under AS 23.30.110; the board shall
4 uphold the decision of the administrator unless evidence is submitted
5 supporting an allegation of abuse of discretion on the part of the
6 administrator; the board shall render a decision within 30 days after
7 completion of the hearing.

8 (p) In this section

9 (1) "administrator" means the reemployment benefits admin-
10 istrator under AS 23.30.041(a);

11 (2) "employability" means possessing the ability but not
12 necessarily the opportunity to engage in employment that is consistent
13 with the employee's physical status imposed by the compensable injury;

14 (3) "labor market" means a geographical area that offers
15 employment opportunities in the following priority:

16 (A) area of residence;

17 (B) area of last employment;

18 (C) the state;

19 (D) other states;

20 (4) "physical capacities" means objective and measurable
21 physical traits such as ability to lift and carry, walk, stand or sit,
22 push, pull, climb, balance, stoop, kneel, crouch, crawl, reach, han-
23 dle, finger, feel, talk, hear or see;

24 (5) "physical demands" means the physical requirements of
25 the job such as strength, including positions such as standing, walk-
26 ing, sitting, and movement of objects such as lifting, carrying,
27 pushing, pulling, climbing, balancing, stooping, kneeling, crouching,
28 crawling, reaching, handling, fingering, feeling, talking, hearing, or
29 seeing;

1 (6) "rehabilitation specialist" means a person who is a
2 certified insurance rehabilitation specialist, a certified rehabilita-
3 tion counselor, or a person who has equivalent or better qualifica-
4 tions as determined under regulations adopted by the department;

5 (7) "remunerative employability" means having the skills
6 that allow a worker to be compensated with wages or other earnings
7 equivalent to at least 60 percent of the worker's gross hourly wages
8 at the time of injury; if the employment is outside the state, the
9 stated 60 percent shall be adjusted to account for the difference
10 between the applicable state average weekly wage and the Alaska aver-
11 age weekly wage.

12 * Sec. 11. AS 23.30.055 is amended to read:

13 Sec. 23.30.055. EXCLUSIVENESS OF LIABILITY. The liability of an
14 employer prescribed in AS 23.30.045 is exclusive and in place of all
15 other liability of the employer and any fellow employee to the em-
16 ployee, the employee's legal representative, husband or wife, parents,
17 dependents, next of kin, and anyone otherwise entitled to recover
18 damages from the employer or fellow employee at law or in admiralty on
19 account of the injury or death. The liability of the employer is
20 exclusive even if the employee's claim is barred under AS 23.30.-
21 020(b). However, if an employer fails to secure payment of compen-
22 sation as required by this chapter, an injured employee or the em-
23 ployee's legal representative in case death results from the injury
24 may elect to claim compensation under this chapter, or to maintain an
25 action against the employer at law or in admiralty for damages on
26 account of the injury or death. In that action the defendant may not
27 plead as a defense that the injury was caused by the negligence of a
28 fellow servant, or that the employee assumed the risk of the employ-
29 ment, or that the injury was due to the contributory negligence of the

1 employee.

2 * Sec. 12. AS 23.30.075(b) is amended to read:

3 (b) If an [AN] employer [WHO] fails to insure and keep insured
4 employees subject to this chapter or fails to obtain a certificate of
5 self-insurance from the board, upon conviction the court shall impose
6 a fine of \$10,000 and may impose a sentence of [, IS PUNISHABLE BY A
7 FINE OF NOT MORE THAN \$1,000, OR BY] imprisonment for not more than
8 one year [, OR BY BOTH]. If an employer is a corporation, all persons
9 who, at the time of the injury or death, had authority to insure the
10 [SAID] corporation or apply for a certificate of self-insurance, and
11 the person actively in charge of the business of the [SUCH] corpo-
12 ration shall be subject to the penalties prescribed in this subsection
13 [HEREIN] and shall be personally, jointly, and severally liable to-
14 gether with the corporation for the payment of all compensation or
15 other benefits for which the corporation is liable under this chapter
16 if the [SAID] corporation at that [SUCH] time is not insured or quali-
17 fied as a self-insurer.

18 * Sec. 13. AS 23.30.095(a) is amended to read:

19 (a) The employer shall furnish medical, surgical, and other
20 attendants or treatment, nurse and hospital service, medicine, crutch-
21 es, and apparatus for the period which the nature of the injury or the
22 process of recovery requires, not exceeding two years from and after
23 the date of injury to the employee. However, if the condition requir-
24 ing the treatment, apparatus, or medicine is a latent one, the two-
25 year period runs from the time the employee has knowledge of the
26 nature of the employee's disability and its relationship to the em-
27 ployment and after disablement. It shall be additionally provided
28 that, if continued treatment or care or both beyond the two-year
29 period is indicated, the injured employee has the right of review by

1 the board. The board may authorize continued treatment or care or
2 both as the process of recovery may require. When medical care is
3 required, the injured employee may designate a licensed physician to
4 provide all medical and related benefits. The employee may not make
5 more than one change in the employee's choice of attending physician
6 without the written consent of the employer. Referral to a specialist
7 by the employee's attending physician is not considered a change in
8 physicians [INSIDE THE STATE TO RENDER THE CARE EXCEPT IN CASES WHERE,
9 IN THE JUDGMENT OF THE BOARD, CARE OR TREATMENT OR BOTH CAN BEST BE
10 ADMINISTERED BY THE SELECTION OF ANOTHER PHYSICIAN]. Upon procuring
11 the services of a physician, the injured employee shall give proper
12 notification of the selection to the employer within a reasonable time
13 after first being treated. Notice of a change in the attending physi-
14 cian shall be given before the change [IF FOR ANY REASON DURING THE
15 PERIOD WHEN MEDICAL CARE IS REQUIRED THE EMPLOYEE WISHES TO CHANGE TO
16 ANOTHER PHYSICIAN, THE EMPLOYEE MAY DO SO IN ACCORDANCE WITH REGU-
17 LATIONS ADOPTED BY THE BOARD].

18 * Sec. 14. AS 23.30.095(c) is amended to read:

19 (c) A claim for medical or surgical treatment, or treatment
20 requiring continuing and multiple treatments of a similar nature is
21 not valid and enforceable against the employer unless, within 14 days
22 following treatment, the physician or health care provider giving the
23 treatment or the employee receiving it furnishes to the employer and
24 the board notice of the injury and treatment, preferably on a form
25 prescribed by the board. The board shall, however, excuse the failure
26 to furnish notice within 14 days when it finds it to be in the inter-
27 est of justice to do so, and it may, upon application by a party in
28 interest, make an award for the reasonable value of the medical or
29 surgical treatment so obtained by the employee. When a claim is made

1 for a course of treatment requiring continuing and multiple treatments
2 of a similar nature, in addition to the notice, the physician or
3 health care provider shall furnish a written treatment plan if the
4 course of treatment will require more frequent outpatient visits than
5 the standard treatment frequency for the nature and degree of the
6 injury and the type of treatments. The treatment plan shall be furn-
7 ished to the employee and the employer within 14 days after treatment
8 begins. The treatment plan must include objectives, modalities,
9 frequency of treatments, and reasons for the frequency of treatments.
10 If the treatment plan is not furnished as required under this subsec-
11 tion, neither the employer nor the employee may be required to pay for
12 treatments that exceed the frequency standard. The board shall adopt
13 regulations establishing standards for frequency of treatment.

14 * Sec. 15. AS 23.30.095(e) is amended to read:

15 (e) The employee shall, after an injury, at reasonable times
16 during the continuance of the disability, if requested by the employer
17 or when ordered by the board, submit to an examination by a physician
18 or surgeon of the employer's choice authorized to practice medicine
19 under the laws of the jurisdiction in which the physician resides
20 [STATE IN WHICH THE EMPLOYEE MAY BE FOUND], furnished and paid for by
21 the employer. The employer may not make more than one change in the
22 employer's choice of a physician or surgeon without the written con-
23 sent of the employee. Referral to a specialist by the employer's
24 physician is not considered a change in physicians. An examination
25 requested by the employer not less than 14 days after injury, and
26 every 60 days thereafter, shall be presumed to be reasonable, and the
27 employee shall submit to the examination without further request or
28 order by the board. Unless medically appropriate, the physician shall
29 use existing diagnostic data to complete the examination. Facts

1 relative to the injury or claim communicated to or otherwise learned
2 by a physician or surgeon who may have attended or examined the em-
3 ployee, or who may have been present at an examination are not priv-
4 ileged, either in the hearings provided for in this chapter or an
5 action to recover damages against an employer who is subject to the
6 compensation provisions of this chapter. If an employee refuses to
7 submit to an [ANY] examination provided for in this section, the
8 employee's rights to compensation shall be suspended until the ob-
9 struction or refusal ceases, and the employee's compensation during
10 the period of suspension may, in the discretion of the board or the
11 court determining an action brought for the recovery of damages under
12 this chapter, be forfeited. The board in any case of death may re-
13 quire an autopsy at the expense of the party requesting the autopsy.
14 An autopsy may not be held without notice first being given to the
15 widow or widower or next of kin if they reside in the state or their
16 whereabouts can be reasonably ascertained, of the time and place of
17 the autopsy and reasonable time and opportunity given the widow or
18 widower or next of kin to have a representative present to witness the
19 autopsy. If adequate notice is not given, the findings from the
20 autopsy may be suppressed on motion made to the board or to the supe-
21 rior court, as the case may be.

22 * Sec. 16. AS 23.30.095(f) is amended to read:

23 (f) All fees and other charges for medical treatment or service
24 [ARE LIMITED TO THE CHARGES THAT PREVAIL IN THE SAME COMMUNITY FOR
25 SIMILAR TREATMENT OF INJURED PERSONS OF LIKE STANDARD OF LIVING AND]
26 shall be subject to regulation by the board but may not exceed usual,
27 customary, and reasonable fees for the treatment or service in the
28 community in which it is rendered, as determined by the board. An
29 employee may not be required to pay a fee or charge for medical

1 treatment or service.

2 * Sec. 17. AS 23.30.095(j) is repealed and reenacted to read:

3 (j) The board may appoint a medical services review committee,
4 or contract with an existing organization in the state or another
5 state, to assist and advise the board in matters involving the appro-
6 priateness, necessity, and cost of medical and related services pro-
7 vided under this chapter.

8 * Sec. 18. AS 23.30.095 is amended by adding a new subsection to read:

9 (k) In the event of a medical dispute regarding determinations
10 of causation, medical stability, ability to enter a reemployment plan,
11 degree of impairment, functional capacity, the amount and efficacy of
12 the continuance of or necessity of treatment, or compensability be-
13 tween the employee's attending physician and the employer's indepen-
14 dent medical evaluation, a second independent medical evaluation shall
15 be conducted by a physician or physicians selected by the board from a
16 list established and maintained by the board. The cost of the exami-
17 nation and medical report shall be paid by the employer. The report
18 of the independent medical examiner shall be furnished to the board
19 and to the parties within 14 days after the examination is concluded.
20 A person may not seek damages from an independent medical examiner
21 caused by the rendering of an opinion or providing testimony under
22 this subsection, except in the event of fraud or gross incompetence.

23 * Sec. 19. AS 23.30.105(a) is amended to read:

24 (a) The right to compensation for disability under this chapter
25 is barred unless a claim for it is filed within two years after the
26 employee has knowledge of the nature of the employee's disability and
27 its relation to the employment and after disablement. However, the
28 maximum time for filing the claim in any event other than arising out
29 of an occupational disease shall be four years from the date of

1 injury, and the right to compensation for death is barred unless a
2 claim therefor is filed within one year after the death, except that
3 if payment of compensation has been made without an award on account
4 of the injury or death, a claim may be filed within two years after
5 the date of the last payment of benefits under AS 23.30.180, 23.30.-
6 185, 23.30.190, 23.30.200, or 23.30.215. It is additionally provided
7 that, in the case of latent defects pertinent to and causing com-
8 pensable disability, the injured employee has full right to claim as
9 shall be determined by the board, time limitations notwithstanding.

10 * Sec. 20. AS 23.30.110(c) is repealed and reenacted to read:

11 (c) Before a hearing is scheduled, the party seeking a hearing
12 shall file a request for a hearing together with an affidavit stating
13 that the party has completed necessary discovery, obtained necessary
14 evidence, and is prepared for the hearing. An opposing party shall
15 have 10 days after the hearing request is filed to file a response.
16 If a party opposes the hearing request, the board or a board designee
17 shall within 30 days of the filing of the opposition conduct a pre-
18 hearing conference and set a hearing date. If opposition is not
19 filed, a hearing shall be scheduled no later than 60 days after the
20 receipt of the hearing request. The board shall give each party at
21 least 10 days' notice of the hearing, either personally or by cer-
22 tified mail. After a hearing has been scheduled, the parties may not
23 stipulate to change the hearing date or to cancel, postpone, or con-
24 tinue the hearing, except for good cause as determined by the board.
25 After completion of the hearing the board shall close the hearing
26 record. If a settlement agreement is reached by the parties less than
27 14 days before the hearing, the parties shall appear at the time of
28 the scheduled hearing to state the terms of the settlement agreement.
29 Within 30 days after the hearing record closes, the board shall file

1 its decision. If the employer controverts a claim on a board-pre-
2 scribed controversion notice and the employee does not request a
3 hearing within two years following the filing of the controversion
4 notice, the claim is denied.

5 * Sec. 21. AS 23.30.120 is amended by adding a new subsection to read:

6 (c) The presumption of compensability established in (a) of this
7 section does not apply to a mental injury resulting from work-related
8 stress.

9 * Sec. 22. AS 23.30.125 is amended by adding a new subsection to read:

10 (f) Subject to an employer's or employee's burden of proof, a
11 finding of fact made by the board as a part of a compensation order is
12 conclusive unless the court specifically finds that a reasonable
13 person could not have reached the conclusion made by the board.

14 * Sec. 23. AS 23.30.130(a) is amended to read:

15 (a) Upon its own initiative, or upon the application of any
16 party in interest on the ground of a change in conditions, including,
17 for the purposes of AS 23.30.175, a change in residence, or because of
18 a mistake in its determination of a fact, the board may, before one
19 year after the date of the last payment of compensation benefits under
20 AS 23.30.180, 23.30.185, 23.30.190, 23.30.200, or 23.30.215, whether
21 or not a compensation order has been issued, or before one year after
22 the rejection of a claim, review a compensation case under [IN ACCOR-
23 DANCE WITH] the procedure prescribed in respect of claims in AS 23.-
24 30.110. Under [IN ACCORDANCE WITH] AS 23.30.110 the board may issue a
25 new compensation order which terminates, continues, reinstates, in-
26 creases, or decreases the compensation, or award compensation.

27 * Sec. 24. AS 23.30.155(c) is amended to read:

28 (c) The insurer or adjuster [EMPLOYER] shall notify the board
29 and the employee on a form prescribed by the board that the payment of

1 compensation has begun or has been increased, decreased, suspended,
2 terminated, resumed, or changed in type. An initial report shall be
3 filed with the board and sent to the employee within 28 days after the
4 date of issuing the first payment of compensation. If at any time 21
5 days or more pass and no compensation payment is issued, a report
6 notifying the board and the employee of the termination or suspension
7 of compensation shall be filed with the board and sent to the employee
8 within 28 days after the date the last compensation payment was is-
9 sued. A report shall also be filed with the board and sent to the
10 employee within 28 days after the date of issuing a payment increas-
11 ing, decreasing, resuming, or changing the type of compensation paid.
12 If the [EMPLOYER FAILS TO NOTIFY THE] board and the employee are not
13 notified within the 28 days prescribed by this subsection for report-
14 ing, the insurer or adjuster [EMPLOYER] shall pay a civil penalty of
15 \$100 for the first day plus \$10 for each day thereafter that the
16 [EMPLOYER FAILED TO GIVE] notice was not given. Total penalties under
17 this subsection [SECTION] may not exceed \$1,000 for a failure to file
18 a required report. Penalties assessed under this subsection are
19 eligible for reduction under (m) of this section. A penalty assessed
20 under this subsection after penalties have been reduced under (m) of
21 this section shall be increased by 25 percent and shall bear interest
22 at the rate established under AS 45.45.010.

23 * Sec. 25. AS 23.30.155(d) is amended to read:

24 (d) If the employer controverts the right to compensation the
25 employer shall file with the board and send to the employee a notice
26 of controversion on or before the 21st day after the employer has
27 knowledge of the alleged injury or death. If the employer controverts
28 the right to compensation after payments have begun, the employer
29 shall file with the board and send to the employee a notice of

1 controversion within seven days after an installment of compensation
2 payable without an award is due. When payment of temporary disability
3 benefits is controverted solely on the grounds that another employer
4 or another insurer of the same employer may be responsible for all or
5 a portion of the benefits, the most recent employer or insurer who is
6 party to the claim and who may be liable shall make the payments
7 during the pendency of the dispute. When a final determination of
8 liability is made, any reimbursement required, including interest at
9 the statutory rate, and all costs and attorneys' fees incurred by the
10 prevailing employer, shall be made within 14 days of the determina-
11 tion.

12 * Sec. 26. AS 23.30.155(e) is amended to read:

13 (e) If any installment of compensation payable without an award
14 is not paid within seven days after it becomes due, as provided in (b)
15 of this section, there shall be added to the unpaid installment an
16 amount equal to 25 [20] percent of it or \$100, whichever amount is
17 greater. This additional amount shall be paid at the same time as,
18 and in addition to, the installment, unless notice is filed under (d)
19 of this section or unless the nonpayment is excused by the board after
20 a showing by the employer that owing to conditions over which the
21 employer had no control the installment could not be paid within the
22 period prescribed for the payment.

23 * Sec. 27. AS 23.30.155(f) is amended to read:

24 (f) If compensation payable under the terms of an award is not
25 paid within 14 days after it becomes due, there shall be added to that
26 unpaid compensation an amount equal to 25 [20] percent of it or \$100,
27 whichever is greater, which shall be paid at the same time as, but in
28 addition to, the compensation, unless review of the compensation order
29 making the award is had as provided in AS 23.30.125 and an interlocu-

1 tory injunction staying payments is allowed by the court.

2 * Sec. 28. AS 23.30.155(m) is repealed and reenacted to read:

3 (m) On or before March 1 of each year the insurer or adjuster
4 shall file a verified annual report on a form prescribed by the board
5 stating the total amount of all compensation by type, the number of
6 claims received and the percentage controverted, medical, and related
7 benefits, vocational rehabilitation expenses, legal fees, including a
8 separate total for fees paid to attorneys and fees paid for the other
9 costs of litigation, and penalties paid on all claims during the
10 preceding calendar year. If the annual report is timely and complete
11 when received by the board and provides accurate information about
12 each category of payments, the commissioner shall review the timeli-
13 ness of the insurer's or adjuster's reports filed during the preceding
14 year under (c) of this section. If during the preceding year the
15 insurer or adjuster filed at least 99 percent of the reports on time,
16 the penalties assessed under (c) of this section shall be waived. If
17 during the preceding year the insurer or adjuster filed at least 97
18 percent of the reports on time, 75 percent of the penalties assessed
19 under (c) of this section shall be waived. If during the preceding
20 year the insurer or adjuster filed 95 percent of the reports on time,
21 50 percent of the penalties assessed under (c) of this section shall
22 be waived. If during the preceding year the insurer's or adjuster's
23 reports have not been filed on time at least 95 percent of the time,
24 none of the penalties assessed under (c) of this section shall be
25 waived. The penalties that are not waived are due and payable when
26 the insurer or adjuster receives notification from the commissioner
27 regarding the timeliness of the reports. If the annual report is not
28 filed by March 1 of each year, the insurer or adjuster shall pay a
29 civil penalty of \$100 for the first day the annual report is late, and

1 \$10 for each additional day the report is late. If the annual report
2 is incomplete when filed, the insurer or adjuster shall pay a civil
3 penalty of \$1,000.

4 * Sec. 29. AS 23.30.155 is amended by adding new subsections to read:

5 (n) If the employer is self-insured or uninsured, the require-
6 ments of (c) and (m) of this section apply to the employer.

7 (o) The board shall promptly notify the division of insurance if
8 the board determines that the employer's insurer has frivolously or
9 unfairly controverted compensation due under this chapter. After
10 receiving notice from the board, the division of insurance shall
11 determine if the insurer has committed an unfair claim settlement
12 practice under AS 21.36.125.

13 (p) When an employer pays compensation due under this chapter to
14 an employee residing in this state, the payment must be made by check
15 or other negotiable instrument drawn on funds deposited in this state.

16 * Sec. 30. AS 23.30.175 is repealed and reenacted to read:

17 Sec. 23.30.175. RATES OF COMPENSATION. (a) The weekly rate of
18 compensation for disability or death may not exceed \$700 and initially
19 may not be less than \$110. However, if the board determines that the
20 employee's spendable weekly wages are less than \$110 a week as com-
21 puted under AS 23.30.220, or less than \$154 a week in the case of an
22 employee who has furnished documentary proof of the employee's wages,
23 it shall issue an order adjusting the weekly rate of compensation to a
24 rate equal to the employee's spendable weekly wages. If the employer
25 can verify that the employee's spendable weekly wages are less than
26 \$154, the employer may adjust the weekly rate of compensation to a
27 rate equal to the employee's spendable weekly wages without an order
28 of the board. If the employee's spendable weekly wages are greater
29 than \$154, but 80 percent of the employee's spendable weekly wages is

1 less than \$154, the employee's weekly rate of compensation shall be
2 \$154. Prior payments made in excess of the adjusted rate shall be
3 deducted from the unpaid compensation in the manner the board deter-
4 mines. In any case, the employer shall pay timely compensation.

5 (b) The following rules apply to benefits payable to recipients
6 not residing in the state at the time compensation benefits are pay-
7 able:

8 (1) the weekly rate of compensation shall be calculated by
9 multiplying the recipient's weekly compensation rate calculated under
10 AS 23.30.180, 23.30.185, 23.30.190, 23.30.200, or 23.30.215, by the
11 ratio of the cost of living of the area in which the recipient resides
12 to the cost of living in this state;

13 (2) the calculation required by (1) of this subsection does
14 not apply if the recipient is absent from the state for medical or re-
15 habilitation services not reasonably available in the state;

16 (3) if the gross weekly earnings of the recipient and the
17 resulting compensation rate is determined under AS 23.30.220(a)(2),
18 the calculation required by this subsection applies only to the por-
19 tion of the recipient's weekly compensation rate attributable to wages
20 earned in the state;

21 (4) application of this subsection may not reduce the
22 weekly compensation rate to less than \$154 a week, except as provided
23 in (a) of this section.

24 (c) The board shall provide by regulation for the determination
25 and comparison of living costs for this state and the other areas in
26 which recipients reside and for the annual redetermination and com-
27 parison of these costs.

28 * Sec. 31. AS 23.30.180 is amended to read:

29 Sec. 23.30.180. PERMANENT TOTAL DISABILITY. In case of total

1 disability adjudged to be permanent 80 percent of the injured em-
2 ployee's spendable weekly wages shall be paid to the employee during
3 the continuance of the total disability. If a permanent partial
4 disability award has been made before a permanent total disability
5 determination, permanent total disability benefits must be reduced by
6 the amount of the permanent partial disability award, adjusted for
7 inflation, in a manner determined by the board. Loss of both hands,
8 or both arms, or both feet, or both legs, or both eyes, or of any two
9 of them, in the absence of conclusive proof to the contrary, consti-
10 tutes permanent total disability. In all other cases permanent total
11 disability is determined in accordance with the facts. In making this
12 determination the market for the employee's services shall be

13 (1) area of residence;

14 (2) area of last employment;

15 (3) the state of residence; and

16 (4) the State of Alaska.

17 * Sec. 32. AS 23.30.180 is amended by adding a new subsection to read:

18 (b) Failure to achieve remunerative employability as defined in
19 AS 23.30.041(p) does not, by itself, constitute permanent total dis-
20 ability.

21 * Sec. 33. AS 23.30.185 is amended to read:

22 Sec. 23.30.185. COMPENSATION FOR TEMPORARY TOTAL DISABILITY. In
23 case of disability total in character but temporary in quality, 80
24 percent of the injured employee's spendable weekly wages shall be paid
25 to the employee during the continuance of the disability. Temporary
26 total disability benefits may not be paid for any period of disability
27 occurring after the date of medical stability.

28 * Sec. 34. AS 23.30.190 is repealed and reenacted to read:

29 Sec. 23.30.190. COMPENSATION FOR PERMANENT PARTIAL IMPAIRMENT.

1 (a) In case of impairment partial in character but permanent in
2 quality, and not resulting in permanent total disability, the compen-
3 sation is \$135,000 multiplied by the employee's percentage of perma-
4 nent impairment of the whole person. The percentage of permanent
5 impairment of the whole person is the percentage of impairment to the
6 particular body part, system, or function converted to the percentage
7 of impairment to the whole person as provided under (b) of this sec-
8 tion. The compensation is payable in a single lump sum, except as
9 otherwise provided in AS 23.30.041, but the compensation may not be
10 discounted for any present value considerations.

11 (b) All determinations of the existence and degree of permanent
12 impairment shall be made strictly and solely under the whole person
13 determination as set out in the American Medical Association Guides to
14 the Evaluation of Permanent Impairment, except that an impairment
15 rating may not be rounded to the next five percent. The board shall
16 adopt a supplementary recognized schedule for injuries that cannot be
17 rated by use of the American Medical Association Guides.

18 (c) The impairment rating determined under (a) of this section
19 shall be reduced by a permanent impairment that existed before the
20 compensable injury. If the combination of a prior impairment rating
21 and a rating under (a) of this section would result in the employee
22 being considered permanently totally disabled, the prior rating does
23 not negate a finding of permanent total disability.

24 * Sec. 35. AS 23.30.200 is amended to read:

25 Sec. 23.30.200. TEMPORARY PARTIAL DISABILITY. In case of tempo-
26 rary partial disability resulting in decrease of earning capacity the
27 compensation shall be 80 percent of the difference between the injured
28 employee's spendable weekly wages before the injury and the wage-
29 earning capacity of the employee after the injury in the same or

1 another employment, to be paid during the continuance of the disabili-
2 ty, but not to be paid for more than five years. Temporary partial
3 disability benefits may not be paid for a period of disability occur-
4 ring after the date of medical stability.

5 * Sec. 36. AS 23.30.200 is amended by adding a new subsection to read:

6 (b) The wage-earning capacity of an injured employee is deter-
7 mined by the actual spendable weekly wage of the employee if the
8 actual spendable weekly wage fairly and reasonably represents the
9 wage-earning capacity of the employee. The board may, in the interest
10 of justice, fix the wage-earning capacity that is reasonable, having
11 due regard to the nature of the injury, the degree of physical impair-
12 ment, the usual employment, and other factors or circumstances in the
13 case that may affect the capacity of the employee to earn wages in a
14 disabled condition, including the effect of disability as it may
15 naturally extend into the future.

16 * Sec. 37. AS 23.30.220(a) is amended to read:

17 (a) The spendable weekly wage of an injured employee at the time
18 of an injury is the basis for computing compensation. It is the
19 employee's gross weekly earnings minus payroll tax deductions. The
20 gross weekly earnings shall be calculated as follows:

21 (1) The gross weekly earnings are computed by dividing by
22 100 the gross earnings of the employee in the two calendar years
23 immediately preceding the injury.

24 (2) If the employee was absent from the labor market for 18
25 months or more of the two calendar years preceding the injury [THE
26 BOARD DETERMINES THAT THE GROSS WEEKLY EARNINGS AT THE TIME OF THE
27 INJURY CANNOT BE FAIRLY CALCULATED UNDER (1) OF THIS SUBSECTION], the
28 board shall [MAY] determine the employee's gross weekly earnings for
29 calculating compensation by considering the nature of the employee's

1 work and work history, but compensation may not exceed the employee's
2 projected gross weekly earnings at the time of injury.

3 (3) If an employee when injured is a minor, an apprentice,
4 or a trainee in a formal training program, as determined by the board,
5 whose wages under normal conditions would increase during the period
6 of disability, the projected increase may be considered by the board
7 in computing the gross weekly earnings of the employee.

8 (4) If the employee is injured while performing duties as a
9 volunteer ambulance attendant, policeman, or fireman, the gross weekly
10 earnings for calculating compensation shall be the minimum gross
11 weekly earnings paid a full-time ambulance attendant, policeman, or
12 fireman employed in the political subdivision where the injury oc-
13 curred, or, if the political subdivision has no full-time ambulance
14 attendants, policemen, or firemen, at a reasonable figure previously
15 set by the political subdivision to make this determination but in no
16 case may the gross weekly earnings for calculating compensation be
17 less than the minimum wage computed on the basis of 40 hours work per
18 week.

19 * Sec. 38. AS 23.30.225 is amended by adding a new subsection to read:

20 (c) If employer contributions to a qualified pension or profit
21 sharing plan have been included in the determination of gross earnings
22 and the employee is receiving pension or profit sharing payments,
23 weekly compensation benefits payable under this chapter shall be
24 reduced by the amount paid or payable to the injured worker under the
25 plan for any week or weeks during which compensation benefits are also
26 payable. The amount of the reduction may not in any week exceed the
27 increase in weekly compensation benefits brought about by the inclu-
28 sion of employer contributions to a qualified pension or profit shar-
29 ing plan in the determination of gross earnings.

1 * Sec. 39. AS 23.30.244 is amended to read:

2 Sec. 23.30.244. CIVIL DEFENSE AND DISASTER RELIEF FORCES AS
3 STATE EMPLOYEES. A resident of Alaska temporarily engaged in a civil
4 defense or disaster relief function in another state or country under
5 [THE PROVISION OF] AS 26.23.130 or as a volunteer in this state is
6 considered an employee of the state for purposes of this chapter.

7 * Sec. 40. AS 23.30 is amended by adding a new section to read:

8 Sec. 23.30.247. DISCRIMINATION PROHIBITED. (a) An employer may
9 not discriminate in hiring, promotion, or retention policies or prac-
10 tices against an employee who has in good faith filed a claim for or
11 received benefits under this chapter. An employer who violates this
12 section is liable to the employee for damages to be assessed by the
13 court in a private civil action.

14 (b) This section may not be construed to prevent an employer
15 from basing hiring, promotion, or retention policies or practices on
16 considerations of the employee's safety practices or the employee's
17 physical and mental abilities; nor may this section be construed so as
18 to create employment rights not otherwise in existence.

19 (c) This section may not be construed to prohibit an employer
20 from requiring a prospective employee to fill out a preemployment
21 questionnaire or application regarding the person's prior health or
22 disability history as long as it is meant to either document written
23 notice for second injury fund reimbursement under AS 23.30.205(c) or
24 to determine whether the employee has the physical or mental capacity
25 to meet the documented physical or mental demands of the work.

26 * Sec. 41. AS 23.30.265(15) is amended to read:

27 (15) "gross earnings" means periodic payments, by an em-
28 ployer to an employee for employment before any authorized or lawfully
29 required deduction or withholding of money by the employer, including

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

14 * Sec. 42. AS 23.30.265(17) is amended to read:

15 (17) "injury" means accidental injury or death arising out
16 of and in the course of employment, and an occupational disease or
17 infection which arises naturally out of the employment or which natu-
18 rally or unavoidably results from an accidental injury; "injury" [,
19 AND] includes breakage or damage to eyeglasses, hearing aids, den-
20 tures, or any prosthetic devices which function as part of the body
21 and further includes an injury caused by the wilful act of a third
22 person directed against an employee because of the employment; "in-
23 jury" does not include mental injury caused by mental stress unless it
24 is established that (A) the work stress was extraordinary and unusual
25 in comparison to pressures and tensions experienced by individuals in
26 a comparable work environment, and (B) the work stress was the predom-
27 inant cause of the mental injury; the amount of work stress shall be
28 measured by actual events; a mental injury is not considered to arise
29 out of and in the course of employment if it results from a disciplin-

1 ary action, work evaluation, job transfer, layoff, demotion, termina-
2 tion or similar action, taken in good faith by the employer;

3 * Sec. 43. AS 23.30.265 is amended by adding a new paragraph to read:

4 (34) "medical stability" means the date after which further
5 objectively measurable improvement from the effects of the compensable
6 injury is not reasonably expected to result from additional medical
7 care or treatment, notwithstanding the possible need for additional
8 medical care or the possibility of improvement or deterioration re-
9 sulting from the passage of time; medical stability shall be presumed
10 in the absence of objectively measurable improvement for a period of
11 45 days; this presumption may be rebutted by clear and convincing
12 evidence.

13 * Sec. 44. AS 23.30.210 and 23.30.265(28) are repealed.

14 * Sec. 45. TRANSITIONAL PROVISIONS. Notwithstanding AS 23.30.040(b),
15 as amended by sec. 8 of this Act, and AS 23.30.155(m), as amended by
16 sec. 28 of this Act, on or before March 1, 1989, each employer that is
17 subject to those sections shall file a report and make the appropriate
18 contribution for all claims existing as of December 31, 1988. The period
19 covered in the report shall be from the date of the termination report or
20 the last anniversary report filed, if one has been filed, through
21 December 31, 1988.

22 * Sec. 46. TEMPORARY RATE REDUCTION; FUTURE FILINGS. (a) Notwith-
23 standing AS 21.39.030, an insurer providing workers' compensation insurance
24 in the state shall provide at least a six percent reduction in the premium
25 rate charged within the state for workers' compensation insurance, for the
26 period beginning July 1, 1988, and ending January 1, 1990.

27 (b) Rate filings made after December 31, 1988, must fully reflect the
28 legal effect of changes made to the workers' compensation system by this
29 Act.

1 * Sec. 47. TRANSITIONAL PROVISION. Notwithstanding AS 23.30.041(p), as
2 enacted by sec. 10 of this Act, for the period from July 1, 1988, until
3 June 30, 1989, the term "rehabilitation specialist" as used in AS 23.30.041
4 includes a person who was actively employed for at least one year before
5 June 30, 1988, in providing rehabilitation services to an injured worker
6 receiving benefits under AS 23.30.

7 * Sec. 48. APPLICABILITY. Except for secs. 8, 25, 28, 29, 42, and 46
8 of this Act, this Act applies only to injuries sustained on or after
9 July 1, 1988.

10 * Sec. 49. Section 42 of this Act applies to injuries sustained on or
11 after the effective date of sec. 42 of this Act.

12 * Sec. 50. Sections 42 and 49 of this Act take effect immediately under
13 AS 01.10.070(c).

14 * Sec. 51. Sections 1 - 41, and 43 - 48 of this Act take effect July 1,
15 1988.

STATE OF ALASKA
1988 LEGISLATIVE SESSION

BILL VERSION : HCS CSSB 322(Jud)

PUBLISH DATE : _____

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Labor
 Title: "An Act relating to Worker's Compensation" BRU: Worker's Compensation
 Sponsor: Senate Labor & Commerce Components: _____
 Requestor: House Judiciary Worker's Compensation

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL		124.0	49.7	49.7	49.7	49.7
SUPPLIES						
EQUIPMENT						
LAND&STRUCTURES						
GRANTS,CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	124.0	49.7	49.7	49.7	49.7

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND			(74.3)	(74.3)	(74.3)	(74.3)
FEDERAL FUNDS						
OTHER *		124.0	124.0	124.0	124.0	124.0
TOTAL	0.0	124.0	49.7	49.7	49.7	49.7

* Second Injury Fund

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

(See Attached)

Prepared by: Jacque McClintock Phone: 465-2790
 Division: Worker's Compensation Date: 4/27/88
 Approved by Commissioner: Jim Sampson Date: 4/27/88
 Agency: Department of Labor

Distribution (by preparer) :
 Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management and Budget
 Impacted Agency(ies)

Analysis of Fiscal Note

For HCS CSSB 322 (Jud)

This bill would require the Department of Labor to keep track of certain Worker's Compensation information it is not currently tracking, and would also require an annual cost of living survey of the 50 states and 10 foreign countries. Details of these two additional costs are as follows:

1. Additional Information Requirements

As a result of this bill, additional detail on information items for each workers' compensation claim would have to be reported by employers/insurers on a by claim and annual basis. This additional information would be input into our computer database which would require a change in the computer programs associated with that system. Estimated costs are \$57,500 to modify the programs, and an additional \$13,000 in CPU time to test and verify the modifications. The total one-time data processing cost would therefore be \$70,500.

2. Annual Cost of Living Survey

An annual cost of living survey would be required to adjust the compensation to those workers' compensation recipients who move from Alaska. We estimate that 250 locations (an average of 5 per state) would have to be surveyed each year. At \$200 per site, the total cost the first year would be \$50,000. In addition, we estimate that 10 foreign locations would have to be surveyed each year at an approximate cost of \$350 per site, or \$3,500 per year. This would make a total of \$53,500 for all sites for the first year. The cost of the survey in future years would decrease slightly to an estimated \$49,700 a year.

Assumptions:

1. An effective date of July 1, 1988.
2. Per the bill, Second Injury Funds will now be utilized to pay the administrative costs associated with the Second Injury Program. The savings to the existing general funds in the Workers' Compensation BRU will then be available to fund the cost of this bill.

A M E N D M E N T

Offered in the HOUSE

By Gruenberg

TO: HCS CSSB 322 (Judiciary)

Page 29, after line 29:

Insert a new bill section to read:

"* Sec. 39. AS 23.30.244 is amended to read:

Sec. 23.30.244. CIVIL DEFENSE AND DISASTER RELIEF FORCES AS STATE EMPLOYEES. A resident of Alaska temporarily engaged in a civil defense or disaster relief function in another state or country under [THE PROVISION OF] AS 26.23.130 or as a volunteer in this state is considered an employee of the state for purposes of this chapter."

Renumber the following bill sections accordingly.

Page 33, line 1:

Delete "41, and 45"

Insert "42, and 46"

Page 33, line 4:

Delete "41"

Insert "42"

Page 33, line 5:

Delete "41"

Insert "42"

Page 33, line 6:

Delete "Sections 41 and 48"

Insert "Sections 42 and 49"

Page 33, line 8:

Delete "40, and 42 - 47"

Insert "41, and 43 - 48"

SECTIONAL ANALYSIS
House CS for CS for SB 322 (Labor and Commerce

Prepared by House Judiciary Committee

Section 1. **LEGISLATIVE INTENT**

Page 1, Line 9

This intent language is meant to give a clear message to the courts that they are not to construe workers' compensation laws in favor of any party but to be fair and to decide cases upon their merit and always within the confines of the written statute. It is also intended that the Board possess the weight of fact-finding authority and that its decision is conclusive unless the court finds that a reasonable person could not have reached the conclusion made by the board.

Further, it is the legislature's intent to address the Alaska Pacific Assurance Co. v. Brown, 687 P.2d 264 (Alaska 1984), decision and constitutionality of the cost of living between claimants receiving benefits in Alaska and living elsewhere.

It is also the Legislature's intent to encourage employers to improve safety practices in the workplace and to use improved safety practices to reduce work related injuries.

Section 2. **SAFETY PROGRAM REFUNDS**

Page 2, Line 7

This section encourages workplace safety by mandating a 10% premium rebate for employers in an assigned risk pool and a 5% premium rebate for employers not in an assigned risk pool if they have a safety program that meets the standards established under the occupational safety code and have had no OSHA

violations subject to fines during the period covered by the annual premium.

Section 3. **BOARD ROSTERS**
Page 2, Line 23

This section creates departmental authority to establish and maintain a board roster of rehabilitation specialists and physicians consistent with the repeal and reenactment of AS 23.30.041 in section 10 and enactment of AS 23.30.095(k) in section 18.

Section 4. **DEPARTMENT REGULATIONS/COURT DECISIONS**
Page 3, Line 9

This section mandates the department to adopt new regulations if an existing regulation is held invalid by the supreme court. The intent of this section is to assure that any new regulation adopted under this section have retroactive as well as prospective application so that everyone is treated equally.

Section 5. **DENIAL OF BENEFITS/EMPLOYEE FALSE REPRESENTATION**
Page 3, Line 14

This section enacts a new provision that denies benefits to an employee who knowingly makes a false statement about his/her physical condition on an employment application or preemployment questionnaire if reliance on the false representation was a substantial factor in the hiring and there was a causal connection between the false representation and the employee's injury. Its purpose is to codify the result in the following board decision and

order: Robinett v. Ensearch Alaska Construction,
AWCB No. 870210 (September 4, 1987).

Section 6. **ALL STATES RIDER NOTIFICATION**

Page 3, Line 22

This section requires that an insurer who extends workers' compensation insurance coverage to an out-of-state employer under another state's coverage policy must provide notice to the Department of Labor. This section addresses the problem of out-of-state employers using out-of-state insurance rates to obtain contracts at lower bid prices than Alaska employers. This will allow the department to investigate employers using other state's coverage policies to assure that all employers doing business in Alaska are paying Alaska premium rates.

Section 7. **SEMI-ANNUAL PAYMENTS**

Page 3, Line 27

This section allows an employer to pay an insurance premium on a semi-annual basis if the annual policy is \$2,000 or more.

Section 8. **SECOND INJURY FUND PAYMENTS**

Page 4, Line 3

This section changes the method and time period the employer must contribute to the second injury fund. Currently, the employer/insurer pays into the fund on the anniversary date of each employee's injury or on termination of each claim, whichever is sooner. This change will allow the employer/insurer to issue one check on all claims annually at the time the

annual report is filed under AS 23.30.155(m), instead of issuing hundreds of checks throughout the year. This will not only save time and expense for employers/insurers but save administrative costs as well.

Section 9. SECOND INJURY FUND EXPENSES

Page 5, Line 5

This section provides that expenses incurred in the administration of the second injury fund be paid from the fund itself instead of from the general fund of the state. This approach returns to the pre-1981 method of paying the fund's administrative expenses. The financial condition of the fund has improved considerably because of the funding formula enacted in 1981, and the second injury fund can now bear the costs of its administration without jeopardizing the integrity of the fund.

Section 10. VOCATIONAL REHABILITATION

Page 5, Line 9

This section repeals prior law and reenacts a fundamentally changed workers' compensation rehabilitation system. The most significant changes are these:

- 1) Under this section the system is no longer mandatory. Thus, an employee who is eligible for rehabilitation benefits may elect whether or not to receive them. If he/she opts for rehabilitation, the employer is obliged to provide rehabilitation benefits. The intent of this change is to reduce the use of rehabilitation as a tool for litigation

and encouraging the use of rehabilitation services for people most likely to benefit and who truly desire and need them.

2) Under this section an employee who opts for rehabilitation may, in the first instance, select the rehabilitation specialist who will help the employee develop and implement a reemployment plan. The purpose of this change is to encourage employees to cooperate fully in their own rehabilitation and to minimize disputes that result under the present system because employees often distrust specialists chosen by the employer. On the other hand, to prevent selection of unqualified or biased specialists, the rehabilitation administrator, who is an employee of the Division of Workers' Compensation, may select the specialist from a list of qualified specialists if the employer objects to the employee's selection.

3) This section shortens the time lines for each step in the rehabilitation process. An eligibility evaluation for rehabilitation must be made within 90 days after the employee's notice of injury. The purpose of this change is to encourage early rehabilitation intervention.

4) This section redefines an employee's eligibility for rehabilitation benefits as the inability to return to the job held at time of injury or other jobs held or trained for within 10 years prior to injury or following injury.

The employee is not eligible for rehabilitation benefits if the employer offers a job with

minimum wages or 60 percent of prior injury wages, whichever is greater. Eligibility is also denied if the employee was rehabilitated following a prior injury and returned to work in a job that required the same physical demands as the pre-injury job.

5) This section provides for the following benefits during the evaluation and rehabilitation process: temporary benefits (TTD) during the healing period, permanent partial disability (PPD) benefits after medical stability, and if PPD benefits end before rehabilitation is completed, a wage at 60 percent of spendable weekly wages with a \$525 cap. The current system provides for the payment of temporary benefits during the entire process.

6) This section establishes a two-year maximum for rehabilitation services and a \$10,000 maximum for the costs of the plan. Under current law the maximum time for most plans is 37 weeks with provisions for 74 weeks of services in exceptional cases and no dollar maximum for plan costs.

The rehabilitation costs will be paid for by the employer on an expense incurred basis.

7) The employer may terminate the rehabilitation plan if the employee is not cooperating with it.

8) This section also redefines "rehabilitation specialist" as someone who is certified in the field.

Section 11. **EXCLUSIVENESS OF LIABILITY**

Page 13, Line 1

This section adds a provision that preserves the exclusiveness of employer liability under workers' compensation law even if an employee's claim is barred under AS 23.30.020(b). See comments to section 5.

Section 12. **PENALTY FOR EMPLOYER NONCOMPLIANCE**

Page 13, Line 19

This section increases the penalty for an employer's failure to insure and keep insured its liability for workers' compensation from \$1,000 to \$10,000 and makes the fine mandatory.

Section 13. **DOCTOR SHOPPING**

Page 14, Line 6

This section adds language that clarifies where the employee can seek medical treatment and limits the employee to no more than one change in choice of attending physician without the written consent of the employer. It also requires the employee to give prior notice of the change. Its purpose is to prevent the abuse of frequent physician changes, with its resultant costly overtreatment, by those seeking opinions to support their claims.

Section 14. **TREATMENT PLAN**

Page 15, Line 6

This section adds language invalidating a course of medical care that requires continuing and multiple

treatment unless a written treatment plan is prescribed and submitted to the employer by the attending physician.

Treatment is limited to 20 visits in the first 60 days and four visits per month after the first 60 days unless the attending physician documents the need for excess services in the written treatment

Section 15. EMPLOYER INDEPENDENT MEDICAL EXAM (IME)

Page 15, Line 28

This section clarifies that, at reasonable times throughout disability, the employee must submit to an examination by a physician or surgeon of the employer's choice and establishes a presumption of reasonableness. It also limits the employer to no more than one change in choice of physicians without the written consent of the employee. It is the intent of sections 13 and 15 to afford equal rights to the employee and employer in the selection and change of their respective physicians.

Section 16. MEDICAL FEES

Page 17, Line 7

This section adds language establishing a medical fee standard, as determined by the board, but not to exceed usual, customary and reasonable fees for the treatment or services in the community in which it is rendered. It also provides that an employee may not be held responsible for the payment of a fee or charge for medical treatment or service.

Section 17. MEDICAL FEE REVIEW

Page 17, Line 16

This section is repealed and reenacted authorizing the board to appoint or contract with a medical services review committee to assist and advise on the appropriateness, necessity and cost of medical and related services.

Section 18. BOARD IME

Page 17, Line 22

This section adds a new provision which grants the board authority to establish a list of physicians and select a physician from the list to conduct an independent medical examination in the event of medical disagreement between the employee's and the employer's physicians. The employer will pay for the examination. It also establishes a presumption that the board's independent medical examiner's opinion is correct and provides the examiner with protection from damages for rendering an opinion or giving testimony.

This section requires that the board's physician be the same specialty as the employee's treating physician unless the board agrees unanimously on a case by case basis to approve a different selection.

Section 19. STATUTE OF LIMITATIONS

Page 18, Line 15

This section codifies the board's interpretation of the meaning of compensation for statute of limitation purposes under AS 23.30.105 and partially complies with the Supreme Court's directive 14 years ago in Williams v. Safeway Stores, 525 P.2d 1087, 1089 n.6 (Alaska 1974), that the legislature clarify

when compensation includes medical and other benefits and when it means time loss benefits only. For the purposes of filing a claim for additional disability compensation, the board has consistently concluded that when compensation payments have been made without an award, the claim must be filed within two years after the last payment of disability or death benefits and cannot be extended by the payment of medical benefits only.

Section 20. HEARINGS AND CONTINUANCES

Page 19, Line 2

This section addresses the delays being experienced by the parties to the workers' compensation system in getting disputed cases before the board and the board's problems in timely docketing cases for hearing. While budget and staff constraints set an outside limit on the number of cases that can be heard, the board's analysis of the current backlog problem is that it is caused in large part because of excessive continuances and the unpreparedness of the parties in presenting their case to the board, which results in the hearing record remaining open.

This amended section will require an affidavit be filed stating that the party has completed all necessary discovery obtained, all necessary evidence, and is fully prepared for the hearing. Once a hearing has been scheduled, a continuance will not be granted, and after the hearing the board will close the hearing record.

Section 21. STRESS CLAIMS

Page 19, Line 27

This section shifts the burden of proof to the employee for establishing a compensable claim for mental injury resulting from work-related stress, consistent with the amendment to AS 23.30.265(17) found in section 40.

Section 22. BOARD FINDINGS

Page 20, Line 2

This section codifies legislative intent in section 1 that findings of fact made by the board in its orders are conclusive unless the court specifically finds that a reasonable person could not have reached the board's conclusion.

Section 23. STATUTE OF LIMITATIONS

Page 20, Line 7

This section codifies the board's interpretation of the meaning of compensation for statute of limitations purposes under AS 23.30.130, which provides that a request for modification of a compensation award must be made within one year after the last payment of disability or death benefits. This is consistent with the amendment to AS 23.30.105 found in section 19.

Section 24. REPORTING REQUIREMENTS

Page 20, Line 20

This section reflects changes consistent with the repeal and reenactment of AS 23.30.155(m) found in section 27, concerning the reduction of reporting penalties.

Section 25. BENEFIT PAYMENTS DURING CONTROVERSION

Page 21, Line 16

This section provides protection for the injured worker whose benefits are denied solely on the grounds that another employer or insurer may be liable for all or some of the benefits. This section requires that the most recent employer or insurer who is party to the claim and may be liable must pay the injured worker temporary disability benefits during the pendency of disputes over liability between various employers and insurers. This section also requires that when liability has been determined, any reimbursement, including interest and all attorney's costs and fees, must be paid within 14 days.

This amendment addresses the problems in Alaska's "last injurious exposure rule" by discouraging needless or frivolous litigation through assessment of costs and interest of successful employers against the ultimately liable employers. It also puts an end to the delays in paying benefits to injured workers who under the current system must often wait months or years with no benefits while two or more employers/insurers fight over liability.

Section 26. LATE PAYMENT PENALTY

Page 22, Line 5

This section increases the employer's penalty from 20% to 25% for late payment of compensation to an employee.

Section 27. REPORTING REQUIREMENTS

Page 22, Line 13

This section repeals and reenacts employer/insurer reporting provisions requiring that an annual, instead of an anniversary, report be filed with the board by March 1 of each year showing the total amount of all compensation by type, medical and related benefits, vocational rehabilitation expenses, legal fees, and penalties paid on all claims during the preceding calendar year. Currently, data is collected on a per claim basis through interim and claim anniversary reports. However, there is no data collected showing what employers/insurers have paid for claims on an annual basis, making it impossible to meaningfully analyze insurance rates or to make effective changes in the workers' compensation system.

Also, it is the purpose of this section to encourage compliance with the reporting system by assessing full penalties against employers/insurers who repeatedly fail to comply with reporting requirements, but forgiving the occasional reporting oversight for insurers showing substantial compliance. Additional civil penalties are included for those insurers who fail to comply with the annual report requirement.

**Section 28. SELF-INSUREDS, UNFAIR CLAIM SETTLEMENTS,
BANK REQUIREMENTS FOR BENEFIT PAYMENTS**

Page 23, Line 13

This section clarifies that if the employer is self-insured, the requirements of AS 23.30.155(c) and (m) in sections 24 and 27 apply to the employer.

This section also requires the board to notify the division of insurance if it is determined that an insurer has frivolously or unfairly controverted an employee's compensation. The division of insurance is then required to make a determination if the insurer has committed an unfair claim settlement practice under AS 21.36.125.

The section further requires that benefits paid to recipients residing in Alaska be paid by checks or other negotiable instruments drawn on Alaska banks or by certified check.

Section 29. RATES OF WEEKLY COMPENSATION

Page 23, Line 26

This section repeals and reenacts the minimum and maximum rates of compensation to be paid an Alaska injured worker. It decreases the maximum weekly compensation rate from 200% of the state's average weekly wage, which for 1988 is \$547 equalling a weekly compensation rate of \$1094, to an absolute maximum of \$700 per week. It increases the minimum weekly compensation rate from \$110 to \$154 per week, except in those cases where the employee does not provide documentary proof of past wages or the employee's spendable weekly wages are less than \$154 per week. The minimum of \$154 approximates the Alaska minimum wage. The purpose of this section is to redistribute workers' compensation dollars to provide a more livable compensation rate for low wage earners without unduly increasing employer costs. It is further the purpose of this section to override the Alaska Supreme Court's holding in Peck v. Alaska Aeronautical Inc., Op. No. 3240 (October

30, 1987), by providing for a fixed maximum compensation rate which can be predicted.

This section also reenacts the provision that Alaska rates of compensation shall be adjusted for those employees who leave the state, except for medical or rehabilitation services not available in Alaska, by the ratio of the cost of living in the locality the employee resides to that of Alaska. It also provides that the board, by regulation, shall determine and annually update living costs for the state and other localities. A similar law providing for the adjustment of the Alaska compensation rate by ratios of states' average weekly wages to those of Alaska was struck down as unconstitutional in Alaska Pacific Assurance Co. v. Brown, 687 P.2d 264, 271 (Alaska 1984). However, the court suggested that an adjustment based on actual cost of living may pass constitutional muster.

Section 30. PERMANENT TOTAL DISABILITY

Page 25, Line 9

This section provides that if an employee is paid a permanent partial disability award and it is subsequently determined that the employee is permanently totally disabled, the permanent total disability benefits must be reduced by the permanent partial disability award, adjusted for inflation, as determined by the board.

This section also establishes a labor market for an injured worker's services that must be considered when determining whether the worker is permanently totally disabled. This section clarifies that not

only the worker's area of residence, which may have little or no employment opportunities, but the area of last employment or the state will be considered as a labor market for his/her services. The purpose of this section is to make it clear that an employee not be classified as permanently totally disabled because he chooses to live in a small or isolated community with fewer employment opportunities.

Section 31. PERMANENT TOTAL DISABILITY

Page 25, Line 27

This section clarifies that failure to satisfy the remunerative employability definition as defined in AS 23.30.041(p)(2) does not mean that an employee is automatically permanently totally disabled.

Note: This section needs a technical amendment as the present cite is incorrect. It now reads "AS 23.30.041(m)(7)" and should read "AS 23.31.041(p)(2)."

Section 32. TEMPORARY TOTAL DISABILITY (TTD)

Page 26, Line 2

This section imposes a cap on temporary total disability by payment of benefits only up to the time of medical stability, as defined in AS 23.30.265(34) found in section 41, but in no case longer than two years from the date of disability. This is consistent with the concept that temporary total disability be paid during the healing period. Following medical stability, the worker is paid permanent partial impairment benefits as reflected in section 33.

Section 33. PERMANENT PARTIAL DISABILITY (PPD)

Page 26, Line 11

This section repeals prior law and reenacts a totally new concept in permanent partial disabilities. All payments for permanent partial impairment will be based on a whole person concept in accordance with the American Medical Guides to Evaluation of Permanent Impairment Compensation. Under the Guides the impairment of any body part is computed as to how it affects total body functioning. Compensation is computed by multiplying the employee's actual degree of impairment by the appropriate adjustment factor by the maximum compensation rate of \$240,000, but no permanent partial impairment payment may be less than \$250. The section also provides that an impairment rating be reduced by a pre-existing permanent impairment; however, the prior rating will not negate a finding of permanent total disability.

Current law provides maximum schedules for fourteen various body parts, ranging from \$2,800 to \$59,000, plus a maximum unscheduled benefit of \$60,000 based on loss of earning capacity for back and neck injuries. This section represents a redistribution of benefits to those workers who have more significant injuries and disabilities from those with lesser impairments.

Note: This section does not work in practice as the Labor-Management Task Force intended. PPD payments at the lower impairments are considerably lower than under present law. See the payment chart in the backup file under "Task Force."

Section 34. TEMPORARY PARTIAL DISABILITY (TPD)

Page 28, Line 12

This section provides for payment of temporary partial disability benefits only up to the time of medical stability, consistent with the amendment to AS 23.30.185 found in section 32. It also reduces the maximum period for paying temporary partial disability benefits from five to two years.

Section 35. TEMPORARY PARTIAL DISABILITY

Page 28, Line 22

This section reenacts language necessary to determine an employee's wage-earning capacity for purposes of temporary partial disability. This language, which was previously found in AS 23.30.210 and is now repealed in section 42, pertains only to the payment of temporary partial benefits. It is consistent with the changes made in AS 23.30.190 found in section 33.

Section 36. WEEKLY WAGE DETERMINATION

Page 29, Line 4

This section amends AS 23.30.220(a) to narrow the instances where an employee's gross weekly earnings cannot be computed under AS 23.30.220(a)(1) based upon past earnings. Only in those cases in which the employee had no earnings or was voluntarily absent from the labor market for 18 months or more during the two calendar years before injury will the gross weekly earnings be calculated under AS 23.30.220(a)(2). The board is then mandated to consider the nature of the employee's work and work

history in determining the gross weekly earnings for calculating compensation, but in no event can the compensation exceed the employee's earnings at the time of injury.

This amendment overrides a long line of supreme court rulings in which the board was ordered to establish the gross weekly earning and therefore the compensation rate by speculating on an employee's future earnings. (See Johnson v. RCA-OMS, Inc., 681 P.2d 905 (Alaska 1984), and its progeny.) The board has consistently found that an employee's past earnings record is the best predictor of an employee's loss of earnings during the period of disability. Thus, except for the exceptions stated, the purpose of this section is to require that gross weekly earnings be computed by dividing by 100 into the employee's gross earnings in the two calendar years immediately preceding the injury.

Section 37. PENSION PLAN OFFSET

Page 30, Line 9

This section provides that if contributions to a qualified pension or profit sharing plan have been included in an employee's gross earnings, as reflected in AS 23.30.265(15) found in section 39, the employer may offset compensation benefits by a like amount when the employee receives pension or profit sharing payments.

Section 38. DISCRIMINATION PROHIBITED

Page 30, Line 20

This section enacts a new provision that prohibits an employer from discriminating in the hiring, promotion or retention of an employee who has in good faith filed a claim for or received compensation benefits. An employer who violates this section is liable for damages assessed by the court in a private civil action.

This section does not prohibit consideration of an employee's safety practices or physical and mental abilities nor does it prohibit inquiry into the employee's prior health or disability history for second injury fund reimbursement or determination of physical or mental capacities to meet the demands of employment.

Section 39. PENSION OR PROFIT SHARING PLAN CONTRIBUTIONS
Page 31, Line 10

This section amends the definition of an employee's gross earnings to include total contributions by an employer to a qualified pension or profit sharing plan for the two prior years multiplied by the percentage of vested interest at the time of injury. This change is consistent with the board's interpretation of the Supreme Court's ruling in Ragland v. Morrison-Knudsen Co., Inc., 724 P.2d 579 (Alaska 1986).

Section 40. STRESS CLAIMS LIMITATION
Page 31, Line 27

This section amends the definition of injury by providing specific language that the term does not include mental injury caused by mental stress unless

the work stress was extraordinary and unusual in the profession and the work stress was the predominant cause of the mental injury. Specifically excluded are those mental injuries that result from disciplinary actions or changes in job status taken in good faith by the employer. Unlike all other types of injuries, it further places the burden on the employee to provide work-connection. See the proposed amendment to AS 23.30 .120 found in Section 21.

This change is consistent with prior board rulings in which the employee's stress had to be greater than all employees in the profession must experience to be compensable. This section is intended to override the Alaska Supreme Court rulings in Wade v. Anchorage School District, 741 P.2d 634 (Alaska 1987), and Fox v. Alascom, 718 P.2d 977 (Alaska 1986).

Section 41. **MEDICAL STABILITY CONCEPT**

Page 32, Line 17

This section adds a new definition which provides that medical stability means the date after which no further measurable improvement is expected to result from additional medical treatment or care. This codifies the meaning of the healing period during which time temporary total or temporary partial disability benefits are paid, and is consistent with the changes made in sections 10, 32 and 34. Currently, temporary disability benefits are paid until economic or employment stability regardless of time factors or the status of the employee's medical condition.

Section 42. **TPD REPEALER**
Page 32, Line 27

This section repeals provisions that are unnecessary or inconsistent with the repeal and reenactment of AS 23.30.200(b) found in section 35.

Section 43. **TRANSITION FOR REPORTING REQUIREMENTS**
Page 32, Line 28

This section contains transitional language necessary to change reporting from an anniversary to an annual system. It specifically provides that each employer is subject to this change for all claims existing as of December 31, 1988.

Section 44. **MANDATED RATE REDUCTION**
Page 33, Line 7

This section mandates a rate decrease for workers' compensation premiums of no less than 6%, effective July 1, 1988 through January 1, 1990.

Section 45. **VOC REHAB SPECIALIST CERTIFICATION TRANSITION**
Page 33, Line 12

This section contains transitional language to include a grandparent clause to allow current rehabilitation specialists who do not have the credentials required under AS 23.30.041(p)(6) to continue to practice for one year after adoption of this bill, at which time they must have gained the required credentials or be barred from further practice as a rehabilitation specialist in the workers' compensation system.

Section 46. **APPLICABILITY**

Page 33, Line 18

This section delineates the amendments to the Act that apply only to injuries sustained on or after July 1, 1988.

Section 47. **EFFECTIVE DATE**

Page 33, Line 21

This section provides that the amendment to the Act under section 40 applies to injuries sustained on or after the effective date of section 40.

Section 48. **EFFECTIVE DATE**

Page 33, Line 23

This section provides that sections 40 and 47 of this Act takes effect immediately under AS 01.10 070(c).

Section 49. **EFFECTIVE DATE**

Page 33, Line 25

This section provides that sections 1-39, and 41-46 of this Act take effect July 1, 1988.

AMENDMENTS TO SB 322
IN HOUSE JUDICIARY COMMITTEE
DRAFT DATED 4/20/88

Note: Further amendments were made to the 4/20/88 draft and appear in the 4/26/88 draft. A list of those amendments follow.

<u>Amdmt. #</u>	<u>Effect</u>	<u>Page-Line Judiciary CS</u>	<u>Page-Line Hse L&C CS</u>
33	Rewrote "reduce disincentives" to read "increase the incentives."	1 - 27	1 - 27
18	Added intent language urging the Administration to enforce reporting requirements and penalties under the Workers' Compensation Act.	2 - 7	2 - 7
19	Rewrote the Safety Program Refund to leave the parameters of the refund open to each insurers discretion, but require that all workers' comp. insurers offer a safety program rate reduction and consulting services.	2 - 19	2 - 7
1	Clarified that the board retains two provider rosters -- one for rehab. specialists, one for physicians.	3 - 2	2 - 26
2	Deleted previous Sec. 4 which allowed the Department to write new regulations if the Supreme Court found regulations to be invalid. The Committee determined that this did not accomplish the original intent -- to make new regs. retroactive.	3 - 13	3 - 9
20	Rewrote the provision for semi-annual premium payments to reflect seasonal employers who make their entire yearly earnings in a few months per year.	3 - 29	3 - 29
21	Rewrote "unusual and extenuating physical limitations" to read "unusual and extenuating circumstance." This refers to reasons why an injured worker may extend past the 90-day limit for taking a voc. rehab. evaluation.	6 - 25	6 - 23

4	Clarified the reference dictionary used in vocational rehab. codes.	7 - 26	7 - 24
3	Increased from 60 to 75 the percentage of a worker's wage at injury that the employer can offer which would make the worker ineligible for voc. rehab.	8 - 2	7 - 28
22	Deleted the typo "of injury."	8 - 4	8 - 1
23	Rewrote the clarification for the physician that an employee may elect by using the term "to provide all medical and related benefits" because "medical and related benefits" is in present definitions. It includes "transportation charges to the nearest point where adequate medical facilities are available."		
24	Rewrote AS 23.30.095(c) regarding notification and length of treatment.	15 - 9	15 - 7
25	The new language treats continuing and multiple treatments very similar to medical and surgical treatment. It also deletes any reference to number of visits for ongoing treatment.		
26	(Note: This section was amended again. See attached list of amendments to 4/26/88 draft)		
27	Deleted the reference to the board IME being in the same speciality as the employee's chosen treating physician.	17 - 27	18 - 1
28	Deleted the notion that the board IME's opinion carries more weight than those of the employer's and employee's physicians.	18 - 2	18 8
5	Left a window open for hearing continuances and allowed for a hearing request with necessary discovery and evidence, but not necessarily <u>all</u> evidence. Also deleted reference to admission of evidence after the hearing is complete.	18 - 24	19 - 5
6		19 - 4	19 - 14
29		19 - 8	19 - 16
7	Increased penalties for late compensation payments to 50 percent or \$300, whichever is greater.	21 - 27	22 - 5
8	(Note: This section was amended again. See attached list of amendments to	22 - 8	22 - 8

4/26/88 draft)

30	Added a penalty of \$1,000 for the filing of incomplete reports.	23 - 12	23 - 12
9	Added that penalties for lack of reporting apply to uninsureds as well as self-insureds.	23 - 16	23 - 14
10	Deleted the use of certified checks for compensation payments.	23 - 26	23 - 25
11	Fixed an incorrect cite.	26 - 1	25 - 29
12	Returned Temporary Total Disability benefits to an unlimited time period.	26 - 7	26 - 8
13	Lowered the Permanent Partial Disability cap to \$135,000.	26 - 14	26 - 15
13 31	Deleted the use of adjustment factors for figuring PPD payments and more clearly defined the whole person impairment theory.	26 - 15	26 - 18
14	Returned Temporary Partial Disability benefits to a five year period.	27 - 16	28 - 19
15	Rewrote the computation of gross weekly earnings so that earnings for anyone who is absent from the labor market for 18 months or more in two years, regardless of the reason for the absence, will be compensated based on work and work history.	28 - 10	29 - 13
32	Deleted the notion of "employee misperceptions" in the stress language.	31 - 8	32 - 12
16	Added the definition of "suitable gainful employment" to the repealers.	31 - 22	32 - 27
17	Changed "takes" to "take."	32 - 18	33 - 23

AMENDMENTS TO SB 322
IN HOUSE JUDICIARY COMMITTEE
DRAFT DATED 4/26/88

<u>Amdmt. #</u>	<u>Effect</u>	<u>Page-Line Judiciary CS</u>	<u>Page-Line Hse L&C CS</u>
8	Restructured the assigned risk pool so that not all companies are automatically charged a 20% surcharge on their premiums. It tries to make the pool more equitable in that those companies proven to be a poor risk are surcharged while those proven to be a good risk are not surcharged. It also reduces the potential abuse of the pool as a "dumping ground" for small or new companies.	2 - 18	NA
1	Permits an insurer to charge for safety program consulting services separately from the premium rate.	3 - 6	NA
2	Maintained the intent of the earlier amendment to this section (in the 4/20 draft) but better clarified the section. The Board would be required to establish standards for frequency of treatment.	15 - 19	15 - 7
6	Changed penalties for late comp. benefits to 25% or \$100, whichever is greater. Note: The House Labor and Commerce Committee had increased the percentage from the present 20% to 25%. The House Judiciary Committee earlier increased that to 50% with a minimum of \$300.	22 - 16 22 - 26	22 - 8
3	Deleted a section that required minimum PPD payments of \$250 because the changes made to the PPD schedule in the 4/20 draft remove the need for this section. Payments could not be that low under the present language.	27 - 18	28 - 3
4	Withdrawn		
5	Deleted unnecessary language.	28 - 24	29 - 12

7

Added language to the rate reduction section that requires rate filings in 1989 and thereafter to reflect changes in the workers' comp system due to this bill.

32 - 21

33 - 11

A M E N D M E N T

Offered in the HOUSE

By Gruenberg

TO: HCS CSSB 322 (Judiciary)

Page 29, after line 29:

Insert a new bill section to read:

"* Sec. 39. AS 23.30.244 is amended to read:

Sec. 23.30.244. CIVIL DEFENSE AND DISASTER RELIEF FORCES AS STATE EMPLOYEES. A resident of Alaska temporarily engaged in a civil defense or disaster relief function in another state or country under [THE PROVISION OF] AS 26.23.130 or as a volunteer in this state is considered an employee of the state for purposes of this chapter."

Renumber the following bill sections accordingly.

Page 33, line 1:

Delete "41, and 45"

Insert "42, and 46"

Page 33, line 4:

Delete "41"

Insert "42"

Page 33, line 5:

Delete "41"

Insert "42"

Page 33, line 6:

Delete "Sections 41 and 48"

Insert "Sections 42 and 49"

Page 33, line 8:

Delete "40, and 43 - 47"

Insert "41, and 43 - 48"



P.O. BOX 129 BARROW, ALASKA 99723
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April 28, 1988

Representative Al Adams
Alaska House of Representatives
Pouch V
Juneau, Alaska 99811

Re: SB 322

Dear Representative Adams:

It is our understanding that the House Finance Committee will shortly be considering SB 322 relating to worker's compensation legislation and we would like to add our comments for your consideration. The Arctic Slope Regional Corporation (ASRC) is vitally concerned with the worker's compensation provisions of the state statutes and efforts to make changes in them. We supported the efforts of the Worker's Compensation Committee of Alaska (WCCA), and encourage changes designed to lower the costs of providing coverage through third party insurance companies or by self-insurance. ASRC has several operating entities that purchase worker's compensation insurance and they have experienced tremendous increases in the cost of that coverage. Our primary areas of activity are in the construction and oilfield support arenas and these increases in insurance costs have significantly impacted our profitability and ability to remain competitive.

There are several versions of SB 322 and numerous amendments that have been proposed. Our initial evaluation of the Senate passed version was positive. It seemed to be headed towards the original objective of attempting to lower the underlying costs of providing worker's compensation. It is difficult to assess, but our expectation was that our premiums for worker's compensation insurance would be stabilized or reduced somewhat. A five percent reduction suggested by others appeared to be reasonable. We have experienced an increase of over 40% in the last two years in our worker's compensation insurance premiums. Simply stopping such increases will help. However, after such tremendous increases, reductions of 5% or 6% do not appear that significant. The real question, of whether the reasons for those increases are fully understood and whether the system would be accordingly changed by the legislation as passed by the Senate, was not

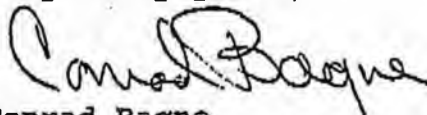
totally answered by the bill. While the cooperation of management and labor has been positive, additional consideration of these issues appeared valuable. One area of particular concern to our companies has been pre-existing injuries and proper allocation of responsibility for injuries of a current claimant.

The draft (dated 4/20/88) proposed by the House Judiciary Committee, however, seems to go in the wrong direction from further consideration of the Senate bill. The voluminous offered amendments seem to lose sight of the objectives of lowering costs. They appear overly concerned with protecting the "unintended beneficiaries" of the present system - the legal, medical and rehabilitation professionals - rather than taking care of the employees and employers. Mandating specific actions of the insurance company will not make recalcitrant carriers respond, it will more likely drive them out of the market. This only further lessens competition and available coverages. The insurance companies are not without blame for the present system's problems and high cost; but don't use them as a scapegoat either.

There may well be other proposals that we have not had the opportunity to fully review and evaluate. We readily concur that the present cost of insurance and benefits is too high and needs modification. This objective should be kept carefully in mind in the last days of the session in consideration of SB 322. If differences can be worked out and the original objectives accomplished, a truly beneficial bill can be passed. If not, we are better off considering these proposals in another session.

Your consideration of our views and comments on this matter is appreciated.

Very truly yours,



Conrad Bagne
Chief Administrative Officer
& House Counsel

CB:fc

Original sponsor: Labor and Commerce
Committee

1 IN THE SENATE

BY THE JUDICIARY COMMITTEE

2 HOUSE CS FOR CS FOR SENATE BILL NO. 322 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

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

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

9 * Section 1. LEGISLATIVE INTENT. (a) It is the intent of the legisla-
10 ture that AS 23.30 be interpreted so as to ensure the quick, efficient,
11 fair, and predictable delivery of indemnity and medical benefits to injured
12 workers at a reasonable cost to the employers who are subject to the pro-
13 visions of AS 23.30.

14 (b) The legislature declares that the workers' compensation laws must
15 not be construed by the courts in favor of any party. It is the specific
16 intent of the legislature that workers' compensation cases be decided on
17 their merits, except when otherwise provided by statute. It is also the
18 intent of the legislature that the board possess the greatest possible
19 authority in the exercise of its fact finding responsibilities and that the
20 board's decisions be conclusive unless the court finds that a reasonable
21 person could not have reached the conclusion made by the board.

22 (c) It is the intent of the legislature in amending AS 23.30.175
23 regarding benefits payable to recipients not residing in the state to

24 (1) recognize the levels of workers' compensation benefits
25 brought about by the high cost of living that exists in the state as com-
26 pared to other localities;

27 (2) increase the incentives to return to work; and

28 (3) remove obstacles to the utilization of vocational rehabili-
29 tation that may be brought about by the payment of workers' compensation

1 benefits at the high levels provided by the Alaska workers' compensation
2 law to individuals residing in localities with living costs lower than
3 those in Alaska.

4 (d) It is the intent of the legislature to encourage employers to
5 improve safety practices in the workplace and to use improved safety prac-
6 tices to reduce work related injuries.

7 (e) It is the intent of the legislature in amending AS 23.30.075(b)
8 and 23.30.155 that the division of workers' compensation, division of
9 insurance, and Department of Law strictly enforce the punishment authorized
10 under AS 23.30.075(b) and the reporting requirements and penalties for
11 noncompliance under AS 23.30.155. Strict enforcement is necessary because

12 (1) the state has failed to impose the punishment authorized
13 under AS 23.30.075(b) against those employers who fail to obtain workers'
14 compensation insurance or to qualify as a self-insurer; and

15 (2) there is a lack of specific data from the division of work-
16 ers' compensation and division of insurance to adequately assess the effi-
17 ciency and costs of the workers' compensation system.

18 * Sec. 2. AS 21.39.155 is amended by adding a new subsection to read:

19 (c) An insurer may not impose a surcharge for assigned risk pool
20 insurance unless the insured has received an experience modification
21 debit. After the insured has received an experience modification
22 debit, the insurer may impose a surcharge if the percentage of the
23 surcharge does not exceed the percentage applied as an experience
24 modification debit or 25 percent of the premium developed after appli-
25 cation of the experience modification factor, whichever is less.

26 * Sec. 3. AS 21.89 is amended by adding a new section to read:

27 Sec. 21.89.015. WORKPLACE SAFETY PROGRAM. An insurer who pro-
28 vides workers' compensation insurance in this state shall establish
29 and maintain a workplace safety rate reduction program available to

1 all insureds. The program must include

2 (1) a reduction in future workers' compensation premiums
3 based on the insured's documented and successful implementation of a
4 safety program; and

5 (2) consulting services available to the insured to estab-
6 lish a workplace safety program; an insurer may charge a fee separate
7 from the premium for services requested under this paragraph.

8 * Sec. 4. AS 23.30.005(h) is amended to read:

9 (h) The department shall [MAY] adopt [IDENTICAL] rules for all
10 panels, and procedures for the periodic selection, retention, and re-
11 moval of both rehabilitation specialists and physicians under AS 23.-
12 30.041 and 23.30.095, and shall [MAY] adopt regulations to carry out
13 the provisions of this chapter. Process and procedure under this
14 chapter shall be as summary and simple as possible. The department,
15 the board or a member of it may for the purposes of this chapter
16 subpoena witnesses, administer or cause to be administered oaths, and
17 may examine or cause to have examined the parts of the books and
18 records of the parties to a proceeding that relate [WHICH RELATED] to
19 questions in dispute. The superior court, on application of the
20 department, the board or any members of it, shall enforce the atten-
21 dance and testimony of witnesses and the production and examination of
22 books, papers, and records.

23 * Sec. 5. AS 23.30.020 is amended by adding a new subsection to read:

24 (b) An employee who knowingly makes a false statement as to the
25 employee's physical condition on an employment application or preem-
26 ployment questionnaire may not receive benefits under this chapter if

27 (1) the employer relied upon the false representation and
28 this reliance was a substantial factor in the hiring; and

29 (2) there was a causal connection between the false

1 representation and the injury to the employee.

2 * Sec. 6. AS 23.30.025 is amended by adding a new subsection to read:

3 (c) An insurer extending coverage required under this chapter by
4 specifying Alaska in the other states section or similar provision of
5 the insurance policy shall provide notice to the department under
6 AS 23.30.085.

7 * Sec. 7. AS 23.30.030 is amended by adding a new paragraph to read:

8 (8) An annual insurance premium that exceeds \$2,000 may be
9 paid on an installment basis of not fewer than two payments, if re-
10 quested by the insured. Premiums paid by installment must be struc-
11 tured to reflect seasonal peaks in the basis of the premium. The
12 insurer shall include this provision in the insurance policy in a
13 manner that clearly informs the insured of the provision.

14 * Sec. 8. AS 23.30.040(b) is amended to read:

15 (b) If an employee suffers a compensable injury that results in
16 temporary total disability, temporary partial disability, permanent
17 partial disability, or permanent total disability, the employer or
18 insurance carrier shall contribute to the second injury fund. The
19 contribution shall be made annually at the time of the report filing
20 required by AS 23.30.155(m) [BY ONE YEAR FROM THE DATE OF THE INJURY
21 OR ON TERMINATION OF THE EMPLOYEE'S CLAIM, WHICHEVER IS SOONER. IF
22 THE CLAIM IS NOT TERMINATED WITHIN ONE YEAR, SUBSEQUENT CONTRIBUTIONS
23 SHALL BE MADE YEARLY UNTIL THE TERMINATION OF THE EMPLOYEE'S CLAIM].
24 The amount of the contribution is the product of the compensation to
25 which the employee is entitled for temporary total disability, tempo-
26 rary partial disability, permanent partial disability, or permanent
27 total disability and the applicable contribution rate set out in
28 column A of this subsection. Payment need not be made to the second
29 injury fund if the total contribution under this subsection is less

1 than \$20. By December 15 of each year the commissioner shall deter-
 2 mine and make available to the public the applicable contribution rate
 3 for the following calendar year according to the reserve rate of the
 4 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	

16 * Sec. 9. AS 23.30.040(h) is amended to read:

17 (h) Administration expenses of the state under this section and
 18 AS 23.30.205 must [SHALL] be paid from the second injury [GENERAL]
 19 fund.

20 * Sec. 10. AS 23.30.041 is repealed and reenacted to read:

21 Sec. 23.30.041. REHABILITATION OF INJURED WORKERS. (a) The
 22 board shall select and employ a reemployment benefits administrator.
 23 The board may authorize the administrator to select and employ addi-
 24 tional staff. The administrator is in the partially exempt service
 25 under AS 39.25.120.

26 (b) The administrator shall perform the following functions:

27 (1) enforce regulations adopted by the board to implement
 28 this section;

29 (2) recommend regulations for adoption by the board that

1 establish performance and reporting criteria for rehabilitation spe-
2 cialists;

3 (3) enforce the quality and effectiveness of reemployment
4 benefits provided for under this section;

5 (4) review on an annual basis the performance of rehabili-
6 tation specialists to determine continued eligibility for delivery of
7 rehabilitation services;

8 (5) submit to the department, on or before January 1 of
9 each year, a report of reemployment benefits provided under this
10 section for the previous fiscal year; the report must include a gener-
11 al section, sections related to each rehabilitation specialist em-
12 ployed under this section, and a statistical summary of all reha-
13 bilitation cases, including

14 (A) the estimated and actual cost of each active
15 rehabilitation plan;

16 (B) the estimated and actual time of each rehabilita-
17 tion plan;

18 (C) a status report on all individuals completing or
19 terminating a reemployment benefits program including a return to
20 work date;

21 (D) the cost of reemployment benefits;

22 (6) maintain a list of rehabilitation specialists who meet
23 the qualifications established under this section;

24 (7) promote awareness among physicians, adjusters, injured
25 workers, employers, employees, attorneys, training providers, and
26 rehabilitation specialists of the reemployment program established in
27 this subsection.

28 (c) If an employee suffers a compensable injury that may perma-
29 nently preclude an employee's return to the employee's occupation at

1 the time of injury, the employee or employer may request an eligibil-
2 ity evaluation for reemployment benefits. The employee shall request
3 an eligibility evaluation within 90 days after the employee gives the
4 employer notice of injury unless the administrator determines the
5 employee has an unusual and extenuating circumstance that prevents the
6 employee from making a timely request. The administrator shall, on a
7 rotating and geographic basis, select a rehabilitation specialist from
8 the list maintained under (b)(6) of this section to perform the eli-
9 gibility evaluation.

10 (d) Within 30 days after the referral by the administrator, the
11 rehabilitation specialist shall perform the eligibility evaluation and
12 issue a report of findings. The administrator may grant up to an
13 additional 30 days for performance of the eligibility evaluation upon
14 notification of unusual and extenuating circumstances and the re-
15 habilitation specialist's request. Within 14 days after receipt of
16 the report from the rehabilitation specialist, the administrator shall
17 notify the parties of the employee's eligibility for reemployment
18 preparation benefits. Within 10 days after the decision, either party
19 may seek review of the decision by requesting a hearing under AS 23.-
20 30.110. The hearing shall be held within 30 days after it is re-
21 quested. The board shall uphold the decision of the administrator
22 except for abuse of discretion on the administrator's part.

23 (e) An employee shall be eligible for benefits under this sec-
24 tion upon the employee's written request and by having a physician
25 predict that the employee will have permanent physical capacities that
26 are less than the physical demands of the employee's job as described
27 in the United States Department of Labor's "Selected Characteristics
28 of Occupations Defined in the Dictionary of Occupational Titles" for

29 (1) the employee's job at the time of injury; or

1 (2) other jobs that exist in the labor market that the
2 employee has held or received training for within 10 years before the
3 injury or that the employee has held following the injury for a period
4 long enough to obtain the skills to compete in the labor market,
5 according to specific vocational preparation codes as described in the
6 United States Department of Labor's "Selected Characteristics of Occu-
7 pations Defined in the Dictionary of Occupational Titles."

8 (f) An employee is not eligible for reemployment benefits if

9 (1) the employer offers employment within the employee's
10 predicted post-injury physical capacities at a wage equivalent to at
11 least the state minimum wage under AS 23.10.065 or 75 percent of the
12 worker's gross hourly wages at the time of injury, whichever is great-
13 er, and the employment prepares the employee to be employable in other
14 jobs that exist in the labor market;

15 (2) the employee has been previously rehabilitated in a
16 former workers' compensation claim and returned to work in the same or
17 similar occupation in terms of physical demands required of the em-
18 ployee at the time of the previous injury; or

19 (3) at the time of medical stability no permanent impair-
20 ment is identified or expected.

21 (g) Within 10 days after the employee receives the adminis-
22 trator's notification of eligibility for benefits, an employee who
23 desires to use these benefits shall give written notice to the em-
24 ployer of the employee's selection of a rehabilitation specialist who
25 shall provide a complete reemployment benefits plan. If the employer
26 disagrees with the employee's choice of rehabilitation specialist to
27 develop the plan and the disagreement cannot be resolved, then the
28 administrator shall assign a rehabilitation specialist. The employer
29 and employee each have one right of refusal of a rehabilitation

1 specialist.

2 (h) Within 90 days after the rehabilitation specialist's selec-
3 tion under (g) of this section, the reemployment plan must be formu-
4 lated and approved. The reemployment plan must include at least the
5 following:

6 (1) a determination of the occupational goal in the labor
7 market;

8 (2) an inventory of the employee's technical skills, phys-
9 ical and intellectual capacities, academic achievement, emotional
10 condition and family support;

11 (3) a plan to acquire the occupational skills to be employ-
12 able;

13 (4) the cost estimate of the reemployment plan, including
14 provider fees; the amount of tuition, books, tools, and supplies;
15 transportation; temporary lodging; or job modification devices;

16 (5) the estimated length of time that the plan will take;

17 (6) the date the plan will commence;

18 (7) the estimated time of medical stability as predicted by
19 the physician;

20 (8) a detailed description and plan schedule; and

21 (9) a finding by the rehabilitation specialist that the
22 inventory under (2) of this subsection indicates that the employee can
23 be reasonably expected to satisfactorily complete the plan and perform
24 in a new occupation within the time and cost limitations of the plan.

25 (i) Reemployment benefits shall be selected from the following
26 in a manner that ensures remunerative employability in the shortest
27 possible time:

28 (1) on the job training;

29 (2) vocational training;

1 (3) academic training;

2 (4) self-employment; or

3 (5) a combination of (1) - (4) of this subsection.

4 (j) The employee, rehabilitation specialist, and the employer
5 shall sign the reemployment benefits plan. If the employer and em-
6 ployee fail to agree on a reemployment plan, either party may submit a
7 reemployment plan for approval to the administrator; the adminis-
8 trator shall approve or deny a plan within 14 days after the plan is
9 submitted; within 10 days of the decision, either party may seek
10 review of the decision by requesting a hearing under AS 23.30.110; the
11 board shall uphold the decision of the administrator unless evidence
12 is submitted supporting an allegation of abuse of discretion on the
13 part of the administrator; the board shall render a decision within 30
14 days after completion of the hearing.

15 (k) Benefits related to the reemployment plan may not extend
16 past two years from date of plan approval or acceptance, whichever
17 date occurs first, at which time the benefits expire. If an employee
18 reaches medical stability before completion of the plan, temporary
19 total disability benefits shall cease and permanent impairment bene-
20 fits shall then be paid at the employee's temporary total disability
21 rate. If the employee's permanent impairment benefits are exhausted
22 before the completion or termination of the reemployment plan, the
23 employer shall provide wages equal to 60 percent of the employee's
24 spendable weekly wages but not to exceed \$525, until the completion or
25 termination of the plan. A permanent impairment benefit remaining
26 unpaid upon the completion or termination of the plan shall be paid to
27 the employee in a single lump sum. The fees of the r .bilitation
28 specialist or rehabilitation professional shall be paid by the em-
29 ployer and may not be included in determining the cost of the

1 reemployment plan.

2 (l) The cost of the reemployment plan incurred under this sec-
3 tion shall be the responsibility of the employer, shall be paid on an
4 expense incurred basis, and may not exceed \$10,000.

5 (m) Only a rehabilitation specialist may accept case assignments
6 as a case manager and sign eligibility determinations and reemployment
7 plans. A person who is not a rehabilitation specialist may perform
8 rehabilitation casework if the work is performed under the direct
9 supervision of a rehabilitation specialist employed in the same firm
10 and location.

11 (n) After the employee has elected to participate in reemploy-
12 ment benefits, if the employer believes the employee has not coop-
13 erated the employer may terminate reemployment benefits on the date of
14 noncooperation. Noncooperation means unreasonable failure to

15 (1) keep appointments;

16 (2) maintain passing grades;

17 (3) attend designated programs;

18 (4) maintain contact with the rehabilitation specialist;

19 (5) cooperate with the rehabilitation specialist in devel-
20 oping a reemployment plan and participating in activities relating to
21 reemployability on a full-time basis;

22 (6) comply with the employee's responsibilities outlined in
23 the reemployment plan; or

24 (7) participate in any planned reemployment activity as
25 determined by the administrator.

26 (o) Upon the request of either party, the administrator shall
27 decide whether the employee has not cooperated as provided under (n)
28 of this section. A hearing before the administrator shall be held
29 within 30 days after it is requested. The administrator shall issue a

1 decision within 14 day' after the hearing. Within 10 days after the
2 administrator files the decision, either party may seek review of the
3 decision by requesting a hearing under AS 23.30.110; the board shall
4 uphold the decision of the administrator unless evidence is submitted
5 supporting an allegation of abuse of discretion on the part of the
6 administrator; the board shall render a decision within 30 days after
7 completion of the hearing.

8 (p) In this section

9 (1) "administrator" means the reemployment benefits admin-
10 istrator under AS 23.30.041(a);

11 (2) "employability" means possessing the ability but not
12 necessarily the opportunity to engage in employment that is consistent
13 with the employee's physical status imposed by the compensable injury;

14 (3) "labor market" means a geographical area that offers
15 employment opportunities in the following priority:

16 (A) area of residence;

17 (B) area of last employment;

18 (C) the state;

19 (D) other states;

20 (4) "physical capacities" means objective and measurable
21 physical traits such as ability to lift and carry, walk, stand or sit,
22 push, pull, climb, balance, stoop, kneel, crouch, crawl, reach, han-
23 dle, finger, feel, talk, hear or see;

24 (5) "physical demands" means the physical requirements of
25 the job such as strength, including positions such as standing, walk-
26 ing, sitting, and movement of objects such as lifting, carrying,
27 pushing, pulling, climbing, balancing, stooping, kneeling, crouching,
28 crawling, reaching, handling, fingering, feeling, talking, hearing, or
29 seeing;

1 (6) "rehabilitation specialist" means a person who is a
2 certified insurance rehabilitation specialist, a certified rehabilita-
3 tion counselor, or a person who has equivalent or better qualifica-
4 tions as determined under regulations adopted by the department;

5 (7) "remunerative employability" means having the skills
6 that allow a worker to be compensated with wages or other earnings
7 equivalent to at least 60 percent of the worker's gross hourly wages
8 at the time of injury; if the employment is outside the state, the
9 stated 60 percent shall be adjusted to account for the difference
10 between the applicable state average weekly wage and the Alaska aver-
11 age weekly wage.

12 * Sec. 11. AS 23.30.055 is amended to read:

13 Sec. 23.30.055. EXCLUSIVENESS OF LIABILITY. The liability of an
14 employer prescribed in AS 23.30.045 is exclusive and in place of all
15 other liability of the employer and any fellow employee to the em-
16 ployee, the employee's legal representative, husband or wife, parents,
17 dependents, next of kin, and anyone otherwise entitled to recover
18 damages from the employer or fellow employee at law or in admiralty on
19 account of the injury or death. The liability of the employer is
20 exclusive even if the employee's claim is barred under AS 23.30.-
21 020(b). However, if an employer fails to secure payment of compen-
22 sation as required by this chapter, an injured employee or the em-
23 ployee's legal representative in case death results from the injury
24 may elect to claim compensation under this chapter, or to maintain an
25 action against the employer at law or in admiralty for damages on
26 account of the injury or death. In that action the defendant may not
27 plead as a defense that the injury was caused by the negligence of a
28 fellow servant, or that the employee assumed the risk of the employ-
29 ment, or that the injury was due to the contributory negligence of the

1 employee.

2 * Sec. 12. AS 23.30.075(b) is amended to read:

3 (b) If an [AN] employer [WHO] fails to insure and keep insured
4 employees subject to this chapter or fails to obtain a certificate of
5 self-insurance from the board, upon conviction the court shall impose
6 a fine of \$10,000 and may impose a sentence of [, IS PUNISHABLE BY A
7 FINE OF NOT MORE THAN \$1,000, OR BY] imprisonment for not more than
8 one year [, OR BY BOTH]. If an employer is a corporation, all persons
9 who, at the time of the injury or death, had authority to insure the
10 [SAID] corporation or apply for a certificate of self-insurance, and
11 the person actively in charge of the business of the [SUCH] corpo-
12 ration shall be subject to the penalties prescribed in this subsection
13 [HEREIN] and shall be personally, jointly, and severally liable to-
14 gether with the corporation for the payment of all compensation or
15 other benefits for which the corporation is liable under this chapter
16 if the [SAID] corporation at that [SUCH] time is not insured or quali-
17 fied as a self-insurer.

18 * Sec. 13. AS 23.30.095(a) is amended to read:

19 (a) The employer shall furnish medical, surgical, and other
20 attendants or treatment, nurse and hospital service, medicine, crutch-
21 es, and apparatus for the period which the nature of the injury or the
22 process of recovery requires, not exceeding two years from and after
23 the date of injury to the employee. However, if the condition requir-
24 ing the treatment, apparatus, or medicine is a latent one, the two-
25 year period runs from the time the employee has knowledge of the
26 nature of the employee's disability and its relationship to the em-
27 ployment and after disablement. It shall be additionally provided
28 that, if continued treatment or care or both beyond the two-year
29 period is indicated, the injured employee has the right of review by

1 the board. The board may authorize continued treatment or care or
2 both as the process of recovery may require. When medical care is
3 required, the injured employee may designate a licensed physician to
4 provide all medical and related benefits. The employee may not make
5 more than one change in the employee's choice of attending physician
6 without the written consent of the employer. Referral to a specialist
7 by the employee's attending physician is not considered a change in
8 physicians [INSIDE THE STATE TO RENDER THE CARE EXCEPT IN CASES WHERE,
9 IN THE JUDGMENT OF THE BOARD, CARE OR TREATMENT OR BOTH CAN BEST BE
10 ADMINISTERED BY THE SELECTION OF ANOTHER PHYSICIAN]. Upon procuring
11 the services of a physician, the injured employee shall give proper
12 notification of the selection to the employer within a reasonable time
13 after first being treated. Notice of a change in the attending physi-
14 cian shall be given before the change [IF FOR ANY REASON DURING THE
15 PERIOD WHEN MEDICAL CARE IS REQUIRED THE EMPLOYEE WISHES TO CHANGE TO
16 ANOTHER PHYSICIAN, THE EMPLOYEE MAY DO SO IN ACCORDANCE WITH REGU-
17 LATIONS ADOPTED BY THE BOARD].

18 * Sec. 14. AS 23.30.095(c) is amended to read:

19 (c) A claim for medical or surgical treatment, or treatment
20 requiring continuing and multiple treatments of a similar nature is
21 not valid and enforceable against the employer unless, within 14 days
22 following treatment, the physician or health care provider giving the
23 treatment or the employee receiving it furnishes to the employer and
24 the board notice of the injury and treatment, preferably on a form
25 prescribed by the board. The board shall, however, excuse the failure
26 to furnish notice within 14 days when it finds it to be in the inter-
27 est of justice to do so, and it may, upon application by a party in
28 interest, make an award for the reasonable value of the medical or
29 surgical treatment so obtained by the employee. When a claim is made

1 for a course of treatment requiring continuing and multiple treatments
2 of a similar nature, in addition to the notice, the physician or
3 health care provider shall furnish a written treatment plan if the
4 course of treatment will require more frequent outpatient visits than
5 the standard treatment frequency for the nature and degree of the
6 injury and the type of treatments. The treatment plan shall be furn-
7 ished to the employee and the employer within 14 days after treatment
8 begins. The treatment plan must include objectives, modalities,
9 frequency of treatments, and reasons for the frequency of treatments.
10 If the treatment plan is not furnished as required under this subsec-
11 tion, neither the employer nor the employee may be required to pay for
12 treatments that exceed the frequency standard. The board shall adopt
13 regulations establishing standards for frequency of treatment.

14 * Sec. 15. AS 23.30.095(e) is amended to read:

15 (e) The employee shall, after an injury, at reasonable times
16 during the continuance of the disability, if requested by the employer
17 or when ordered by the board, submit to an examination by a physician
18 or surgeon of the employer's choice authorized to practice medicine
19 under the laws of the jurisdiction in which the physician resides
20 [STATE IN WHICH THE EMPLOYEE MAY BE FOUND], furnished and paid for by
21 the employer. The employer may not make more than one change in the
22 employer's choice of a physician or surgeon without the written con-
23 sent of the employee. Referral to a specialist by the employer's
24 physician is not considered a change in physicians. An examination
25 requested by the employer not less than 14 days after injury, and
26 every 60 days thereafter, shall be presumed to be reasonable, and the
27 employee shall submit to the examination without further request or
28 order by the board. Unless medically appropriate, the physician shall
29 use existing diagnostic data to complete the examination. Facts

1 relative to the injury or claim communicated to or otherwise learned
2 by a physician or surgeon who may have attended or examined the em-
3 ployee, or who may have been present at an examination are not priv-
4 ileged, either in the hearings provided for in this chapter or an
5 action to recover damages against an employer who is subject to the
6 compensation provisions of this chapter. If an employee refuses to
7 submit to an [ANY] examination provided for in this section, the
8 employee's rights to compensation sha ' be suspended until the ob-
9 struction or refusal ceases, and the employee's compensation during
10 the period of suspension may, in the discretion of the board or the
11 court determining an action brought for the recovery of damages under
12 this chapter, be forfeited. The board in any case of death may re-
13 quire an autopsy at the expense of the party requesting the autopsy.
14 An autopsy may not be held without notice first being given to the
15 widow or widower or next of kin if they reside in the state or their
16 whereabouts can be reasonably ascertained, of the time and place of
17 the autopsy and reasonable time and opportunity given the widow or
18 widower or next of kin to have a representative present to witness the
19 autopsy. If adequate notice is not given, the findings from the
20 autopsy may be suppressed on motion made to the board or to the supe-
21 rior court, as the case may be.

22 * Sec. 16. AS 23.30.095(f) is amended to read:

23 (f) All fees and other charges for medical treatment or service
24 [ARE LIMITED TO THE CHARGES THAT PREVAIL IN THE SAME COMMUNITY FOR
25 SIMILAR TREATMENT OF INJURED PERSONS OF LIKE STANDARD OF LIVING AND]
26 shall be subject to regulation by the board but may not exceed usual,
27 customary, and reasonable fees for the treatment or service in the
28 community in which it is rendered, as determined by the board. An
29 employee may not be required to pay a fee or charge for medical

1 treatment or service.

2 * Sec. 17. AS 23.30.095(j) is repealed and reenacted to read:

3 (j) The board may appoint a medical services review committee,
4 or contract with an existing organization in the state or another
5 state, to assist and advise the board in matters involving the appro-
6 priateness, necessity, and cost of medical and related services pro-
7 vided under this chapter.

8 * Sec. 18. AS 23.30.095 is amended by adding a new subsection to read:

9 (k) In the event of a medical dispute regarding determinations
10 of causation, medical stability, ability to enter a reemployment plan,
11 degree of impairment, functional capacity, the amount and efficacy of
12 the continuance of or necessity of treatment, or compensability be-
13 tween the employee's attending physician and the employer's indepen-
14 dent medical evaluation, a second independent medical evaluation shall
15 be conducted by a physician or physicians selected by the board from a
16 list established and maintained by the board. The cost of the exami-
17 nation and medical report shall be paid by the employer. The report
18 of the independent medical examiner shall be furnished to the board
19 and to the parties within 14 days after the examination is concluded.
20 A person may not seek damages from an independent medical examiner
21 caused by the rendering of an opinion or providing testimony under
22 this subsection, except in the event of fraud or gross incompetence.

23 * Sec. 19. AS 23.30.105(a) is amended to read:

24 (a) The right to compensation for disability under this chapter
25 is barred unless a claim for it is filed within two years after the
26 employee has knowledge of the nature of the employee's disability and
27 its relation to the employment and after disablement. However, the
28 maximum time for filing the claim in any event other than arising out
29 of an occupational disease shall be four years from the date of

1 injury, and the right to compensation for death is barred unless a
2 claim therefor is filed within one year after the death, except that
3 if payment of compensation has been made without an award on account
4 of the injury or death, a claim may be filed within two years after
5 the date of the last payment of benefits under AS 23.30.180, 23.30.-
6 185, 23.30.190, 23.30.200, or 23.30.215. It is additionally provided
7 that, in the case of latent defects pertinent to and causing com-
8 pensable disability, the injured employee has full right to claim as
9 shall be determined by the board, time limitations notwithstanding.

10 * Sec. 20. AS 23.30.110(c) is repealed and reenacted to read:

11 (c) Before a hearing is scheduled, the party seeking a hearing
12 shall file a request for a hearing together with an affidavit stating
13 that the party has completed necessary discovery, obtained necessary
14 evidence, and is prepared for the hearing. An opposing party shall
15 have 10 days after the hearing request is filed to file a response.
16 If a party opposes the hearing request, the board or a board designee
17 shall within 30 days of the filing of the opposition conduct a pre-
18 hearing conference and set a hearing date. If opposition is not
19 filed, a hearing shall be scheduled no later than 60 days after the
20 receipt of the hearing request. The board shall give each party at
21 least 10 days' notice of the hearing, either personally or by cer-
22 tified mail. After a hearing has been scheduled, the parties may not
23 stipulate to change the hearing date or to cancel, postpone, or con-
24 tinue the hearing, except for good cause as determined by the board.
25 After completion of the hearing the board shall close the hearing
26 record. If a settlement agreement is reached by the parties less than
27 14 days before the hearing, the parties shall appear at the time of
28 the scheduled hearing to state the terms of the settlement agreement.
29 Within 30 days after the hearing record closes, the board shall file

1 its decision. If the employer controverts a claim on a board-pre-
2 scribed controversion notice and the employee does not request a
3 hearing within two years following the filing of the controversion
4 notice, the claim is denied.

5 * Sec. 21. AS 23.30.120 is amended by adding a new subsection to read:

6 (c) The presumption of compensability established in (a) of this
7 section does not apply to a mental injury resulting from work-related
8 stress.

9 * Sec. 22. AS 23.30.125 is amended by adding a new subsection to read:

10 (f) Subject to an employer's or employee's burden of proof, a
11 finding of fact made by the board as a part of a compensation order is
12 conclusive unless the court specifically finds that a reasonable
13 person could not have reached the conclusion made by the board.

14 * Sec. 23. AS 23.30.130(a) is amended to read:

15 (a) Upon its own initiative, or upon the application of any
16 party in interest on the ground of a change in conditions, including,
17 for the purposes of AS 23.30.175, a change in residence, or because of
18 a mistake in its determination of a fact, the board may, before one
19 year after the date of the last payment of compensation benefits under
20 AS 23.30.180, 23.30.185, 23.30.190, 23.30.200, or 23.30.215, whether
21 or not a compensation order has been issued, or before one year after
22 the rejection of a claim, review a compensation case under [IN ACCOR-
23 DANCE WITH] the procedure prescribed in respect of claims in AS 23.-
24 30.110. Under [IN ACCORDANCE WITH] AS 23.30.110 the board may issue a
25 new compensation order which terminates, continues, reinstates, in-
26 creases, or decreases the compensation, or award compensation.

27 * Sec. 24. AS 23.30.155(c) is amended to read:

28 (c) The insurer or adjuster [EMPLOYER] shall notify the board
29 and the employee on a form prescribed by the board that the payment of

1 compensation has begun or has been increased, decreased, suspended,
2 terminated, resumed, or changed in type. An initial report shall be
3 filed with the board and sent to the employee within 28 days after the
4 date of issuing the first payment of compensation. If at any time 21
5 days or more pass and no compensation payment is issued, a report
6 notifying the board and the employee of the termination or suspension
7 of compensation shall be filed with the board and sent to the employee
8 within 28 days after the date the last compensation payment was is-
9 sued. A report shall also be filed with the board and sent to the
10 employee within 28 days after the date of issuing a payment increas-
11 ing, decreasing, resuming, or changing the type of compensation paid.
12 If the [EMPLOYER FAILS TO NOTIFY THE] board and the employee are not
13 notified within the 28 days prescribed by this subsection for report-
14 ing, the insurer or adjuster [EMPLOYER] shall pay a civil penalty of
15 \$100 for the first day plus \$10 for each day thereafter that the
16 [EMPLOYER FAILED TO GIVE] notice was not given. Total penalties under
17 this subsection [SECTION] may not exceed \$1,000 for a failure to file
18 a required report. Penalties assessed under this subsection are
19 eligible for reduction under (m) of this section. A penalty assessed
20 under this subsection after penalties have been reduced under (m) of
21 this section shall be increased by 25 percent and shall bear interest
22 at the rate established under AS 45.45.010.

23 * Sec. 25. AS 23.30.155(d) is amended to read:

24 (d) If the employer controverts the right to compensation the
25 employer shall file with the board and send to the employee a notice
26 of controversion on or before the 21st day after the employer has
27 knowledge of the alleged injury or death. If the employer controverts
28 the right to compensation after payments have begun, the employer
29 shall file with the board and send to the employee a notice of

1 controversy within seven days after an installment of compensation
2 payable without an award is due. When payment of temporary disability
3 benefits is controverted solely on the grounds that another employer
4 or another insurer of the same employer may be responsible for all or
5 a portion of the benefits, the most recent employer or insurer who is
6 party to the claim and who may be liable shall make the payments
7 during the pendency of the dispute. When a final determination of
8 liability is made, any reimbursement required, including interest at
9 the statutory rate, and all costs and attorneys' fees incurred by the
10 prevailing employer, shall be made within 14 days of the determina-
11 tion.

12 * Sec. 26. AS 23.30.155(e) is amended to read:

13 (e) If any installment of compensation payable without an award
14 is not paid within seven days after it becomes due, as provided in (b)
15 of this section, there shall be added to the unpaid installment an
16 amount equal to 25 [20] percent of it or \$100, whichever amount is
17 greater. This additional amount shall be paid at the same time as,
18 and in addition to, the installment, unless notice is filed under (d)
19 of this section or unless the nonpayment is excused by the board after
20 a showing by the employer that owing to conditions over which the
21 employer had no control the installment could not be paid within the
22 period prescribed for the payment.

23 * Sec. 27. AS 23.30.155(f) is amended to read:

24 (f) If compensation payable under the terms of an award is not
25 paid within 14 days after it becomes due, there shall be added to that
26 unpaid compensation an amount equal to 25 [20] percent of it or \$100,
27 whichever is greater, which shall be paid at the same time as, but in
28 addition to, the compensation, unless review of the compensation order
29 making the award is had as provided in AS 23.30.125 and an interlocu-

1 tory injunction staying payments is allowed by the court.

2 * Sec. 28. AS 23.30.155(m) is repealed and reenacted to read:

3 (m) On or before March 1 of each year the insurer or adjuster
4 shall file a verified annual report on a form prescribed by the board
5 stating the total amount of all compensation by type, the number of
6 claims received and the percentage controverted, medical, and related
7 benefits, vocational rehabilitation expenses, legal fees, including a
8 separate total for fees paid to attorneys and fees paid for the other
9 costs of litigation, and penalties paid on all claims during the
10 preceding calendar year. If the annual report is timely and complete
11 when received by the board and provides accurate information about
12 each category of payments, the commissioner shall review the timeli-
13 ness of the insurer's or adjuster's reports filed during the preceding
14 year under (c) of this section. If during the preceding year the
15 insurer or adjuster filed at least 99 percent of the reports on time,
16 the penalties assessed under (c) of this section shall be waived. If
17 during the preceding year the insurer or adjuster filed at least 97
18 percent of the reports on time, 75 percent of the penalties assessed
19 under (c) of this section shall be waived. If during the preceding
20 year the insurer or adjuster filed 95 percent of the reports on time,
21 50 percent of the penalties assessed under (c) of this section shall
22 be waived. If during the preceding year the insurer's or adjuster's
23 reports have not been filed on time at least 95 percent of the time,
24 none of the penalties assessed under (c) of this section shall be
25 waived. The penalties that are not waived are due and payable when
26 the insurer or adjuster receives notification from the commissioner
27 regarding the timeliness of the reports. If the annual report is not
28 filed by March 1 of each year, the insurer or adjuster shall pay a
29 civil penalty of \$100 for the first day the annual report is late, and

1 \$10 for each additional day the report is late. If the annual report
2 is incomplete when filed, the insurer or adjuster shall pay a civil
3 penalty of \$1,000.

4 * Sec. 29. AS 23.30.155 is amended by adding new subsections to read:

5 (n) If the employer is self-insured or uninsured, the require-
6 ments of (c) and (m) of this section apply to the employer.

7 (o) The board shall promptly notify the division of insurance if
8 the board determines that the employer's insurer has frivolously or
9 unfairly controverted compensation due under this chapter. After
10 receiving notice from the board, the division of insurance shall
11 determine if the insurer has committed an unfair claim settlement
12 practice under AS 21.36.125.

13 (p) When an employer pays compensation due under this chapter to
14 an employee residing in this state, the payment must be made by check
15 or other negotiable instrument drawn on funds deposited in this state.

16 * Sec. 30. AS 23.30.175 is repealed and reenacted to read:

17 Sec. 23.30.175. RATES OF COMPENSATION. (a) The weekly rate of
18 compensation for disability or death may not exceed \$700 and initially
19 may not be less than \$110. However, if the board determines that the
20 employee's spendable weekly wages are less than \$110 a week as com-
21 puted under AS 23.30.220, or less than \$154 a week in the case of an
22 employee who has furnished documentary proof of the employee's wages,
23 it shall issue an order adjusting the weekly rate of compensation to a
24 rate equal to the employee's spendable weekly wages. If the employer
25 can verify that the employee's spendable weekly wages are less than
26 \$154, the employer may adjust the weekly rate of compensation to a
27 rate equal to the employee's spendable weekly wages without an order
28 of the board. If the employee's spendable weekly wages are greater
29 than \$154, but 80 percent of the employee's spendable weekly wages is

1 less than \$154, the employee's weekly rate of compensation shall be
2 \$154. Prior payments made in excess of the adjusted rate shall be
3 deducted from the unpaid compensation in the manner the board deter-
4 mines. In any case, the employer shall pay timely compensation.

5 (b) The following rules apply to benefits payable to recipients
6 not residing in the state at the time compensation benefits are pay-
7 able:

8 (1) the weekly rate of compensation shall be calculated by
9 multiplying the recipient's weekly compensation rate calculated under
10 AS 23.30.180, 23.30.185, 23.30.190, 23.30.200, or 23.30.215, by the
11 ratio of the cost of living of the area in which the recipient resides
12 to the cost of living in this state;

13 (2) the calculation required by (1) of this subsection does
14 not apply if the recipient is absent from the state for medical or re-
15 habilitation services not reasonably available in the state;

16 (3) if the gross weekly earnings of the recipient and the
17 resulting compensation rate is determined under AS 23.30.220(a)(2),
18 the calculation required by this subsection applies only to the por-
19 tion of the recipient's weekly compensation rate attributable to wages
20 earned in the state;

21 (4) application of this subsection may not reduce the
22 weekly compensation rate to less than \$154 a week, except as provided
23 in (a) of this section.

24 (c) The board shall provide by regulation for the determination
25 and comparison of living costs for this state and the other areas in
26 which recipients reside and for the annual redetermination and com-
27 parison of these costs.

28 * Sec. 31. AS 23.30.180 is amended to read:

29 Sec. 23.30.180. PERMANENT TOTAL DISABILITY. In case of total

1 disability adjudged to be permanent 80 percent of the injured em-
2 ployee's spendable weekly wages shall be paid to the employee during
3 the continuance of the total disability. If a permanent partial
4 disability award has been made before a permanent total disability
5 determination, permanent total disability benefits must be reduced by
6 the amount of the permanent partial disability award, adjusted for
7 inflation, in a manner determined by the board. Loss of both hands,
8 or both arms, or both feet, or both legs, or both eyes, or of any two
9 of them, in the absence of conclusive proof to the contrary, consti-
10 tutes permanent total disability. In all other cases permanent total
11 disability is determined in accordance with the facts. In making this
12 determination the market for the employee's services shall be

13 (1) area of residence;

14 (2) area of last employment;

15 (3) the state of residence; and

16 (4) the State of Alaska.

17 * Sec. 32. AS 23.30.180 is amended by adding a new subsection to read:

18 (b) Failure to achieve remunerative employability as defined in
19 AS 23.30.041(p) does not, by itself, constitute permanent total dis-
20 ability.

21 * Sec. 33. AS 23.30.185 is amended to read:

22 Sec. 23.30.185. COMPENSATION FOR TEMPORARY TOTAL DISABILITY. In
23 case of disability total in character but temporary in quality, 80
24 percent of the injured employee's spendable weekly wages shall be paid
25 to the employee during the continuance of the disability. Temporary
26 total disability benefits may not be paid for any period of disability
27 occurring after the date of medical stability.

28 * Sec. 34. AS 23.30.190 is repealed and reenacted to read:

29 Sec. 23.30.190. COMPENSATION FOR PERMANENT PARTIAL IMPAIRMENT.

1 (a) In case of impairment partial in character but permanent in
2 quality, and not resulting in permanent total disability, the compen-
3 sation is \$135,000 multiplied by the employee's percentage of perma-
4 nent impairment of the whole person. The percentage of permanent
5 impairment of the whole person is the percentage of impairment to the
6 particular body part, system, or function converted to the percentage
7 of impairment to the whole person as provided under (b) of this sec-
8 tion. The compensation is payable in a single lump sum, except as
9 otherwise provided in AS 23.30.041, but the compensation may not be
10 discounted for any present value considerations.

11 (b) All determinations of the existence and degree of permanent
12 impairment shall be made strictly and solely under the whole person
13 determination as set out in the American Medical Association Guides to
14 the Evaluation of Permanent Impairment, except that an impairment
15 rating may not be rounded to the next five percent. The board shall
16 adopt a supplementary recognized schedule for injuries that cannot be
17 rated by use of the American Medical Association Guides.

18 (c) The impairment rating determined under (a) of this section
19 shall be reduced by a permanent impairment that existed before the
20 compensable injury. If the combination of a prior impairment rating
21 and a rating under (a) of this section would result in the employee
22 being considered permanently totally disabled, the prior rating does
23 not negate a finding of permanent total disability.

24 * Sec. 35. AS 23.30.200 is amended to read:

25 Sec. 23.30.200. TEMPORARY PARTIAL DISABILITY. In case of tempo-
26 rary partial disability resulting in decrease of earning capacity the
27 compensation shall be 80 percent of the difference between the injured
28 employee's spendable weekly wages before the injury and the wage-
29 earning capacity of the employee after the injury in the same or

1 another employment, to be paid during the continuance of the disabili-
2 ty, but not to be paid for more than five years. Temporary partial
3 disability benefits may not be paid for a period of disability occur-
4 ring after the date of medical stability.

5 * Sec. 36. AS 23.30.200 is amended by adding a new subsection to read:

6 (b) The wage-earning capacity of an injured employee is deter-
7 mined by the actual spendable weekly wage of the employee if the
8 actual spendable weekly wage fairly and reasonably represents the
9 wage-earning capacity of the employee. The board may, in the interest
10 of justice, fix the wage-earning capacity that is reasonable, having
11 due regard to the nature of the injury, the degree of physical impair-
12 ment, the usual employment, and other factors or circumstances in the
13 case that may affect the capacity of the employee to earn wages in a
14 disabled condition, including the effect of disability as it may
15 naturally extend into the future.

16 * Sec. 37. AS 23.30.220(a) is amended to read:

17 (a) The spendable weekly wage of an injured employee at the time
18 of an injury is the basis for computing compensation. It is the
19 employee's gross weekly earnings minus payroll tax deductions. The
20 gross weekly earnings shall be calculated as follows:

21 (1) The gross weekly earnings are computed by dividing by
22 100 the gross earnings of the employee in the two calendar years
23 immediately preceding the injury.

24 (2) If the employee was absent from the labor market for 18
25 months or more of the two calendar years preceding the injury [THE
26 BOARD DETERMINES THAT THE GROSS WEEKLY EARNINGS AT THE TIME OF THE
27 INJURY CANNOT BE FAIRLY CALCULATED UNDER (1) OF THIS SUBSECTION], the
28 board shall [MAY] determine the employee's gross weekly earnings for
29 calculating compensation by considering the nature of the employee's

1 work and work history, but compensation may not exceed the employee's
2 projected gross weekly earnings at the time of injury.

3 (3) If an employee when injured is a minor, an apprentice,
4 or a trainee in a formal training program, as determined by the board,
5 whose wages under normal conditions would increase during the period
6 of disability, the projected increase may be considered by the board
7 in computing the gross weekly earnings of the employee.

8 (4) If the employee is injured while performing duties as a
9 volunteer ambulance attendant, policeman, or fireman, the gross weekly
10 earnings for calculating compensation shall be the minimum gross
11 weekly earnings paid a full-time ambulance attendant, policeman, or
12 fireman employed in the political subdivision where the injury oc-
13 curred, or, if the political subdivision has no full-time ambulance
14 attendants, policemen, or firemen, at a reasonable figure previously
15 set by the political subdivision to make this determination but in no
16 case may the gross weekly earnings for calculating compensation be
17 less than the minimum wage computed on the basis of 40 hours work per
18 week.

19 * Sec. 38. AS 23.30.225 is amended by adding a new subsection to read:

20 (c) If employer contributions to a qualified pension or profit
21 sharing plan have been included in the determination of gross earnings
22 and the employee is receiving pension or profit sharing payments,
23 weekly compensation benefits payable under this chapter shall be
24 reduced by the amount paid or payable to the injured worker under the
25 plan for any week or weeks during which compensation benefits are also
26 payable. The amount of the reduction may not in any week exceed the
27 increase in weekly compensation benefits brought about by the inclu-
28 sion of employer contributions to a qualified pension or profit shar-
29 ing plan in the determination of gross earnings.

1 * Sec. 39. AS 23.30.244 is amended to read:

2 Sec. 23.30.244. CIVIL DEFENSE AND DISASTER RELIEF FORCES AS
3 STATE EMPLOYEES. A resident of Alaska temporarily engaged in a civil
4 defense or disaster relief function in another state or country under
5 [THE PROVISION OF] AS 26.23.130 or as a volunteer in this state is
6 considered an employee of the state for purposes of this chapter.

7 * Sec. 40. AS 23.30 is amended by adding a new section to read:

8 Sec. 23.30.247. DISCRIMINATION PROHIBITED. (a) An employer may
9 not discriminate in hiring, promotion, or retention policies or prac-
10 tices against an employee who has in good faith filed a claim for or
11 received benefits under this chapter. An employer who violates this
12 section is liable to the employee for damages to be assessed by the
13 court in a private civil action.

14 (b) This section may not be construed to prevent an employer
15 from basing hiring, promotion, or retention policies or practices on
16 considerations of the employee's safety practices or the employee's
17 physical and mental abilities; nor may this section be construed so as
18 to create employment rights not otherwise in existence.

19 (c) This section may not be construed to prohibit an employer
20 from requiring a prospective employee to fill out a preemployment
21 questionnaire or application regarding the person's prior health or
22 disability history as long as it is meant to either document written
23 notice for second injury fund reimbursement under AS 23.30.205(c) or
24 to determine whether the employee has the physical or mental capacity
25 to meet the documented physical or mental demands of the work.

26 * Sec. 41. AS 23.30.265(15) is amended to read:

27 (15) "gross earnings" means periodic payments, by an em-
28 ployer to an employee for employment before any authorized or lawfully
29 required deduction or withholding of money by the employer, including

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

14 * Sec. 42. AS 23.30.265(17) is amended to read:

15 (17) "injury" means accidental injury or death arising out
16 of and in the course of employment, and an occupational disease or
17 infection which arises naturally out of the employment or which natu-
18 rally or unavoidably results from an accidental injury; "injury" [,
19 AND] includes breakage or damage to eyeglasses, hearing aids, den-
20 tures, or any prosthetic devices which function as part of the body
21 and further includes an injury caused by the wilful act of a third
22 person directed against an employee because of the employment; "in-
23 jury" does not include mental injury caused by mental stress unless it
24 is established that (A) the work stress was extraordinary and unusual
25 in comparison to pressures and tensions experienced by individuals in
26 a comparable work environment, and (B) the work stress was the predom-
27 inant cause of the mental injury; the amount of work stress shall be
28 measured by actual events; a mental injury is not considered to arise
29 out of and in the course of employment if it results from a disciplin-

1 ary action, work evaluation, job transfer, layoff, demotion, termina-
2 tion or similar action, taken in good faith by the employer;

3 * Sec. 43. AS 23.30.265 is amended by adding a new paragraph to read:

4 (34) "medical stability" means the date after which further
5 objectively measurable improvement from the effects of the compensable
6 injury is not reasonably expected to result from additional medical
7 care or treatment, notwithstanding the possible need for additional
8 medical care or the possibility of improvement or deterioration re-
9 sulting from the passage of time; medical stability shall be presumed
10 in the absence of objectively measurable improvement for a period of
11 45 days; this presumption may be rebutted by clear and convincing
12 evidence.

13 * Sec. 44. AS 23.30.210 and 23.30.265(28) are repealed.

14 * Sec. 45. TRANSITIONAL PROVISIONS. Notwithstanding AS 23.30.040(b),
15 as amended by sec. 8 of this Act, and AS 23.30.155(m), as amended by
16 sec. 28 of this Act, on or before March 1, 1989, each employer that is
17 subject to those sections shall file a report and make the appropriate
18 contribution for all claims existing as of December 31, 1988. The period
19 covered in the report shall be from the date of the termination report or
20 the last anniversary report filed, if one has been filed, through
21 December 31, 1988.

22 * Sec. 46. TEMPORARY RATE REDUCTION; FUTURE FILINGS. (a) Notwith-
23 standing AS 21.39.030, an insurer providing workers' compensation insurance
24 in the state shall provide at least a six percent reduction in the premium
25 rate charged within the state for workers' compensation insurance, for the
26 period beginning July 1, 1988, and ending January 1, 1990.

27 (b) Rate filings made after December 31, 1988, must fully reflect the
28 legal effect of changes made to the workers' compensation system by this
29 Act.

1 * Sec. 47. TRANSITIONAL PROVISION. Notwithstanding AS 23.30.041(p), as
2 enacted by sec. 10 of this Act, for the period from July 1, 1988, until
3 June 30, 1989, the term "rehabilitation specialist" as used in AS 23.30.041
4 includes a person who was actively employed for at least one year before
5 June 30, 1988, in providing rehabilitation services to an injured worker
6 receiving benefits under AS 23.30.

7 * Sec. 48. APPLICABILITY. Except for secs. 8, 25, 28, 29, 42, and 46
8 of this Act, this Act applies only to injuries sustained on or after
9 July 1, 1988.

10 * Sec. 49. Section 42 of this Act applies to injuries sustained on or
11 after the effective date of sec. 42 of this Act.

12 * Sec. 50. Sections 42 and 49 of this Act take effect immediately under
13 AS 01.10.070(c).

14 * Sec. 51. Sections 1 - 41, and 43 - 48 of this Act take effect July 1,
15 1988.