

SB

322

file 1

STATE OF ALASKA THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

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May, 1988

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS database CMPR. In order to save space copies of minutes have not been left in the files.

Mary Van Nimwegen

House Judiciary:

4-6-88

4-11-88

4-12-88

4-13-88

4-14-88

4-15-88

4-16-88

4-18-88

4-19-88

4-25-88

4-28-88

Date referred: 3/17/88

FURTHER REFERRALS:

Finance

4/28

DATE: Apr. 28, 1988

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

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

RECOMMENDS:

- replace with HCS CS SB 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 _____
- zero fiscal note same as previous zero fiscal note published _____
- zero with analysis

SIGNING TO PASS:

SIGNING OTHER RECOMMENDATIONS:

Chairman's signature

11/6/88

(1)

SB 722

Bob Anders:

Co chair Labor/Management Task

S Labor

Bob Anders:

S Management

May Pierce:

CSBB 222

Sec 7: Problem w/ how it will work.

Enforcement:

① Urban vs Rural enforcement

② Employees in higher risk areas will be penalized.

Assign risk pool:

- Insurance rip off.

possible

- Rate of surcharge in assigned risk pool

Voc Rehab

Prop J Mandatory
controlled by carriers
employee has little to say what occupation
will be rehabbed in.

Propose:

- voluntary
- employee have choice

TTO paid while in voc rehab.

propose - limit until Medical Stability -

limit to 2 years - ok

Medical Benefits.

- litigation and dispute:

Try to limit abuse of system.
Medical - Ins - lawyer:

Medical,

Chairman Doctor

→ repr for release to work for
for of Malpractices

Propose IME - Independent Medical ~~Examine~~ Examine.

Limit Mal fees to "usual customary fee"

→ IME:

↳ work for Board

⇒ paid by employer

Chosen ~~Dr~~ by from a list of doctors by -

p17 line 14 may to shall

p18 line 4 → eliminate unanimous requirement

p21 line 17

Andrus.

- Benefits for workers.

Reservation of rights pgs 21 line 17 - 29

Payment to by last employer essential

Benefit Package	
Max	1100 → 700
Min	110 → 154

1985 data used -

only 11 over 700 in 1985.

Cost of living adjustment: p24 line 18-22

A.P.D. Whelan ~~Concept~~ Concept =

4/6/88

(5)

D

~~to~~

Spentable Weekly Wage
Unscheduled Injuries.

P29 line 20 $\frac{1}{2}$ \rightarrow projected gross weekly.

P32 Stress:

Summary

Voc Rehn

EMF

PPD

As wage

Unscheduled Injury w/ PPD

4/11/98

Levin Property:

Atty for labor.

Facts of problems in WC.

(1) Whole premium \$ - .50 to worker.

(a) Atty

(b) Medical

(c) Voc Rehab

(d) Ins Company

Premium in AK 157 M per year 1987

Medical to injured worker.

Med cost: UCR - Usual, Customary

Frequency of (baseline):

→ set standards can be exempted

Voc Rehab:

~~Mandatory~~ Voluntary:

Substantive as
6 1/2 rate
decrease

4/11/88

Korn Company:
Voc. Rates:

* See 25, Benefit Payment During Conference

See 5.
p 3 L14

See 38 → Distribution

Benefits:

PP -
included:
scheduled:

Widow's Pension: \$240,000
Current

MAX 1100

MAX 700
154
Papers

SS322

4/1/88

Kenn D.

Pyrogland v _____ ;

Existing Law
only paid for last wagon

Brown v.
COVA →

STRESS:

Doctor Shopping:

Dave Galtstein:

Sec 2, Safety Programs Rebate
want out
Surcharge need Rating.

Delicate Balance
Window of Opportunity
Squaky Clean

4/11/88

IME:

Sec. 18: →

Medical stability.

degree of injury:

P18. L4 →

Mental stress issue → needs to be covered.

PPD

Goal was to break even

More benefit to major injuries

Jackie McClintock's

Medical Care.

4/11/88

Leslie McClintock:

~~Books~~

ATTY Fees:

Approval of ~~B~~ ATY Fees by Bd

- (1) disputed
- (2) settlement

4/13/88

Lester McIntosh

~~PTD~~ PTD → Continued.

TTD & PTD =

TTD →

2 year limit:

Complete loss ann
current 59,000

new \$144,000

Housing:

Cash

Grant = 1485
76 of

Unscheduled =

Voc Rehab

4/13/88.

Migaine Lindes,

~~Voc Rehab~~:

10 years in system:

SB. 322 →

Medical Stability - Issue

Chiropractor Amendment

Bls right to information vs hearing
process.

is appropriate:

4/13/88

File:

Jerry Brinkley

302 Operating Engineers.

L
→

Glenn Rainwater

P5. L 10-14

P8 L 3-8

P9 L 6-7

P9 L 21 - P10 L 2

P26 P3-10; object to 2 year limitation

Erica Mahoney - Injured worker

23.30.041

existing law is not mandatory
does existing law ~~does not~~ establish voluntary

App. Evb - not penalized for switching Voc Rehab.

4/13/88

IME

Dr. Lon Godfrey. Chiropractor.

IME: put to much emphasis on
any IME.

Kathi Brown. IME

"Qualified in field of injury"

Power Post - 73.30.031 (041)

Voc Rehab

↳ not mandatory in existing law.

James Bailey:

① →

② →

4/14/88

John Lewis:

Rate Reduction

Mandated Rates

Maine experience - not relevant to Alaska discussion.

(1) Maine - historically low for years

Instituted a Use Rehab Program
mandated 10% reduction.

Florida:

1979 → 15% mandated rate reduction
did not result in carriers leaving
and voluntary rate reductions continued

4/14/88

John Lewis

→ Why Mandate

→ No employers are asking for it

Freezes - Hawaii

→ use when concern of data base

give time

Ask Timber Trust
why lower rates

Why Decrease

① If results of law will reduce costs - present employers should benefit.

② Using tools to reduce costs
→ Incentive to use the tools if
not done then loose \$

③ Get everybody's attention.

Bill has reasonable opportunity to reduce costs
Procedural changes given broadest impact
even retroactive application.

Best possible

John Lewis

4/1/88

PPD schedule

Fits in the procedural issue

Stress cases

need to make the changes

How does our
language compare
to other states

(justifies mandatory rate reduction)

in several states adopted

Colo, Ma., Ore,

Better no risks ban together

AK, Tim. Just.

time

activity

safety

4/14/88

(A) John Davis

ok for Mandate Reduction
or Freeze
w/ items in Bill.

important:-

Enhancement of data base
of RSD.

Mitch Gravo.

Chiropractor Team

p15 L16-27

- How will this section work

"multiple treatment of continuous nature"

"written treatment plan"

- does it need approval - by whom

- liability

- approval of plan.

p17: I.M.E.;

4/14/88

Warren Dvorack
Ave School Dist.

1979 self insured

cut costs by $\frac{1}{3}$

5000 employees.

880,000 to 1,500,000 in 3 years.

iniquities in law
unnecessary litigation
ambiguities in statute

Mandatory Voc Rehab required
see section 10

where is it
required under
state statute

p18 L3-5

④ Situation:

200,000 -

alleged ~~at~~ job caused stress

Wade v Ave School Dist

93 322

4/14/88

Stress

emotional strain

⊗ Tony Smith: Homer
Carpenter →

Accident prevention

* State fund advocate Sund/Taylor

* Enforce OSHA - by State.
not enforced

Individual worker choice

Charles McKee:

Rate Reduction - temporary:

Elaine Taylor.

4/14/80

779. under 10 employees

Mod. Factor 1.39

Sec 2 of bill:

Good point

* Can't afford to attend the meetings.

Rating committee

CR committee — public employment

Howard Cutler

Risk Manager

Klyster

President

Risk Managers Ass of Nc

(1) I.M.E.:

Chris 118 visits:

860 employees

59,000 costs. losses

self insure

→ self investigate

Dick Cattaroch

Task Force

4/15/88

p10 L 28 [60%] = 75%

p26 L#15 =
(240,000) 135,000

p26 L18 - 29 } Relate
p27 L1 - 24 }

p28 L18

p26 L9 -- two - change to 5 five

We have ~~agreed~~ agreed - It does not increase the costs

Change Craft:

~~two~~
Injured workers?

Disability & impairment

Seriously injured workers

⊕

9/15/88

Disability -

Bill remove compensation based on disability.

Go straight to medical impairment

Impact of legislation →
unknown

Examples

① Loss of eye
SES 322 32,000

Transition of TTD - TPD on medical stability.
→ get there fast

② ~~48~~ 47% - loss of leg

③ Existing Law See p28 L 6-7

§ 32322

4/15/89

draft

Delay: ~~in~~ in decisions.

Sec. 20 of bill → Re. Delet sec 20

Effect:

→ kill all hearings.

→ put cost of depts on TI

→ not preclude from

Stress: Claims.

See 40 p31

Eliminate claims of workers in stressful jobs.

7654 - 7655-

Prof Larson

Stress →

Labor members of Task force did they

SB 322

4/15/88

4/18/88: → Wall St Journal

Stress example:

Use job safety training to reduce
claims.

~~to~~ Raymond Decision

Bill does not include all fringe
benefits

Pension issues:

Sec. 37 - - Sec. 38 -

+

Problem

Craft:

4/15/88

Doctor change issues

increase petition to board.

Sec. 10

Sec. 25 good

Rehab

Voluntary → vs. mandatory.

Restore people to a functional status rather than just pay money.

Should you have Medical Stability before use Rehab referral

Medical:

All treatment should be considered.
20 treatment in 60 days use a \$ amount instead of arbitrary visitation.

4/15/97

Craft
Compensation Ret
Sec 28 p 23

175 as relates to 220 (a)

are they read together or
separately
is 175 an exception.

Social policy
low income workers get adjustment
middle - high income can't get

4/15/88

⑧ Stalby Davidson

Depose Atty → from Area

Support SB 322

Voc Rehab:

TTD → end at Medical Stability:

PPD → TTD - Rehab

PPD → Totally scheduled

Trn E:

see

14 L 22:23 - no appeal to board

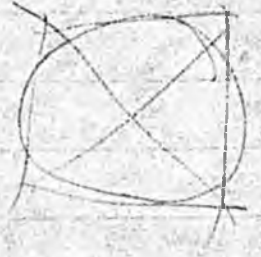
Stress Purpose of Work Comp
physical injury on job

Stress to worker not compensable

4/15/88

Rights → Employee v. Employer.

Workers Compensation System:



Burden of proof

Sec 1 - Jaz inter.

Existing law:

Ambiguity → interpret for the
Humanitarian Purpose

TTD → MS → PPD

Sec 20 →

Time table issue.

Due Process for Employer.

← SB 327 →

4/16/88

Ray Bond:
R & R Scaffold.

Rating Committee
- standard rate, as of

Pool ⇒ Assigned Risk - problem.

claims. → \$50,000 limit of some insurance companies
need to help to direct

Iron worker - craft charge is too high
driving

Need more representatives on Rating Committee

Story

23.50 +10% 1/00

52.00 +20% surcharge 1/00



Rating Bd have a member of industry
they are rating

4/16/88

Diane Johnson

want to protect claimants
Company use system

Slow pace of court system - encourages
controversies & litigation.

→ Need punitive damage action for mental -

→ Problem of reopening case
when fraud is present

Doctor exchange - hopping

Subsequent medical problems
↳ difficult to get payments

Compromise & release →

Under duress → need to get Medical
coverage.

→ quick action

4/16/88

Allan Tesche

Rebecca Loupro

Atty in Arch

→ Δ lawyer on submission of facts to board

Hard data to suggest

- ① significant portion of cost % of total
- ② are costs unreasonably high
- ③ Does it exist.

Overall fees paid - small amount
than
600 claims of
67 retained counsel

3685/per case per attorney, controverted.

Average hourly rates.

Δ Camp lawyers charge

Even assuming

- ① Δ costs are high
- ② Alternatives.

A. → Recovery of Atty fees on last frivolous employer rule.

B. Penalty for bad faith or frivolous claims

4/16/88

Report requirement
Costs Reported

Get Disclosure of D costs to Work Camp Bd

Deho

→ 23,301.55 (h)
→ 23,319.55 ←

Renue Murray.

Management →
State version of bill.

Scott Watson Services.

#1
) ?
=

75% increase w/o bill
5.7% increase w bill
30.79% Total impact.

#2

△ lawyers reporting costs will derivate
and ruin the bill.
(self insured employers)

4/16/88

Atty fees:

Stress claim:

Why not treat the board

Don Cornell

Subjects #1

Turbo machinery.

- A & E T → maintenance K -

Concerns of business people in North Karri.

→ small business people are concerned
w/ large self insurers.

Whole person

240,000

→

135,000

Rehab portion dropped entirely

- Pay Injured worker to give him ~~money~~ ^{money}

* give Rehab Money to EE.

§ 322

4/14/81

Joe Randazzo

PIS 6.16-20

→ oppose 20 of 60 *Restraint Section*

Petitioner Zotal

Privilege of being in
The m

W.C. Δ work

Each side gives up rights
Supreme Court - balance tipped

Stress:

Wide case expands Fox
set up a Calif standard.
subjective

Objective standard - need something out
the ordinary.

§ 322 7-8. - Objective standard used in
most other cases

4/16/88

Zobell →

▷ atty fees

IP fees.

no request to repeal
the statute - of criminal

Art Robson - United Fairbanks.

p1 L20

- 'reasonable person'

use preponderance of evidence test
used in most other states

Sec 2 20

Sec 3 and on to end

Sec 4

5

6 ok

7 compare

8 same as is.

Sec 9 = 4322

Sec 10 = Rehab

we have a voluntary system now

Sec 11 - use a waiver rather than a block.

Sec 12 - put more help in A-G.

Sec 13 → Doctor shopping.

limit to state lines

Sec 14 →

Medical Practice problem

Doctors will have to recommend expensive treatments

Sec 15 → licensed in ~~some~~ area of practice.

Sec 16 →

Possible to increase costs usual custom. UCR - set at 90% of rates / percentile - will raise 82% of charges

S13 321

4/16/88

Return

Sr 18 → Medical Community meeting at
parent

Robert of a single person -
Ment

Sr 19 good

Sr 20 good idea
Sr Capt
parking available at program

Mending from continues
both parties "eyes"

Sr 21

Sr 22 on Sr 1

Sr 23 good

Sr 24

— annually reporting
will have school on funds by meeting.

Sr 25 good

Sr 26

don't know

Return

4/26/88

Sec 27 annual report

Sec 28 no penalty diff on self
inward and career.

Annually (p) goal idea.

Sec 29 part of essential compromise goal.

6(3) confusing.

Sec 30

Sec 31

Sec 32 → 2 years →
amend to 5 years.

Sec 33 →

34 → don't understand ??

35 →

36. wages ~~at~~ determination.
Draft problem

4/15/88

See 37 → Return axes

38 → Discriminator

39 → Difficult wording.

40

41 medical sterility
not workable

42 ok

43

44 → ok

4/16/88

Donna Bailey:

victim of WC.

5 years on WC

unable to go to Bed

\$93.00/wk

support family
buying home

Va Rehab problem

doesn't work:

was smoking \$10/hr
now \$3/hr

buying
own home

own vehicle

- that cuts off a lot programs
in welfare

3 grandchildren in Geneva

can't leave town - need to be available to

answer phone if Va Reh calls

State Rehab Center

4/16/88

Larry Buchholz:

IDEAS

~~Use Rehab~~

51 years old

- former employee of Work Comp Division

Sec 2 Safety and aspect of refund

positive approach

Bud Jaeger
Represent

Shattuck & Gorman

Emp 23 years

15 East Wash Spent

Threat of ~~work~~ work w/ small business,

Pooling → assigned risk rates:

outside contractor advantage issue.

Mandated Rates Issue

affects different carriers differently.

4/16/88

Bud Jaeger

Tom Batchelor Atty. Susan
Work Comp Lawyer.
Both sides.
WCCA: ask represent today.

System

- not working
- needs reform
- frustrating.
- can be and made better.

Stress:

Work case:

Apportionment of injury

Last injurious exposure rule

long comment on theory

SOS 322

4/16/88

Batchelor:

Purpose is to reduce litigation
Inside off's:

Sec 18. IME → Super doctor
~~separate problem~~
- problem of super doctor issue
- problem of immunity

Smallwood - objection -

Sec. 20:

And Sec. 28 - ~~B~~
[contravened] to resist

Atty fees ~~to~~ Δ:

SB 322

4/14/88

Carl Anderson:

Alaska National Ins Co.

Support SB 322

Rate 5.7%

GR. Alaska Committee

Do not support a mandated Rate Decrease

- ① less competition
- ② increase in assign risk pool
- ③ increase other lines of insurance

4/16/88

Mano Fry → Dick Cattaneo

p11 L. 1-10 | skc is
unreasonable

p15 Jan 14

"continuing and multiple treatment
of a similar nature"



Dick →

33 → 37 1/2 pages 8 Medical

treatment:
visit

p18 → L1-5

don't like →

delay →

Reason done administratively -
use 513 322 language.

023 Jan 29

raise bottom to
154 it's minimum.

024 -

good discussion on Sec 5 & 11

Sec 39 P 31

032 Sec 40 Stress:

MANO:

~~Jan Hansen~~
Jan Hansen

3/4/8/07

WCB.

Unscheduled P.P.D.

1) most disputed item .120
.740

→ loss of wage earning capacity.

→ employee has to prove

Cut litigation
Did it work.

pd1. Sec. 14

Sec. 18 →

↳ have had look at every IME
will encourage litigation.

Selection =

*3

Super Doc. →

set up IME panel to start with

4/16/78

Jan Hansen:

Sec 20:

need amendment for escape clause
5 of ROTH

Vis Rehab. Counselor:

90 day choice → wish Mandatory.

p. 6. L 21. →

p 7 L 16 →

p 7 L 22-24 →

p 10 L 19-23 - limit to \$10,000
not enough money for small
communities.

AMEND:

→ Amend
do not include transportation
nor cost of living outside

Disagree w/ TIP stop at medical
stability.

4/16/88

See Roth

L.P. Tangen:

Alliance of American Insurers.

① Sec 44 - don't like.

② Sec - ⇒ don't like rebate for safety:

③ Sec 3
Reporting requirements

Phil Palenberg
TI Council

increase # PPO to major benefits
decrease in TTD

Benefit rollback ← in bill.

CSB 3m

4/16/88

Phil Palenberg

Benefits are fair or arbitrary

Rating guides do ~~not~~ not track
with economic loss

PTD def's changed
to include the whole state
as labor market

Use Rehab

① 90 day period will eliminate
because of failure to apply.

② See amendment

Rehab →

IME issue

S 36 problems w/ implementation:

4/14/88

p1 L14-20

Humanitarian purposes

Employer controls the work force

- negotiations

scales are

HOUSE JUDICIARY COMMITTEE

APRIL 11-16 AGENDA

SB 322 - WORKERS' COMPENSATION

WEDNESDAY, APRIL 6 5:30 - 6:30

OVERVIEW OF SB 322

Bob Anders; Labor-Management Task Force - Labor
representative
Workers' Comp Board

DISCUSSION: Remaining areas of controversy
Labor priorities

Note: Committee will be on listen-only teleconference.

MONDAY, APRIL 11 1:30 - 3:00

INSURANCE SPECIFIC TOPICS

Rate History:

Paul Roller; Director, Division of Insurance
Don Koch; Special Deputy, Division of Insurance

Assigned Risk Pool:

Stan Sparks; Director, Government, Consumer and Industry
Affairs - National Council on Compensation
Insurance (NCCI) (on teleconference from
Portland)

Alaska Timber Trust experience:

Donna Lewis; Alaska Timber Trust (on teleconference from
Ketchikan)

Industry aspects:

Gary Purdom; Industrial Indemnity and Alaska
Classification and Rating (C&R)
Committee

DISCUSSION:

- 1) Mandated Rate Reduction or Rate Freeze
- 2) Revamping the Assigned Risk Pool
- 3) Rate Reductions for Safety Programs
Note: Richard Arab; Deputy Director, Occupational
Safety and Health, will be
available for questions.

Note: Committee will be on listen-only teleconference

House Judiciary Committee Workers' Comp agenda (cont.)

TUESDAY, APRIL 12 1:30 - 3:00

CONTINUATION OF APRIL 11 AGENDA IF NEEDED

OVERVIEW OF SB 322

Labor-Management Task Force - Management representatives
(Note: Task Force members will be in Juneau personally and
on line from Anchorage.)

BENEFIT STRUCTURE - PRESENT AND PROPOSED

Jaquelyn McClintock; Director, Division of Workers' Comp

Note: Committee will be on listen only teleconference

WEDNESDAY, APRIL 13 1:30 - 3:00

INDEPENDENT MEDICAL EXAM (IME)

Note: Open to public testimony specific to this topic only.

VOCATIONAL REHABILITATION

Note: Open to public testimony specific to this topic only.

LEGAL ASPECTS

Janice Hansen; Chief of Adjudications, Division of Workers'
Compensation

DISCUSSION:

Section 18 - Board IME - unanimous vote requirement

Section 10 - Vocational Rehabilitation changes

Note: Committee will be on listen-only teleconference except
as noted above.

House Judiciary Committee Workers' Comp agenda (cont.)

THURSDAY, APRIL 14 1:30 - 3:00

RATE REDUCTION

John Lewis; consultant to Labor-Management Task Force
(Note: on teleconference from Chicago)

DISCUSSION:

Pros and cons of mandated rate reductions and freezes;
The Maine experience - comparable to Alaska?

EMPLOYER TESTIMONY

Kevin James; Klukwan, Inc.

Ray Bond; R&R Scaffolding (note: on teleconference from
Anchorage)

PUBLIC TESTIMONY

Testimony will be taken on all topics related to bill.

FRIDAY, APRIL 15 1:30 - 3:00

EFFECT TO WORKERS - Temporary Total Disability (TTD) and
Permanent Partial Disability (PPD)
Chancy Croft, attorney

PUBLIC TESTIMONY

Testimony will be taken on all topics related to bill.

SATURDAY, APRIL 16

9:00 - 12:00

PUBLIC TESTIMONY

Testimony will be taken on all topics related to bill.

1:00 - 5:00

COMMITTEE AMENDMENTS

Note: Committee will remain on listen-only teleconference.

SB 322 CONFERENCE COMMITTEE

Topics under conference:

- 1) Board IME - more weight than other medical opinions *House*
House CS - page 18, line 20
Senate CS - page 16, line 23
- 2) Fines for late reporting - "or \$100, whichever is greater."
House CS - page 22, line 16 and 26 *Senate*
NOT IN SENATE CS
- 3) Hearing Preparation - whether to reinsert "all", "all", and "fully"
House CS - page 19, lines 13 and 14
NOT IN SENATE CS *Senate*
- 4) Checks drawn on in-state banks *Senate*
House CS - page 24, line 13
NOT IN SENATE CS
- 5) Stress language - perceptions/misperceptions
House CS - page 31, line 28
Senate CS - page 29, line 10 *House*

Topics under limited free conference:

- 1) Workplace Safety Program - new language? *yes*
House CS - page 2, line 27
NOT IN SENATE CS
- 2) Fine for lack of coverage - \$10,000 *sh*
House CS - page 14, line 6
- 3) Determination of gross weekly earnings - delete
"projected"
House CS - page 30, line 2 *sh*
Senate CS - page 26, line 18
- 4) Rate Reduction or freeze *sh*
House CS - page 32, line 22
NOT IN SENATE CS
- 5) Assigned Risk Pool *sh*
House CS - page 2, line 18
NOT IN SENATE CS

Sund

PROPOSED LANGUAGE FOR RATE REDUCTION

"Notwithstanding AS 21.39.030, rates filed by rating organizations for use in the state of Alaska may not be increased before Jan. 1, 1990.

PROPOSED LANGUAGE FOR ASSIGNED RISK POOL

Version A -

New businesses subject to surcharge for three years
No surcharge without exp. mod. debit
Surcharge = 30%

"An insurer may not impose a surcharge for assigned risk pool insurance unless the insured has not been in business in the state for three full years or the insured has received an experience modification debit. The amount of the surcharge shall be equal to 30 percent of the premium after consideration of the experience modification debit. The assigned risk pool premium for insureds who have or are entitled to an experience modification credit shall not exceed that derived from the application of standard rates for the insured's classification adjusted for the experience modification credit."

Version B -

No surcharge without exp. mod. debit - including new business
Surcharge = 25%

"An insurer may not impose a surcharge for assigned risk pool insurance unless the insured has received an experience modification debit. The amount of the surcharge shall be equal to 25 percent of the premium after consideration of the experience modification debit. The assigned risk pool premium for insureds who have or are entitled to an experience modification credit shall not exceed that derived from the application of standard rates for the insured's classification adjusted for the experience modification credit."

Version C -

New business subject to surcharge for two years
No surcharge without exp. mod. debit
Surcharge = 20%

"An insurer may not impose a surcharge for assigned risk pool insurance unless the insured has not been in business in the state for two full years or the insured has received an experience modification debit. The amount of the surcharge shall be equal to 20 percent of the premium after consideration of the experience modification debit. The assigned risk pool premium for insureds who have or are entitled to an experience modification credit shall not exceed that derived from the application of standard rates for the insured's classification adjusted for the experience modification credit."

Variables to play with: Number of years for new business and percent of surcharge.

Kelly

Replace language on lines 19 through 25 with the following:

"(c) An insurer may impose a surcharge not to exceed 25 percent of premium for assigned risk pool insurance provided that no surcharge may be applied to the first ~~\$2,500~~ of premium in any policy year."

3,500

Comment:

This provision provides a limit on pool surcharge by premium size. Only that portion of premium in excess of \$2,500 would be subject to surcharge. This provision has the advantage of being relatively simple to administer.

CONFERENCE COMMITTEE CS FOR SB 322

John Lund
5/4/88

Changes from House Judiciary CS

- 1) **Assigned Risk Pool:**
Restructure so that surcharge is increased from 20 percent to 25 percent but is not applied to the first \$3,000 of premium.
Page 2, Line 19
Note: A new effective date was added to the bill to specify that this provision applies only to new and renewing policies as of July 1, 1988.
Page 32, Line 25

- 2) **Workplace safety program:**
Rewrite so that the program is subject to the approval of the Division of Insurance.
Page 2, Line 27

- 3) **Fines for late reporting: *(payments)***
Retain 25 percent but delete "or \$100, whichever is greater."
Page 22, Lines 8 and 18

- 4) **Checks drawn on in-state banks:**
Delete entire provision
Page 24, Line 5

- 5) **Determination of gross weekly earnings:**
Delete "projected."
Page 28, Line 19

- 6) **Rate reduction:**
Rewrite so that rates are not permitted to increase before Jan. 1, 1990.
Page 32, Line 10

Rec: 4:35pm 5/4

CONFERENCE COMMITTEE REPORT

5/3/88 Date

Madam President:
Mr. Speaker:

The CONFERENCE COMMITTEE (with limited powers of free conference) considering CS FOR SENATE BILL NO. 322 (L&C) and HOUSE CS FOR CS FOR SENATE BILL NO. 322 (Judiciary) "An Act relating to workers' compensation; and providing for an effective date" recommends that

CONFERENCE CS FOR SENATE BILL NO. 322

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

(with a fiscal note)

be adopted.

Twin Kelly
Senator Kelly, Chairman

Paul Fischer
Senator Fischer

Mike Szymanski
Senator Szymanski

[Signature]
Representative Sund, Chairman

[Signature]
Representative Navarre

[Signature]
Representative Mehard

STATE OF ALASKA
1988 LEGISLATIVE SESSION

BILL VERSION: CCSSB 322

PUBLISH DATE: 5/3/88

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						
---------	--	--	--	--	--	--

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: 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

Analysis of Fiscal Note

For HCS SCS 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.

TO: Rep. John Sund
FROM: Shari Kochman
DATE: April 16, 1988
RE: All Proposed Amendments to SB 322 in all testimony

Amendment #1

This is a technical change.

The present cite in the bill for the U.S. Department of Labor Dictionary of Occupational Titles is incorrect.

Amendment #2

This is a technical change. The present cite in bill is incorrect.

Amendment #3

This would delete the definition for "suitable gainful employment" which is a term used in the present vocational rehabilitation statute, but would not be used in the proposed statute - AS 23.30.041.

Amendment #4

This would make the reporting, notification and penalties described in AS 23.30.155(c) and (m) apply to uninsured employers as well as self-insured employers.

Amendment #5

This amendment refers to penalties against employers for failure to file required reports, notify claimants of changes in compensation and make payments to claimants on time.

The amendment increases the fines for late notification of changes and late annual reports from \$100 to \$1,000 for the first day and from \$10 to \$100 for every day thereafter.

The penalty for late payment of compensation is increased from 20 percent of the compensation to 25 percent but no less than \$100. This is consistent with penalty changes already made in the House Labor and Commerce Committee and, in fact, was intended to be changed in that committee.

Amendment #6

This amendment would delete a section added in the House Labor and Commerce committee that requires compensation checks to be drawn on funds deposited in Alaska or by certified check.

The intent of this is to prevent delayed payment due to check clearing time. But it is doubtful whether this provision would accomplish that. First of all, check clearing is computerized on a national and regional basis. It could take as long to clear an Anchorage check in Ketchikan as it would a Des Moines check. Second of all, certified checks carry no more weight and are cleared no faster than personal or business checks. Third of all, I don't see how the Legislature has the authority to tell an insurance company where to do its banking. This is a commercial matter, not a workers' compensation matter.

Amendment #7

The intent of this intent language is to urge the Administration to enforce penalties in the workers' compensation statute. Currently, the board may report to the Division of Insurance that an employer is without insurance, and the Division may then pass that onto the attorney general's office, but the case dies there. We have one memo that states the case is "just not worth the state's time."

If we believe lack of workers' comp insurance is reprehensible, we need to enforce the penalties.

Amendment #8

This would delete section 4 of the bill which mandates the department to adopt new regulations if the Supreme Court finds existing regulations invalid. The intent of the task force was that new regulations be retroactive as well as prospective. There is question for the need and actual effect of this section -- which you understand better than I.

Amendment #9

This would delete the provision that an impairment rating for permanent partial disability would be reduced by an impairment from a preexisting condition.

You should note a couple of things here. The provision does not delineate whether the preexisting condition was work related -- that's not the point. The question is whether an employer should be responsible to pay for an earlier condition that is unrelated to the present injury, but may be aggravated by the present injury.

Another thing to note is that if the combination of injuries does result in permanent total disability, the worker would be compensated for PTD.

Amendment #10

This amendment refers to the methods for the board to determine spendable weekly wage, which is now one of the most litigated areas in workers' comp.

The problem is with those employees who had no earnings in the two years prior to injury or were working for only 6 months out of the previous two years. In those cases, the board is to determine compensation based on employees work history and may not exceed projected earnings.

The present language tries to exclude people, who because of lifestyle choices, have low earnings in the two years before injury. It attempts to include people who, for good reasons, have low earnings in the two years before injury.

However, it doesn't succeed. For example, an employee who works just long enough to pay for his extensive vacations would, because he was voluntarily out of the work force, be

entitled to an adjustment in his spendable weekly wage under subsection (b).

However, a person who is out of the work force for more than 18 months in the two years before injury because he is battling cancer, surely an involuntary reason for not working, would not be entitled to an adjustment to his spendable weekly wage under subsection (b). Instead, his compensation would be based on his earnings, if any, in the two years before injury divided by 100.

This amendment deletes the word "voluntarily" because of the above cited problems with definition.

Amendment #11

This amendment addresses the minimum offered wage to an injured worker that would make the worker ineligible for vocational rehabilitation. It would increase the percentage of wage at the time of injury from 60 percent to 75 percent.

Note: This was proposed by the Labor-Management Task Force as part of the amendments to the "PPD-TTD package deal."

Amendment #12

This is the new proposal for the PPD-TTD schedule. It would lower the maximum PPD payment from \$240,000 to \$135,000 and delete the adjustment factor schedule. Effects of this change are in a table that has been distributed to the committee.

In conjunction with the PPD change, the amendment would return TTD and TPD to present law which is no limit on TTD (present bill puts a two year limit on it) and a five year limit on TPD (present bill limits it to two years).

Note: The Task Force testified that TTD would go to a five-year limit to make it consistent with TPD. However, I later clarified that if the intent was actually to go to present law (which was confirmed), then TTD should be unlimited.

Amendments #13A and #13B

These are two possibilities for addressing the present requirement for a unanimous board vote to have an IME outside of the claimant's physician's speciality. Amendment 13A would simply delete any reference to the specialty and direct the board to select an IME from their list of providers.

Amendment 13B would instruct the board to conduct the IME in the same specialty as the treating physician unless the board or its designee (i.e., the pre-hearing officer) approves a different specialty.

Both amendments would prevent the costly necessity of convening the board to select an IME. It should be noted that the present language would have a fiscal impact for board meetings which has not yet been determined.

Both amendments also address the importance of this decision in comparison to other decisions made by the board. No other decision requires a unanimous vote.

The second proposal (13B), by even mentioning the specialty requirement, may open a door for litigation. The first proposal (13A) probably would not. If the overall intent of the bill is to reduce litigation, we should probably consider what new possibilities for litigation we are introducing through this legislation.

One other point. While the chiropractors do have substantial evidence that the medical professional does discriminate against them, the present language infers an expected discrimination on the part of the board. If we believe the board is discriminatory, we are in sorry shape.

Amendment #14

The proposed amendment deletes the mandated rate reduction and replaces it with a mandated rate freeze.

It also makes the freeze effective from now through 1990 -- so that new rates could not be set until 1991. That is a year later than the mandated rate reduction now in the bill specifies.

The idea of a freeze, as indicated by John Lewis, is to give time to gather experience under the law change. If we want to do that, we should consider what experience is used for determining rates. The following table explains:

<u>Date Rates Set</u>	<u>Experience Base</u>
January 1989	Jan. '86 - Jan. '88 (no experience under this bill)
January 1990	Jan. '87 - Jan. '89 (six months experience under this bill)
January 1991	Jan. '88 - Jan. '90 (18 months experience under this bill)
January 1992	Jan. '89 - Jan. '91 (24 months experience under this bill)

Therefore, if a freeze is effective until only Jan. 1990, rates will be set with very little new experience (only six months) versus 18 months of new experience come Jan. 1991.

One argument against the freeze being effective immediately is that the Jan. 1989 rates will be based on pre-legislation experience and should, therefore, be subject to modification. However, Don Koch of the Division of Insurance testified on April 11 that as of current available data, he sees either no increase or a very small (maybe 2 percent) increase in January.

Regarding the rate reduction -- the C&R Committee, on April 4, determined a 5.7 percent reduction was in line on July 1, 1988 as a result of the bill. Keep in mind two things -- the rates will be subject to an experience adjustment which could overcompensate for the law reduction (although Mr. Koch's testimony indicates otherwise). Furthermore, it is unclear which version of the bill the C&R Committee was using. The letter said "in the existing version of SB 322" which, on

April 4, was the House Labor and Commerce substitute. But some are under the impression that the committee was using the Senate version. Finally, this does not address the results of any House Judiciary and subsequent changes.

Amendment #15

This amendment addresses the assigned risk pool and prohibits the 20 percent surcharge for those pool companies that do not receive an experience modification. That really translates to all new companies in the pool and all companies with a premium under \$2,500 (because lower premiums are not rated.)

This would give immediate and extensive relief to many small employers in the state, but keep in mind the policy call this is making.

Because the pool runs at a deficit (losses were more than \$4 million in 1987), those lost surcharges will be put on the shoulders of the larger companies in the pool. Should the larger companies subsidize the smaller companies?

Also, experience mods are not always a clear reflection of actual claim losses. Let me try to explain -- but beware that I am getting into the clandestine area of actuarial science.

A \$100,000 loss is not considered a \$100,000 for purposes of experience modifications. It is actually considered a \$9,260 loss unless other circumstances (which I will not get into) make it higher. So, as is the nature with insurance, the added loss is spread among other companies.

Note also that this amendment does a curious thing in providing a disincentive for a company to want an experience rating. Let's say the company gets rid of its 20 percent surcharge because of no experience mod, and later is given a .95 mod which is a five percent reduction. Now the employer loses the exemption from the surcharge and the net effect is a 15 percent increase in rates. Of course, the question is whether the insurers will bother rating the lower premiums, but this amendment may incite them to do so -- which of course adds to their costs of doing business.

As Stan Sparks testified, the assigned risk pool is a tricky thing to address and our problem is not exclusive to Alaska. I have been told by a member of the C&R Committee that they are trying to address it and revamp the pool in some way.

Amendment #16

This is the defense attorney fees amendment which you know more about than I do.

A M E N D M E N T #1

Offered in the HOUSE

By Sund

TO: HCS CSSB 322(L&C)

Page 7, line 24:

Delete "dictionary of occupational titles"

Insert "United States Department of Labor's "Selected Characteristics of Occupations Defined in the Dictionary of Occupational Titles""

A M E N D M E N T

2

Offered in the HOUSE

By Sur

TO: HCS CSSB 322(L&C)

Page 25, line 29:

Delete "AS 23.30.041(m)(7)"

Insert "AS 23.30.041(p)" ~~AS~~

A M E N D M E N T

#3

Offered in the HOUSE

By Sund

TO: HCS CSSB 322(L&C)

Page 32, line 27:

Delete "is"

Insert "and 23.30.265(28) are"

A M E N D M E N T

F4

Offered in the HOUSE

By Sun

TO: HCS CSSB 322(L&C)

Page 23, line 14, after "self-insured"

Insert "or uninsured"

#5

A M E N D M E N T

Offered in the HOUSE

By

TO: HCS CSSB 322(L&C)

~~Page 21, line 7, after "penalty"~~
~~Insert "employee"~~

Page 21, line 8:

Delete "\$100"

Insert "\$1,000 [\$100]"

Delete "\$10"

Insert "\$100 [\$10]"

Page 21, line 10:

Delete "\$1,000"

Insert "\$10,000 [\$1,000]"

Page 22, after line 4:

Insert a new bill section to read:

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

(e) If any installment of compensation payable without an a
is not paid within seven days after it becomes due, as provided in
of this section, there shall be added to the unpaid installmen
amount equal to 25 [20] percent of it or \$100, whichever amount
greater. This additional amount shall be paid at the same time

*Amend ment
5
(Cont.)*

and in addition to, the installment, unless notice is filed under
of this section or unless the nonpayment is excused by the board
a showing by the employer that owing to conditions over which
employer had no control the installment could not be paid within
period prescribed for the payment."

Renumber remaining bill sections accordingly.

Page 22, line 8, after "it":

Insert "or ^{\$100,} ~~\$1,000~~, whichever amount is greater"

Page 23, line 11:

Delete "\$100"

Insert "\$1,000"

Page 23, line 12:

Delete "\$10"

Insert "\$100"

Page 33, line 1:

Delete "sec. 27"

Insert "sec. 28"

Page 33, line 18:

Delete "27, 28, 40, and 44"

Insert "28, 29, 41, and 45"

Page 33, line 21:

Delete "Section 40"

Insert "Section 41"

Page 33, line 22:

Delete "sec. 40"

Insert "sec. 41"

Page 33, line 23:

Delete "Sections 40 and 47"

Insert "Sections 41 and 48"

Page 33, line 25:

Delete "39, and 41 - 46"

Insert "40, and 42 - 47"

6

A M E N D M E N T

Offered in the HOUSE

By S

TO: HCS CSSB 322(L&C)

Page 23, lines 22 - 25:

Delete all material.

A M E N D M E N T

7

Offered in the HOUSE

By S

TO: HCS CSSE 322(L&C)

Page 1, line 9, after "LEGISLATIVE":

Insert "FINDINGS AND"

After "INTENT.":

Insert a new subsection to read:

"(a) The legislature finds that, as the costs of workers compensation insurance increases, the danger that an employer will to insure or to qualify for self-insurance also increases. The legislature also finds that there has been a failure on the part of state to

(1) adequately enforce AS 23.30.075(a), which require employer to either obtain workers' compensation insurance or to provide proof of the ability to self-insure; and

(2) impose the punishment authorized under AS 23.30.075 against those employees who do fail to obtain workers' compensation insurance or to qualify as a self-insurer."

Reletter following subsections accordingly.

A M E N D M E N T

#8

Offered in the HOUSE

By

TO: HCS CSSB 322(L&C)

Page 3, lines 9 - 13:

Delete all material.

Renumber following bill sections accordingly.

Page 32, line 29:

Delete "sec. 8"

Insert "sec. 7"

Page 33, line 1:

Delete "sec. 27"

Insert "sec. 26"

Page 33, line 13:

Delete "sec. 9"

Insert "sec. 8"

Page 33, line 18:

Delete "secs. 8, 25, 27, 28, 40, and 44"

Insert "secs. 7, 24, 26, 27, 39, and 43"

Page 33, line 21:

AMENDMENT

#9

Offered in the HOUSE

By S

TO: HCS CSSB 322(L&C)

Page 28, lines 6 - 8:

Delete "The impairment rating determined under (a) of this s shall be reduced by a permanent impairment that existed before the c sable injury."

A M E N D M E N T #10

Offered in the HOUSE

By Su

TO: HCS CSSB 322(L&C)

Page 29, line 13:

Delete "voluntarily"

A M E N D M E N T

~~10~~ 11

Offered in the HOUSE

By Su

TO: HCS CSSB 322(L&C)

Page 7, line 28:

Delete "60"

Insert "75"

A M E N D M E N T

#12

Offered in the HOUSE

By S

TO: HCS CSSB 322(L&C)

Page 26, lines 2 - 10:

Delete all material.

Renumber the remaining bill sections accordingly.

Page 26, line 15:

Delete "\$240,000"

Insert "\$135,000"

Page 26, line 18, following "considerations."

Delete all material through page 27, line 24.

Page 28, lines 12 - 21:

Delete all material.

Renumber the remaining bill sections accordingly.

Page 33, line 18:

Delete "40, and 44"

Insert "38, and 42"

Amendment #12
(Cont.)

Page 33, line 21:

Delete "40"

Insert "38"

Page 33, line 22:

Delete "40"

Insert "38"

Page 33, line 23:

Delete "40 and 47"

Insert "38 and 45"

Delete "takes"

Insert "take"

Page 33, line 25:

Delete "39, and 41 - 46"

Insert "37, and 39 - 44"

A M E N D M E N T

#13 A

Offered in the HOUSE

By S

TO: HCS CSSB 322(L&C)

Page 18, lines 1 - 5:

Delete "A physician selected by the board under this subsection be qualified in the same specialty as the treating physician select the employee, unless the board or the board's panel agrees unanimously case by case basis to approve a different selection."

#13 B

A M E N D M E N T

Offered in the HOUSE

By S

TO: HCS CSSB 322(L&C)

Page 18, line 4:

Delete "panel"

Insert "designee"

Delete "unanimously on a case by case basis"

A M E N D M E N T

#14

Offered in the HOUSE

By Sunc

TO: HCS CSSB 322(L&C)

Page 33, line 7:

Delete "REDUCTION"

Insert "FREEZE"

Page 33, lines 8 - 11:

Delete "shall provide at least a six percent reduction in the premi rate charged within the state for workers' compensation insurance, for t period beginning July 1, 1988, and ending January 1, 1990"

Insert "may not increase the premium rate charged within the state fo workers' compensation insurance during the period beginning April 18, 1988 and ending January 1, 1991"

Page 33, after line 22:

Insert a new bill section to read:

"* Sec. 48. Section 44 of this Act is retroactive to April 18, 1988."

Renumber the following bill sections accordingly.

Page 33, line 23, after "40":

Delete "and 47"

*Amendment
#14
(cont.)*

Insert ", 44, 47, and 48"

Delete "takes"

Insert "take"

Page 33, line 25:

Delete "and 41 - 46"

Insert "41 - 43, 45, and 46"

#15

A M E N D M E N T

Offered in the HOUSE

By

TO: HCS CSSB 322(L&C)

Page 2, after line 6:

Insert a new bill section to read:

"* Sec. 2. AS 21.39.155 is amended by adding a new subsection to
(c) An insurer may not impose a surcharge for assigned risk
insurance unless the insured has received an experience rating."

Renumber remaining bill sections accordingly.

Page 32, line 29:

Delete "sec. 8"

Insert "sec. 9"

Page 33, line 1:

Delete "sec. 27"

Insert "sec. 28"

Page 33, line 13:

Delete "sec. 9"

Insert "sec. 10"

Page 33, line 18:

Amendment # 15 (cont.)

Delete "secs. 8, 25, 27, 28, 40, and 44"

Insert "secs. 9, 26, 28, 29, 41, and 45"

Page 33, line 21:

Delete "Section 40"

Insert "Section 41"

Page 33, line 22:

Delete "sec. 40"

Insert "sec. 41"

Page 33, line 23:

Delete "Sections 40 and 47"

Insert "Sections 41 and 48"

Page 33, line 25:

Delete "Sections 1 - 39, and 41 - 46"

Insert "Sections 1 - 40, and 42 - 47"

A M E N D M E N T

#16

Offered in the HOUSE

By S

TO: HCS CSSB 322(L&C)

Page 31, after line 9:

Insert a new bill section to read:

"* Sec. 39. AS 23.30.260 is amended to read:

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

(1) receives a fee, other consideration, or a gratuity in the account of services rendered to an employer, employee, insurer, insurance adjuster regarding [IN RESPECT TO] a claim, unless such consideration or gratuity is approved by the board, a designee of the board, or the court; or

(2) makes it a business to solicit employment for a law firm or for oneself in respect to a claim or award for compensation."

Page 33, line 18:

Delete "40, and 44"

Insert "41, and 45"

Page 33, line 21:

Delete "Section 40"

Amendment #16 (cont.)

Insert "Section 41"

Page 33, line 22:

Delete "sec. 40"

Insert "sec. 41"

Page 33, line 23:

Delete "Sections 40 and 47"

Insert "Sections 41 and 48"

Page 33, line 25:

Delete "39, and 41 - 46"

Insert "40, and 42 - 47"

Other issues to address:

Section 2 -- safety program -- is it workable.

Section 7 - semi-annual payments for seasonal employers. If we want to change this, we need language from the Division of Insurance.

Section 10 - voc rehab - questions on optional versus mandatory and the time frame for requesting an evaluation.

Section 14 - treatment plan limitations and how is a "visit" defined.

Section 18 - Board IME - weight given to the Board's IME and the exemption from liability for the IME physician.

Section 20 - time frames for hearing requests and limits on continuances.

Sections 21 and 40 - stress claims.

Sections 37 and 39 - treatment of pension plans.

Amd. #4

A M E N D M E N T #1

Offered in the HOUSE

By Sund

TO: HCS CSSB 322(L&C)

Page 7, line 24:

Delete "dictionary of occupational titles"

Insert "United States Department of Labor's "Selected Characteristics
of Occupations Defined in the Dictionary of Occupational Titles""

AS 23.30.110(c) is repealed and reenacted to read:

(c) Before a hearing is scheduled, the party seeking a hearing shall file a request for a hearing together with an affidavit stating that the party has completed all necessary discovery, has obtained all evidence it needs for the hearing, and will not seek a continuance or request the hearing record remain open at the conclusion of the hearing. Within 10 days the opposing party must notify the board if it is not ready for a hearing. If the opposing party notifies the board that it is not ready for hearing, the board or a board designee will conduct a pre-hearing conference within 30 days, and determine the hearing date. If no opposition is filed, a hearing will be scheduled no later than 60 days after the receipt of the request and affidavit. The parties shall be given at least 10 days' notice of the hearing, either personally or by certified mail. Once a hearing has been scheduled, no continuances will be permitted. The board shall close the hearing record at the end of the hearing; any evidence or arguments filed after the conclusion of the hearing will be excluded from the record. The only exception will be in case of surprise as determined by the board. The board may then extend the time to file additional evidence or argument. The parties cannot stipulate to leave the hearing record open. The parties may not stipulate to change the date, cancel, postpone, or continue the hearing, except for ^{*good cause shown.} cases of illness of a party or its representative or because of a conflict with a matter scheduled by a state or federal court. If the parties reach a settlement agreement less than 14 days before the hearing, the parties shall appear at the time of the scheduled hearing to state the terms of the settlement agreement. Within 30 days after the hearing record closes, the board shall file its decision. If the employer controverts a claim on a board prescribed controversion notice and the employee does not request a hearing within two years following the filing of the controversion notice, the claim is denied.

Amd. #
5
(amended)

Taylor -
Amd. to
Amd.
#5

A M E N D M E N T

2

Offered in the HOUSE

By Sund

TO: HCS CSSB 322(L&C)

Page 25, line 29:

Delete "AS 23.30.041(m)(7)"

Insert "AS 23.30.041(p)" ~~2~~

*Ammt. # 11
adopted*

A M E N D M E N T

#3

Offered in the HOUSE

TO: HCS CSSB 322(L&C)

By Sund

*Amend. #16
accepted*

Page 32, line 27:

Delete "is"

Insert "and 23.30.265(28) are"

Am. #9

I4

A M E N D M E N T

Offered in the HOUSE

By Sund

TO: HCS CSSB 322(L&C)

Page 23, line 14, after "self-insured"

Insert "or uninsured"

A M E N D M E N T

#5

Offered in the HOUSE

By Sun

TO: HCS CSSB 322(L&C)

~~Page 21, line 7, after "penalty"~~
~~Insert "to the employee"~~

Handwritten scribble

Page 21, line 8:

Delete "\$100"

Insert "\$1,000 [\$100]"

Delete "\$10"

Insert "\$100 [\$10]"

Page 21, line 10:

Delete "\$1,000"

Insert "\$10,000 [\$1,000]"

Amndt. #7

Page 22, after line 4:

Insert a new bill section to read:

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

(e) If any installment of compensation payable without an award is not paid within seven days after it becomes due, as provided in (b) of this section, there shall be added to the unpaid installment an amount equal to ⁵⁰25 [20] percent of it or ³⁰⁰\$100, whichever amount is greater. This additional amount shall be paid at the same time as,

Amndt. #7

and in addition to, the installment, unless notice is filed under (of this section or unless the nonpayment is excused by the board after a showing by the employer that owing to conditions over which the employer had no control the installment could not be paid within the period prescribed for the payment."

Renumber remaining bill sections accordingly.

*amdt.
#9*

Page 22, line 8, after "it":
50% ~~300,~~
Insert "or \$1,000, whichever amount is greater"

Page 23, line 11:
Delete "\$100"
Insert "\$1,000"

Page 23, line 12:
Delete "\$10"
Insert "\$100"

Page 33, line 1:
Delete "sec. 27"
Insert "sec. 28"

Page 33, line 18:
Delete "27, 28, 40, and 44"
Insert "28, 29, 41, and 45"

Page 33, line 21:

Delete "Section 40"

Insert "Section 41"

Page 33, line 22:

Delete "sec. 40"

Insert "sec. 41"

Page 33, line 23:

Delete "Sections 40 and 47"

Insert "Sections 41 and 48"

Page 33, line 25:

Delete "39, and 41 - 46"

Insert "40, and 42 - 47"

b

A M E N D M E N T

Offered in the HOUSE

By Sund

TO: HCS CSSB 322(L&C)

Page 23, lines ~~22~~ 25: a

~~Delete all material.~~

delete all material.

Amd. #10

*Amd. #2
(deletes sec. 9)*

A M E N D M E N T

#8

Offered in the HOUSE

By Sund

TO: HCS CSSB 322(L&C)

Page 3, lines 9 - 13:

Delete all material.

Renumber following bill sections accordingly.

Page 32, line 29:

Delete "sec. 8"

Insert "sec. 7"

Page 33, line 1:

Delete "sec. 27"

Insert "sec. 26"

Page 33, line 13:

Delete "sec. 9"

Insert "sec. 8"

Page 33, line 18:

Delete "secs. 8, 25, 27, 28, 40, and 44"

Insert "secs. 7, 24, 26, 27, 39, and 43"

Page 33, line 21:

A M E N D M E N T #10

Offered in the HOUSE

By Sund

TO: HCS CSSB 322(L&C)

*Amend. # 15
adopted*

Page 29, line 13:

Delete "voluntarily"

Amnd. #3

A M E N D M E N T

11

Offered in the HOUSE

By Sund

TO: HCS CSSB 322(L&C)

Page 7, line 28:

Delete "60"

Insert "75"

Sections 32-33-34

5-1514Lee
Ford

To replace
earlier amendment

A M E N D M E N T #12

*Amend #12
adopted*

Offered in the HOUSE

By Sund

TO: HCS CSSB 322(L&C)

Page 26, lines 8 - 10:

Delete "Temporary total disability benefits may not be paid for more than two years regardless of continuance of the disability."

Page 26, line 15:

Delete "\$240,000"

Insert "\$135,000"

*Amend. #13
Adopted*

Page 26, line 18, following "considerations.":

Delete all material through page 27, line 24.

Page 28, line 19:

Delete "two [FIVE]"

Insert "five"

Amend #14

Page 33, line 23:

Delete "takes"

Insert "take"

Amend. #17

Section 1

By Sund

AMENDMENT

Offered in the House

TO: HCS CSSB 322 (L&C)

Page 2, line 7:

Insert a new subsection to read:

"(e) It is the intent of the legislature in amending AS 23.30.075 (and AS 23.30.155 that the Division of Workers' Compensation, Division of Insurance and Department of Law strictly enforce the punishment authorized under AS 23.30.075(b) and the reporting requirements ~~in~~ penalties for noncompliance with AS 23.30.155, based on findings that

- 1) there has been a failure on the part of the state to impose the punishment authorized under AS 23.30.075(b) against those employers who fail to obtain workers' compensation insurance or to qualify as a self-insurer, and
- 2) there is a lack of specific data within the Division of Workers' Compensation and Division of Insurance to adequately assess the efficiency and costs of the workers compensation system.

*Amend. #18
adopted*

Section 2

By Sund

Amend #17

AMENDMENT

Offered in the HOUSE

TO: HCS CSSB 322 (L&C)

Page 2, lines 8 - 22:

Delete all material and write a new Sec. 2 to read:

An insurer who provides workers' compensation insurance must establish and maintain a workplace safety rate reduction program available to all insureds. The program must include:

- 1) A reduction in future workers' compensation premiums based on the insured's documented, successful implementation of a safety program, and
- 2) The availability of consulting services to the insured to establish a workplace safety program.

Sec. 7

Amendment #20

A M E N D M E N T

Offered in the HOUSE

By Sund

TO: HCS CSSB 322(L&C)

Page 3, line 29:

Delete "semiannually"

Insert "on an installment basis of not fewer than two payments"

After "insured."

Insert "Premiums paid by installment must be structured to reflect seasonal peaks in the basis of the premium."

Amend #21

Section 10

A M E N D M E N T

Offered in the HOUSE

By Sun

TO: HCS CSSB 322(L&C)

Page 6, line 23, after "has":

Delete "unusual and extenuating physical limitations that prevent"

Insert "an unusual and extenuating circumstance that prevents"

Section 10

Amd. #22

A M E N D M E N T

Offered in the HOUSE

By Sun

TO: HCS CSSB 322(L&C)

Page 8, line 1:

Delete "of injury"

Section 13

Amend # 23

A M E N D M E N T

Offered in the HOUSE

By Sur

TO: HCS CSSB 322(L&C)

Page 14, line 21:

Delete "inside the state where the employee resides to render care"

Insert "to provide all medical and related benefits"

Page 14, line 25, after "[":

Insert "INSIDE THE STATE TO RENDER THE CARE" ??

← pike explain

Section 14
Version C

*Amend #24
amended by Ulmer -*

A M E N D M E N T

Offered in the HOUSE

By Sund

TO: HCS CSSB 322(L&C)

Page 15, line 7, after "treatment":

Delete "is"

Insert ", or treatment requiring continuing and multiple treatments
a similar nature ¹⁵ are [IS]"

Page 15, lines 16 - 27, after "employee.":

Delete all material.

Amend #27

Sec 18 B

A M E N D M E N T

[Handwritten signature]

Offered in the HOUSE

By :

TO: HCS CSSB 322(L&C)

Page 18, lines 1 - 5:

Delete "A physician selected by the board under this subsection be qualified in the same specialty as the treating physician select the employee, unless the board or the board's panel agrees unanimously case by case basis to approve a different selection."

Section 18 A

Amend #23

A M E N D M E N T

Offered in the HOUSE

By Sun

TO: HCS CSSB 322(L&C)

Page 18, lines 8 - 11:

Delete "The opinion of the independent medical examiner shall, in absence of clear and convincing objective evidence to the contrary, presumed to be correct."

Admt #29

Sec. 20

A M E N D M E N T

Offered in the HOUSE

By Sund

TO: HCS CSSB 322(L&C)

Page 19, lines 14 - 15:

Delete "a continuance may not be granted"

Insert "the parties may not stipulate to change the hearing date or to cancel, postpone, or continue the hearing, except for good cause as determined by the board"

Page 19, lines 16 - 19:

Delete "Evidence or arguments filed after the conclusion of the hearing may not be considered by the board, unless the board determines that good cause exists for failure to complete the hearing at the scheduled time."

Sec. 27

Amel # 30

A M E N D M E N T

Offered in the HOUSE

By Sund

TO: HCS CSSB 322(L&C)

Page 23, line 12, after "late.":

Insert "If the annual report is incomplete when filed, the insurer or adjuster shall pay a civil penalty of \$1,000."

Amendment #31

Sec. 33

A M E N D M E N T

Offered in the HOUSE

By Sund

TO: HCS CSSB 322(L&C)

Page 26, line 15:

Delete "net"

Page 26, line 16, after "person":

Delete ", and"

Insert ". The percentage of permanent impairment of the whole person is the percentage of impairment to the particular body part, system, or function converted to the percentage of impairment to the whole person as provided under (b) of this section. The compensation is"

Amend #33

Section 1

A M E N D M E N T

Offered in the HOUSE

By Sund

TO: HCS CSSB 322(L&C)

Page 1, line 27:

Delete "reduce disincentives"

Insert "increase the incentives"

Sec. 1
Version C

Amend. # 34
filed

A M E N D M E N T

Offered in the HOUSE

By Sund

TO: HCS CSSB 322(L&C)

Page 1, lines 14 - 21:

Delete all material.

Reletter following subsections accordingly.

Original sponsor: Labor and Commerce
Committee

Mountain purposes

BY THE LABOR AND
COMMERCE COMMITTEE

Corrington

1 IN THE SENATE

2 HOUSE CS FOR CS FOR SENATE BILL NO. 322 (L&C)

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 assure 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.

*original
language*

Sec 22

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 incentives} reduce ~~disincentives~~ 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.

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

* Sec. 2. AS 21.89 is amended by adding a new section to read:

Sec. 21.89.015. REFUND OF WORKERS' COMPENSATION PREMIUM. (a)

An insurer who provides workers' compensation insurance by participa-
tion in an assigned risk pool under AS 21.39.155, shall refund at
least 10 percent of the premium charged an insured for the assigned
risk pool insurance if, during the period covered by the premium
payment, the insured has a safety program that complies with the
general safety code standards adopted by the department and has not
been cited for a safety or health violation for which the insured
could be fined under AS 18.60.091.

(b) An insurer shall refund at least five percent of the premium
charged for workers' compensation insurance if, during the period
covered by the premium payment, the insured has a safety program that
complies with general safety code standards adopted by the department
and has not been cited for a safety or health violation for which the
insured could be fined under AS 18.60.091.

* Sec. 3. AS 23.30.005(h) is amended to read:

(h) The department shall [MAY] adopt [IDENTICAL] rules for all
panels, and procedures for the periodic selection, retention, and re-
moval of rehabilitation specialists and physicians under AS 23.30.041
and 23.30.095, and shall [MAY] adopt regulations to carry out the
provisions of this chapter. Process and procedure under this chapter
shall be as summary and simple as possible. The department, the board

yes w/ each
Anders has problem
refund for safety program
collateral

added in l&c

5%

Amend and follow

Draft a statute or form form
wave not a block benefit.
waiver - see sec 11

1 or a member of it may for the purposes of this chapter subpoena wit-
2 nesses, administer or cause to be administered oaths, and may examine
3 or cause to have examined the parts of the books and records of the
4 parties to a proceeding that relate [WHICH RELATED] to questions in
5 dispute. The superior court, on application of the department, the
6 board or any members of it, shall enforce the attendance and testimony
7 of witnesses and the production and examination of books, papers, and
8 records.

what is
this about??

* Sec. 4. AS 23.30.005 is amended by adding a new subsection to read:

(m) If a regulation adopted by the department and approved by a majority of the full board is determined to be invalid by the state supreme court, the department may adopt new regulations that conform to the department's statutory authority as interpreted by the court.

? Reason unnecessary.

Brown v. Alpac

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

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

can you
discriminate
in hiring based on
physical condition?

immunity
for employees
for initial
injury?

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

(2) there was a causal connection between the false representation and the injury to the employee.

See sec 11

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

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

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

(8) An annual insurance premium that exceeds \$2,000 may be paid semiannually, if requested by the insured. The insurer shall

may read around for seasonal employees [Kohman]

1 include this provision in the insurance policy in a manner that clear-
2 ly informs the insured of the provision.

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

4 (b) If an employee suffers a compensable injury that results in
5 temporary total disability, temporary partial disability, permanent
6 partial disability, or permanent total disability, the employer or
7 insurance carrier shall contribute to the second injury fund. The
8 contribution shall be made annually at the time of the report filing
9 required by AS 23.30.155(m) [BY ONE YEAR FROM THE DATE OF THE INJURY
10 OR ON TERMINATION OF THE EMPLOYEE'S CLAIM, WHICHEVER IS SOONER. IF
11 THE CLAIM IS NOT TERMINATED WITHIN ONE YEAR, SUBSEQUENT CONTRIBUTIONS
12 SHALL BE MADE YEARLY UNTIL THE TERMINATION OF THE EMPLOYEE'S CLAIM].
13 The amount of the contribution is the product of the compensation to
14 which the employee is entitled for temporary total disability, tempo-
15 rary partial disability, permanent partial disability, or permanent
16 total disability and the applicable contribution rate set out in
17 column A of this subsection. Payment need not be made to the second
18 injury fund if the total contribution under this subsection is less
19 than \$20. By December 15 of each year the commissioner shall deter-
20 mine and make available to the public the applicable contribution rate
21 for the following calendar year according to the reserve rate of the
22 second injury fund in column B of this subsection:

23	Column A	Column B	
24	Second Injury Fund	Reserve Rate	
25	Contribution Rate	At Least	But Less Than
26	(Percent)	(Percent)	(Percent)
27	6	0	50
28	5	50	75
29	4	75	100

I thought we did this last year or year before.

1	3	100	125
2	2	125	150
3	1	150	175
4	0	175	

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

6 (h) Administration expenses of the state under this section and
7 AS 23.30.205 must [SHALL] be paid from the second injury [GENERAL]
8 fund. *what report on budget*

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

10 Sec. 23.30.041. REHABILITATION OF INJURED WORKERS. (a) The
11 board shall select and employ a reemployment benefits administrator.
12 The board may authorize the administrator to select and employ addi-
13 tional staff. The administrator is in the partially exempt service
14 under AS 39.25.120.

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

16 (1) enforce regulations adopted by the board to implement
17 this section;

18 (2) recommend regulations for adoption by the board that
19 establish performance and reporting criteria for rehabilitation spe-
20 cialists;

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

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

26 (5) submit to the department, on or before January 1 of
27 each year, a report of reemployment benefits provided under this
28 section for the previous fiscal year; the report must include a gener-
29 al section, sections related to each rehabilitation specialist

*Classified
Service?*

1 employed under this section, and a statistical summary of all reha-
2 bilitation cases, including

3 (A) the estimated and actual cost of each active
4 rehabilitation plan;

5 (B) the estimated and actual time of each rehabilita-
6 tion plan;

7 (C) a status report on all individuals completing or
8 terminating a reemployment benefits program including a return to
9 work date;

10 (D) the cost of reemployment benefits;

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

13 (7) promote awareness among physicians, adjusters, injured
14 workers, employers, employees, attorneys, training providers, and
15 rehabilitation specialists of the reemployment program established in
16 this subsection.

17 (c) If an employee suffers a compensable injury that may perma-
18 nently preclude an employee's return to the employee's occupation at
19 the time of injury, the employee or employer may request an eligibil-
20 ity evaluation for reemployment benefits. The employee shall request
21 an eligibility evaluation within 90 days after the employee gives the
22 employer notice of injury unless the administrator determines the
23 employee has unusual and extenuating physical limitations that prevent
24 the employee from making a timely request. The administrator shall,
25 on a rotating and geographic basis, select a rehabilitation specialist
26 from the list maintained under (b)(6) of this section to perform the
27 eligibility evaluation.

28 (d) Within 30 days after the referral by the administrator, the
29 rehabilitation specialist shall perform the eligibility evaluation and

6-90
proposed
Amend

How informed

Handwritten initials

1 issue a report of findings. The administrator may grant up to an
2 additional 30 days for performance of the eligibility evaluation upon
3 notification of unusual and extenuating circumstances and the re-
4 habilitation specialist's request. Within 14 days after receipt of
5 the report from the rehabilitation specialist, the administrator shall
6 notify the parties of the employee's eligibility for reemployment
7 preparation benefits. Within 10 days after the decision, either party
8 may seek review of the decision by requesting a hearing under AS 23.-
9 30.110. The hearing shall be held within 30 days after it is re-
10 quested. The board shall uphold the decision of the administrator
11 except for abuse of discretion on the administrator's part.

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

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

19 (2) other jobs that exist in the labor market that the
20 employee has held or received training for within 10 years before the
21 injury or that the employee has held following the injury for a period
22 long enough to obtain the skills to compete in the labor market,
23 according to specific vocational preparation codes as described in the
24 dictionary of occupational titles.

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

26 (1) the employer offers employment within the employee's
27 predicted post-injury physical capacities at a wage equivalent to at
28 least the state minimum wage under AS 23.10.065 or 60 percent of the
29 worker's gross hourly wages at the time of injury, whichever is

SB0322C

HCS CSSB 372(L&C)

-7-

Craft 100%

75% award

Does not apply to

Why not relate to prior existing wage capacity?

out of date

Donner/who

1 greater, [of injury] and the employment prepares the employee to be
2 employable in other jobs that exist in the labor market;

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

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

9 (g) Within 10 days after the employee receives the adminis-
10 trator's notification of eligibility for benefits, an employee who
11 desires to use these benefits shall give written notice to the em-
12 ployer of the employee's selection of a rehabilitation specialist who
13 shall provide a complete reemployment benefits plan. If the employer
14 disagrees with the employee's choice of rehabilitation specialist to
15 develop the plan and the disagreement cannot be resolved, then the
16 administrator shall assign a rehabilitation specialist. The employer
17 and employee each have one right of refusal of a rehabilitation spe-
18 cialist.

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

23 (1) a determination of the occupational goal in the labor
24 market;

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

28 (3) a plan to acquire the occupational skills to be employ-
29 able;

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

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

5 (6) the date the plan will commence;

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

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

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

13 (i) Reemployment benefits shall be selected from the following
14 in a manner that ensures remunerative employability in the shortest
15 possible time:

16 (1) on the job training;

17 (2) vocational training;

18 (3) academic training;

19 (4) self-employment; or

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

21 (j) The employee, rehabilitation specialist, and the employer
22 shall sign the reemployment benefits plan. If the employer and em-
23 ployee fail to agree on a reemployment plan, either party may submit a
24 reemployment plan for approval to the administrator; the adminis-
25 trator shall approve or deny a plan within 14 days after the plan is
26 submitted; within 10 days of the decision, either party may seek
27 review of the decision by requesting a hearing under AS 23.30.110; the
28 board shall uphold the decision of the administrator unless evidence
29 is submitted supporting an allegation of abuse of discretion on the

1 part of the administrator; the board shall render a decision within 30
2 days after completion of the hearing.

3 (k) Benefits related to the reemployment plan may not extend
4 past two years from date of plan approval or acceptance, whichever
5 date occurs first, at which time the benefits expire. If an employee
6 reaches medical stability before completion of the plan, temporary
7 total disability benefits shall cease and permanent impairment bene-
8 fits shall then be paid at the employee's temporary total disability
9 rate. If the employee's permanent impairment benefits are exhausted
10 before the completion or termination of the reemployment plan, the
11 employer shall provide wages equal to 60 percent of the employee's
12 spendable weekly wages but not to exceed \$525, until the completion or
13 termination of the plan. A permanent impairment benefit remaining
14 unpaid upon the completion or termination of the plan shall be paid to
15 the employee in a single lump sum. The fees of the rehabilitation
16 specialist or rehabilitation professional shall be paid by the em-
17 ployer and may not be included in determining the cost of the reem-
18 ployment plan.

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

22 (m) Only a rehabilitation specialist may accept case assignments
23 as a case manager and sign eligibility determinations and reemployment
24 plans. A person who is not a rehabilitation specialist may perform
25 rehabilitation casework if the work is performed under the direct
26 supervision of a rehabilitation specialist employed in the same firm
27 and location.

28 (n) After the employee has elected to participate in reemploy-
29 *Craft* ment benefits, if the employer believes the employee has not

high litigators

Lucrose litigation

with whom

*who judges
is there appeal*

1 cooperated the employer may terminate reemployment benefits on the
2 date of noncooperation. Noncooperation means unreasonable failure to

- 3 (1) keep appointments;
- 4 (2) maintain passing grades;
- 5 (3) attend designated programs;
- 6 (4) maintain contact with the rehabilitation specialist;
- 7 (5) cooperate with the rehabilitation specialist in devel-
- 8 oping a reemployment plan and participating in activities relating to
- 9 reemployability on a full-time basis;
- 10 (6) comply with the employee's responsibilities outlined in
- 11 the reemployment plan; or
- 12 (7) participate in any planned reemployment activity as
- 13 determined by the administrator.

14 (o) Upon the request of either party, the administrator shall
15 decide whether the employee has not cooperated as provided under (n)
16 of this section. A hearing before the administrator shall be held
17 within 30 days after it is requested. The administrator shall issue a
18 decision within 14 days after the hearing. Within 10 days after the
19 administrator files the decision, either party may seek review of the
20 decision by requesting a hearing under AS 23.30.110; the board shall
21 uphold the decision of the administrator unless evidence is submitted
22 supporting an allegation of abuse of discretion on the part of the
23 administrator; the board shall render a decision within 30 days after
24 completion of the hearing.

*30
14
10*

- 25 (p) In this section
- 26 (1) "administrator" means the reemployment benefits admin-
- 27 istrator under AS 23.30.041(a);
- 28 (2) "employability" means possessing the ability but not
- 29 necessarily the opportunity to engage in employment that is consistent

*what if work not available
unemployment?*

1 with the employee's physical status imposed by the compensable injury;

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

- 4 (A) area of residence;
- 5 (B) area of last employment;
- 6 (C) the state;
- 7 (D) other states;

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

12 (5) "physical demands" means the physical requirements of
13 the job such as strength, including positions such as standing, walk-
14 ing, sitting, and movement of objects such as lifting, carrying,
15 pushing, pulling, climbing, balancing, stooping, kneeling, crouching,
16 crawling, reaching, handling, fingering, feeling, talking, hearing, or
17 seeing;

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

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

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

*can employer discriminate under physical injuries -
waiver under sec 5*

1 Sec. 23.30.055. EXCLUSIVENESS OF LIABILITY. The liability of an
2 employer prescribed in AS 23.30.045 is exclusive and in place of all
3 other liability of the employer and any fellow employee to the em-
4 ployee, the employee's legal representative, husband or wife, parents,
5 dependents, next of kin, and anyone otherwise entitled to recover
6 damages from the employer or fellow employee at law or in admiralty on
7 account of the injury or death. The liability of the employer is
8 exclusive even if the employee's claim is barred under AS 23.30.-
9 020(b). However, if an employer fails to secure payment of compen-
10 sation as required by this chapter, an injured employee or the em-
11 ployee's legal representative in case death results from the injury
12 may elect to claim compensation under this chapter, or to maintain an
13 action against the employer at law or in admiralty for damages on
14 account of the injury or death. In that action the defendant may not
15 plead as a defense that the injury was caused by the negligence of a
16 fellow servant, or that the employee assumed the risk of the employ-
17 ment, or that the injury was due to the contributory negligence of the
18 employee.

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

20 (b) If an [AN] employer ~~[WHO]~~ fails to insure and keep insured
21 employees subject to this chapter or fails to obtain a certificate of
22 self-insurance from the board, upon conviction the court shall impose
23 a fine of \$10,000 and may impose a sentence of [, IS PUNISHABLE BY A
24 FINE OF NOT MORE THAN \$1,000, OR BY] imprisonment for not more than
25 one year [, OR BY BOTH]. If an employer is a corporation, all persons
26 who, at the time of the injury or death, had authority to insure the
27 [SAID] corporation or apply for a certificate of self-insurance, and
28 the person actively in charge of the business of the [SUCH] corpo-
29 ration shall be subject to the penalties prescribed in this subsection

1 [HEREIN] and shall be personally, jointly, and severally liable to-
2 gether with the corporation for the payment of all compensation or
3 other benefits for which the corporation is liable under this chapter
4 if the [SAID] corporation at that [SUCH] time is not insured or quali-
5 fied as a self-insurer.

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

7 (a) The employer shall furnish medical, surgical, and other
8 attendants or treatment, nurse and hospital service, medicine, crutch-
9 es, and apparatus for the period which the nature of the injury or the
10 process of recovery requires, not exceeding two years from and after
11 the date of injury to the employee. However, if the condition requir-
12 ing the treatment, apparatus, or medicine is a latent one, the two-
13 year period runs from the time the employee has knowledge of the
14 nature of the employee's disability and its relationship to the em-
15 ployment and after disablement. It shall be additionally provided
16 that, if continued treatment or care or both beyond the two-year
17 period is indicated, the injured employee has the right of review by
18 the board. The board may authorize continued treatment or care or
19 both as the process of recovery may require. When medical care is
20 required, the injured employee may designate a licensed physician
21 inside the state where the employee resides to render the care. The
22 employee may not make more than one change in the employee's choice of
23 attending physician without the written consent of the employer.
24 Referral to a specialist by the employee's attending physician is not
25 considered a change in physicians [EXCEPT IN CASES WHERE, IN THE
26 JUDGMENT OF THE BOARD, CARE OR TREATMENT OR BOTH CAN BEST BE ADMINIS-
27 TERED BY THE SELECTION OF ANOTHER PHYSICIAN]. Upon procuring the
28 services of a physician, the injured employee shall give proper noti-
29 fication of the selection to the employer within a reasonable time

*Denton
shippings*

23.30.265(a)

Copy

*no appeal
to board*

(A)

1 after first being treated. Notice of a change in the attending physi-
2 cian shall be given before the change [IF FOR ANY REASON DURING THE
3 PERIOD WHEN MEDICAL CARE IS REQUIRED THE EMPLOYEE WISHES TO CHANGE TO
4 ANOTHER PHYSICIAN, THE EMPLOYEE MAY DO SO IN ACCORDANCE WITH REGU-
5 LATIONS ADOPTED BY THE BOARD].

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

7 (c) A claim for medical or surgical treatment is not valid and
8 enforceable against the employer unless, within 14 days following
9 treatment, the physician giving the treatment or the employee re-
10 ceiving it furnishes to the employer and the board notice of the
11 injury and treatment, preferably on a form prescribed by the board.
12 The board shall, however, excuse the failure to furnish notice within
13 14 days when it finds it to be in the interest of justice to do so,
14 and it may, upon application by a party in interest, make an award for
15 the reasonable value of the medical or surgical treatment so obtained

16 (d) A claim for a course of treatment requiring con-
17 tinuing and multiple treatments of a similar nature is not valid
18 unless the treatments are carried out under a written treatment plan
19 prescribed before the commencement of the course of treatment, com-
20 pleted and signed by the attending physician, and mailed to the em-
21 ployer within one week of the beginning of treatment. The treatment
22 plan must include objectives, modalities, and frequency of treatment.
23 The initial treatment plan may not include more than 20 visits in the
24 first 60 days. If more than 20 visits are required within the first
25 60 days, or more than four visits a month after the first 60 days, the
26 physician shall document the need for services in excess of the guide-
27 lines in the written treatment plan.

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

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

*Mitch Gross
Chiropractor*

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helps
written*

Plan

condition

*escape
clause*

1 during the continuance of the disability, if requested by the employer
2 or when ordered by the board, submit to an examination by a physician
3 or surgeon of the employer's choice authorized to practice medicine
4 under the laws of the jurisdiction in which the physician resides
5 [STATE IN WHICH THE EMPLOYEE MAY BE FOUND], furnished and paid for by
6 the employer. The employer may not make more than one change in the
7 employer's choice of a physician or surgeon without the written con-
8 sent of the employee. Referral to a specialist by the employer's
9 physician is not considered a change in physicians. An examination
10 requested by the employer not less than 14 days after injury, and
11 every 60 days thereafter, shall be presumed to be reasonable, and the
12 employee shall submit to the examination without further request or
13 order by the board. Unless medically appropriate, the physician shall
14 use existing diagnostic data to complete the examination. Facts
15 relative to the injury or claim communicated to or otherwise learned
16 by a physician or surgeon who may have attended or examined the em-
17 ployee, or who may have been present at an examination are priv-
18 ileged, either in the hearings provided for in this chapter or an
19 action to recover damages against an employer who is subject to the
20 compensation provisions of this chapter. If an employee refuses to
21 submit to an [ANY] examination provided for in this section, the
22 employee's rights to compensation shall be suspended until the ob-
23 struction or refusal ceases, and the employee's compensation during
24 the period of suspension may, in the discretion of the board or the
25 court determining an action brought for the recovery of damages under
26 this chapter, be forfeited. The board in any case of death may re-
27 quire an autopsy at the expense of the party requesting the autopsy.
28 An autopsy may not be held without notice first being given to the
29 widow or widower or next of kin if they reside in the state or their

1 whereabouts can be reasonably ascertained, of the time and place of
2 the autopsy and reasonable time and opportunity given the widow or
3 widower or next of kin to have a representative present to witness the
4 autopsy. If adequate notice is not given, the findings from the
5 autopsy may be suppressed on motion made to the board or to the supe-
6 rior court, as the case may be

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

8 (f) All fees and other charges for medical treatment or service
9 [ARE LIMITED TO THE CHARGES THAT PREVAIL IN THE SAME COMMUNITY FOR
10 SIMILAR TREATMENT OF INJURED PERSONS OF LIKE STANDARD OF LIVING AND]
11 shall be subject to regulation by the board but may not exceed usual,
12 customary, and reasonable fees for the treatment or service in the
13 community in which it is rendered, as determined by the board. An
14 employee may not be required to pay a fee or charge for medical treat-
15 ment or service.

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

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

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

23 (k) In the event of a medical dispute regarding determinations
24 of causation, medical stability, ability to enter a reemployment plan,
25 degree of impairment, functional capacity, the amount and efficacy of
26 the continuance of or necessity of treatment, or compensability be-
27 tween the employee's attending physician and the employer's indepen-
28 dent medical evaluation, a second independent medical evaluation shall
29 be conducted by a physician or physicians selected by the board from a

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Anderson
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See Brown amendment - qualified in field of surgery

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1 list established and maintained by the board. A physician selected by
 2 the board under this subsection shall be qualified in the same spe-
 3 cialty as the treating physician selected by the employee, unless the
 4 board or the board's panel agrees unanimously on a case by case basis
 5 to approve a different selection. The cost of the examination and
 6 medical report shall be paid by the employer. The report of the in-
 7 dependent medical examiner shall be furnished to the board and to the
 8 parties within 14 days after the examination is concluded. The opini-
 9 on of the independent medical examiner shall, in the absence of clear
 10 and convincing objective evidence to the contrary, be presumed to be
 11 correct. A person may not seek damages from an independent medical
 12 examiner caused by the rendering of an opinion or providing testimony
 13 under this subsection, except in the event of fraud or gross incompe-
 14 tence.

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

(a) The right to compensation for disability under this chapter
 is barred unless a claim for it is filed within two years after the
 employee has knowledge of the nature of the employee's disability and
 its relation to the employment and after disablement. However, the
 maximum time for filing the claim in any event other than arising out
 of an occupational disease shall be four years from the date of in-
 jury, and the right to compensation for death is barred unless a claim
 therefor is filed within one year after the death, except that if
 payment of compensation has been made without an award on account of
 the injury or death, a claim may be filed within two years after the
 date of the last payment of benefits under AS 23.30.180, 23.30.185,
 23.30.190, 23.30.200, or 23.30.215. It is additionally provided that,
 in the case of latent defects pertinent to and causing compensable
 disability, the injured employee has full right to claim as shall be

malpractice

Ad #5

1 determined by the board, time limitations notwithstanding.

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

hearing

3 (c) Before a hearing is scheduled, the party seeking a hearing
4 shall file a request for a hearing together with an affidavit stating
5 that the party has completed all necessary discovery, obtained all
6 necessary evidence, and is fully prepared for the hearing. An oppos-

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7 ing party shall have 10 days after the hearing request is filed to
8 file a response. If a party opposes the hearing request, the board or
9 a board designee shall within 30 days of the filing of the opposition
10 conduct a prehearing conference and set a hearing date. If opposition

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11 is not filed, a hearing shall be scheduled no later than 60 days after
12 the receipt of the hearing request. The board shall give each party
13 at least 10 days' notice of the hearing, either personally or by
14 certified mail. After a hearing has been scheduled, a continuance may

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continuance*

15 not be granted. After completion of the hearing the board shall close
16 the hearing record. Evidence or arguments filed after the conclusion
17 of the hearing may not be considered by the board, unless the board

W-??

18 determines that good cause exists for failure to complete the hearing
19 at the scheduled time. If a settlement agreement is reached by the
20 parties less than 14 days before the hearing, the parties shall appear
21 at the time of the scheduled hearing to state the terms of the settle-

22 ment agreement. Within 30 days after the hearing record closes, the
23 board shall file its decision. If the employer controverts a claim on
24 a board-prescribed controversion notice and the employee does not
25 request a hearing within two years following the filing of the con-
26 troversion notice, the claim is denied.

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

28 (c) The presumption of compensability established in (a) of this
29 section does not apply to a mental injury resulting from work-related

Shaw

See 40

employee must prove stress injury

~~Sec 1~~ (b)

1 stress.

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

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

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

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

See 19

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

21 (c) The insurer or adjuster [EMPLOYER] shall notify the board
22 and the employee on a form prescribed by the board that the payment of
23 compensation has begun or has been increased, decreased, suspended,
24 terminated, resumed, or changed in type. An initial report shall be
25 filed with the board and sent to the employee within 28 days after the
26 date of issuing the first payment of compensation. If at any time 21
27 days or more pass and no compensation payment is issued, a report
28 notifying the board and the employee of the termination or suspension
29 of compensation shall be filed with the board and sent to the employee

1 within 28 days after the date the last compensation payment was is-
2 sued. A report shall also be filed with the board and sent to the
3 employee within 28 days after the date of issuing a payment increas-
4 ing, decreasing, resuming, or changing the type of compensation paid.
5 If the [EMPLOYER FAILS TO NOTIFY THE] board and the employee are not
6 notified within the 28 days prescribed by this subsection for report-
7 ing, the insurer or adjuster [EMPLOYER] shall pay a civil penalty of
8 \$100 for the first day plus \$10 for each day thereafter that the
9 [EMPLOYER FAILED TO GIVE] notice was not given. Total penalties under
10 this subsection [SECTION] may not exceed \$1,000 for a failure to file
11 a required report. Penalties assessed under this subsection are
12 eligible for reduction under (m) of this section. A penalty assessed
13 under this subsection after penalties have been reduced under (m) of
14 this section shall be increased by 25 percent and shall bear interest
15 at the rate established under AS 45.45.010.

16 *Subor* ^{*} Sec. 25. AS 23.30.155(d) is amended to read:

17 *OK* (d) If the employer controverts the right to compensation the
18 employer shall file with the board and send to the employee a notice
19 of controversion on or before the 21st day after the employer has
20 knowledge of the alleged injury or death. If the employer controverts
21 the right to compensation after payments have begun, the employer
22 shall file with the board and send to the employee a notice of con-
23 troversion within seven days after an installment of compensation
24 payable without an award is due. When payment of temporary disability
25 benefits is controverted solely on the grounds that another employer
26 or another insurer of the same employer may be responsible for all or
27 a portion of the benefits, the most recent employer or insurer who is
28 party to the claim and who may be liable shall make the payments
29 during the pendency of the dispute. When a final determination of

recreation of rights

1 liability is made, any reimbursement required, including interest at
2 the statutory rate, and all costs and attorneys' fees incurred by the
3 prevailing employer, shall be made within 14 days of the determina-
4 tion.

5 * Sec. 26. AS 23.30.155(f) is amended to read:

6 (f) If compensation payable under the terms of an award is not
7 paid within 14 days after it becomes due, there shall be added to that
8 unpaid compensation an amount equal to ²⁵ [20] percent ²⁵ of it, which
9 shall be paid at the same time as, but in addition to, the compensa-
10 tion, unless review of the compensation order making the award is had
11 as provided in AS 23.30.125 and an interlocutory injunction staying
12 payments is allowed by the court.

13 * Sec. 27. AS 23.30.155(m) is repealed and reenacted to read:

14 (m) Or or before March 1 of each year the insurer or adjuster
15 shall file a verified annual report on a form prescribed by the board
16 stating the total amount of all compensation by type, the number of
17 claims received and the percentage controverted, medical, and related
18 benefits, vocational rehabilitation expenses, legal fees, including a
19 ~~separate total for fees paid to attorneys and fees paid for the other~~
20 costs of litigation, and penalties paid on all claims during the
21 preceding calendar year. If the annual report is timely and complete
22 when received by the board and provides accurate information about
23 each category of payments, the commissioner shall review the timeli-
24 ness of the insurer's or adjuster's reports filed during the preceding
25 year under (c) of this section. If during the preceding year the
26 insurer or adjuster filed at least 99 percent of the reports on time,
27 the penalties assessed under (c) of this section shall be waived. If
28 during the preceding year the insurer or adjuster filed at least 97
29 percent of the reports on time, 75 percent of the penalties assessed

#9 or uninsured

1 under (c) of this section shall be waived. If during the preceding
2 year the insurer or adjuster filed 75 percent of the reports on time,
3 50 percent of the penalties assessed under (c) of this section shall
4 be waived. If during the preceding year the insurer's or adjuster's
5 reports have not been filed on time at least 95 percent of the time,
6 none of the penalties assessed under (c) of this section shall be
7 waived. The penalties that are not waived are due and payable when
8 the insurer or adjuster receives notification from the commissioner
9 regarding the timeliness of the reports. If the annual report is not
10 filed by March 1 of each year, the insurer or adjuster shall pay a
11 civil penalty of \$100 for the first day the annual report is late, and
12 \$10 for each additional day the report is late.

13 * Sec. 28. AS 23.30.155 is amended by adding new subsections to read.

14 (n) If the employer is self-insured, the requirements of (c) and
15 (m) of this section apply to the employer.

16 (o) The board shall promptly notify the division of insurance if
17 the board determines that the employer's insurer has frivolously or
18 unfairly controverted compensation due under this chapter. After
19 receiving notice from the board, the division of insurance shall
20 determine if the insurer has committed an unfair claim settlement
21 practice under AS 21.36.125.

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

26 * Sec. 29. AS 23.30.175 is repealed and reenacted to read:

27 Sec. 23.30.175. RATES OF COMPENSATION. (a) The weekly rate of
28 compensation for disability or death may not exceed \$700 and initially
29 may not be less than \$110. However, if the board determines that the

Revised Annual

total ineffective

Amended #10

*Problem by
calculation.*

1 employee's spendable weekly wages are less than \$110 a week as com-
2 puted under AS 23.30.220, or less than \$154 a week in the case of an
3 employee who has furnished documentary proof of the employee's wages,
4 it shall issue an order adjusting the weekly rate of compensation to a
5 rate equal to the employee's spendable weekly wages. If the employer
6 can verify that the employee's spendable weekly wages are less than
7 \$154, the employer may adjust the weekly rate of compensation to a
8 rate equal to the employee's spendable weekly wages without an order
9 of the board. If the employee's spendable weekly wages are greater
10 than \$154, but 80 percent of the employee's spendable weekly wages is
11 less than \$154, the employee's weekly rate of compensation shall be
12 \$154. Prior payments made in excess of the adjusted rate shall be
13 deducted from the unpaid compensation in the manner the board deter-
14 mines. In any case, the employer shall pay timely compensation.

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

18 (1) the weekly rate of compensation shall be calculated by
19 multiplying the recipient's weekly compensation rate calculated under
20 AS 23.30.180, 23.30.185, 23.30.190, 23.30.200, or 23.30.215, by the
21 ratio of the cost of living of the area in which the recipient resides
22 to the cost of living in this state;

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

26 (3) if the gross weekly earnings of the recipient and the
27 resulting compensation rate is determined under AS 23.30.220(a)(2),
28 the calculation required by this subsection applies only to the por-
29 tion of the recipient's weekly compensation rate attributable to wages

*board
may not*

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amending*

1 earned in the state;

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

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

9 * Sec. 30. AS 23.30.180 is amended to read:

10 Sec. 23.30.180. PERMANENT TOTAL DISABILITY. In case of total
11 disability adjudged to be permanent 80 percent of the injured em-
12 ployee's spendable weekly wages shall be paid to the employee during
13 the continuance of the total disability. If a permanent partial
14 disability award has been made before a permanent total disability
15 determination, permanent total disability benefits must be reduced by
16 the amount of the permanent partial disability award, adjusted for
17 inflation, in a manner determined by the board. Loss of both hands,
18 or both arms, or both feet, or both legs, or both eyes, or of any two
19 of them, in the absence of conclusive proof to the contrary, consti-
20 tutes permanent total disability. In all other cases permanent total
21 disability is determined in accordance with the facts. In making this
22 determination the market for the employee's services shall be

- 23 (1) area of residence;
- 24 (2) area of last employment;
- 25 (3) the state of residence; and
- 26 (4) the State of Alaska.

27 * Sec. 31. AS 23.30.180 is amended by adding a new subsection to read:

28 (b) Failure to achieve remunerative employability as defined in
29 (AS 23.30.041(m)(7)) does not, by itself, constitute permanent total

Handwritten initials in a circle.

Handwritten note: "Hand down work" with an arrow pointing to line 23.

Handwritten note: "AS 23.30.041(m)(7) (p)"

Handwritten number "11" with a checkmark.

1 disability.

2 * Sec. 32. AS 23.30.185 is amended to read:

3 Sec. 23.30.185. COMPENSATION FOR TEMPORARY TOTAL DISABILITY. In
4 case of disability total in character but temporary in quality, 80
5 percent of the injured employee's spendable weekly wages shall be paid
6 to the employee during the continuance of the disability. Temporary
7 total disability benefits may not be paid for any period of disability
8 occurring after the date of medical stability. [Temporary total dis-
9 ability benefits may not be paid for more than two years regardless of
10 continuance of the disability.]

11 * Sec. 33. AS 23.30.190 is repealed and reenacted to read:

12 Sec. 23.30.190. COMPENSATION FOR PERMANENT PARTIAL IMPAIRMENT

13 (a) In case of impairment partial in character but permanent in
14 quality, and not resulting in permanent total disability, the compen-
15 sation is ~~\$240,000~~ ^{135,000} multiplied by the employee's percentage of net
16 permanent impairment of the whole person, and payable in a single lump
17 sum, except as otherwise provided in AS 23.30.041, but the compensa-
18 tion may not be discounted for any present value considerations. [The
19 percentage of net permanent impairment shall be determined by multi-
20 plying the employee's actual degree of permanent impairment by the
21 appropriate adjustment factor, as follows:

22	Degree of Actual Impairment	Adjustment Factor
23	0 - 5	0
24	6	0.060
25	7	0.120
26	8	0.180
27	9	0.240
28	10	0.300
29	11	0.333

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1	12	0.366
2	13	0.399
3	14	0.432
4	15	0.465
5	16	0.495
6	17	0.540
7	18	0.585
8	19	0.630
9	20	0.675
10	21	0.680
11	22	0.688
12	23	0.696
13	24	0.704
14	25	0.712
15	26	0.740
16	27	0.765
17	28	0.790
18	29	0.815
19	30	0.840
20	31	0.880
21	32	0.910
22	33	0.940
23	34	0.970
24	35-100	1.000

25 (b) All determinations of the existence and degree of permanent
26 impairment shall be made strictly and solely under the whole person
27 determination as set out in the American Medical Association Guides to
28 the Evaluation of Permanent Impairment, except that an impairment
29 rating may not be rounded to the next five percent. The board shall

1 adopt a supplementary recognized schedule for injuries that cannot be
2 rated by use of the American Medical Association Guides.

3 (c) An employee with an actual permanent impairment as deter-
4 mined under (b) of this section may not receive less than \$250 for the
5 impairment.

6 (d) The impairment rating determined under (a) of this section
7 shall be reduced by a permanent impairment that existed before the
8 compensable injury. If the combination of a prior impairment rating
9 and a rating under (a) of this section would result in the employee
10 being considered permanently totally disabled, the prior rating does
11 not negate a finding of permanent total disability.

12 * Sec. 34. AS 23.30.200 is amended to read:

13 Sec. 23.30.200. TEMPORARY PARTIAL DISABILITY. In case of tempo-
14 rary partial disability resulting in decrease of earning capacity the
15 compensation shall be 80 percent of the difference between the injured
16 employee's spendable weekly wages before the injury and the wage-
17 earning capacity of the employee after the injury in the same or
18 another employment, to be paid during the continuance of the disabili-
19 ty, but not to be paid for more than two [FIVE] years. Temporary
20 partial disability benefits may not be paid for a period of disability
21 occurring after the date of medical stability.

22 * Sec. 35. AS 23.30.200 is amended by adding a new subsection to read:

23 (b) The wage-earning capacity of an injured employee is deter-
24 mined by the actual spendable weekly wage of the employee if the
25 actual spendable weekly wage fairly and reasonably represents the
26 wage-earning capacity of the employee. The board may, in the interest
27 of justice, fix the wage-earning capacity that is reasonable, having
28 due regard to the nature of the injury, the degree of physical impair-
29 ment, the usual employment, and other factors or circumstances in the

def part

1 case that may affect the capacity of the employee to earn wages in a
2 disabled condition, including the effect of disability as it may
3 naturally extend into the future.

4 * Sec. 36. AS 23.30.220(a) is amended to read:

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

9 (1) The gross weekly earnings are computed by dividing by
10 100 the gross earnings of the employee in the two calendar years
11 immediately preceding the injury.

read amendment

12 (2) If the employee had no earnings during the two calendar
13 years preceding the injury or was voluntarily absent from the labor
14 market for 18 months or more of the two calendar years preceding the
15 injury [THE BOARD DETERMINES THAT THE GROSS WEEKLY EARNINGS AT THE
16 TIME OF THE INJURY CANNOT BE FAIRLY CALCULATED UNDER (1) OF THIS
17 SUBSECTION], the board shall [MAY] determine the employee's gross
18 weekly earnings for calculating compensation by considering the nature
19 of the employee's work and work history, but compensation may not
20 exceed the employee's projected gross weekly earnings at the time of
21 injury.

[Handwritten signature]

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

27 (4) If the employee is injured while performing duties as a
28 volunteer ambulance attendant, policeman, or fireman, the gross weekly
29 earnings for calculating compensation shall be the minimum gross

1 weekly earnings paid a full-time ambulance attendant, policeman, or
2 fireman employed in the political subdivision where the injury oc-
3 curred, or, if the political subdivision has no full-time ambulance
4 attendants, policemen, or firemen, at a reasonable figure previously
5 set by the political subdivision to make this determination but in no
6 case may the gross weekly earnings for calculating compensation be
7 less than the minimum wage computed on the basis of 40 hours work per
8 week.

9 Sec. 37. AS 23.30.225 is amended by adding a new subsection to read:

10 (c) If employer contributions to a qualified pension or profit
11 sharing plan have been included in the determination of gross earnings
12 and the employee is receiving pension or profit sharing payments,
13 weekly compensation benefits payable under this chapter shall be
14 reduced by the amount paid or payable to the injured worker under the
15 plan for any week or weeks during which compensation benefits are also
16 payable. The amount of the reduction may not in any week exceed the
17 increase in weekly compensation benefits brought about by the inclu-
18 sion of employer contributions to a qualified pension or profit shar-
19 ing plan in the determination of gross earnings.

20 * Sec. 38. AS 23.30 is amended by adding a new section to read:

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

27 (b) This section may not be construed to prevent an employer
28 from basing hiring, promotion, or retention policies or practices on
29 considerations of the employee's safety practices or the employee's

Handwritten notes:
- A circled 'D' with a checkmark.
- 'Pension Union worker' written vertically.

Handwritten initials:
- 'Be 2005' written diagonally.

1 physical and mental abilities; nor may this section be construed so as
2 to create employment rights not otherwise in existence.

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

10 * Sec. 39. AS 23.30.265(15) is amended to read:

11 *ok* (15) "gross earnings" means periodic payments, by an em-
12 ployer to an employee for employment before any authorized or lawfully
13 required deduction or withholding of money by the employer, including
14 compensation that is deferred at the option of the employee, and
15 excluding irregular bonuses, reimbursement of expenses, expense allow-
16 ances, and any benefit or payment to the employee that is not fully
17 taxable to the employee during the pay period, except that the total
18 amount of contributions made by an employer to a qualified pension or
19 profit sharing plan during the two plan years preceding the injury,
20 multiplied by the percentage of the employee's vested interest in the
21 plan at the time of injury, shall be included in the determination of
22 gross earnings; the value of room and board if taxable to the employee
23 may be considered in determining gross earnings; however, the value of
24 room and board that would raise an employee's gross weekly earning
25 above the state [ALASKA] average weekly wage at the time of injury may
26 not be considered;

27 * Sec. 40. AS 23.30.265(17) is amended to read:

28 (17) "injury" means accidental injury or death arising out
29 of and in the course of employment, and an occupational disease or

mental/mental

existing law substantial cause of

1 infection which arises naturally out of the employment or which natu-
 2 rally or unavoidably results from an accidental injury; "injury" [,
 3 AND] includes breakage or damage to eyeglasses, hearing aids, den-
 4 tures, or any prosthetic devices which function as part of the body
 5 and further includes an injury caused by the wilful act of a third
 6 person directed against an employee because of the employment: "in-
 7 jury" does not include mental injury caused by mental stress unless it
 8 is established that (A) the work stress was extraordinary and unusual
 9 in comparison to pressures and tensions experienced by individuals in
 10 a comparable work environment, and (B) the work stress was the predom-
 11 inant cause of the mental injury; the amount of work stress shall be
 12 measured by actual events rather than misperceptions by the employee;
 13 a mental injury is not considered to arise out of and in the course of
 14 employment if it results from a disciplinary action, work evaluation,
 15 job transfer, layoff, demotion, termination or similar action, taken
 16 in good faith by the employer;

mental stress

probably need work.

Cross issue predominant

#32
Adopted

* Sec. 41. AS 23.30.265 is amended by adding a new paragraph to read:

18 (34) "medical stability" means the date after which further
 19 objectively measurable improvement from the effects of the compensable
 20 injury is not reasonably expected to result from additional medical
 21 care or treatment, notwithstanding the possible need for additional
 22 medical care or the possibility of improvement or deterioration re-
 23 sulting from the passage of time; medical stability shall be presumed
 24 in the absence of objectively measurable improvement for a period of
 25 45 days; this presumption may be rebutted by clear and convincing
 26 evidence.

* Sec. 42. AS 23.30.210 is repealed.

and 23.30.265(28) are

* Sec. 43. TRANSITIONAL PROVISIONS. Notwithstanding AS 23.30.040(b), as amended by sec. 8 of this Act, and AS 23.30.155(m), as amended by

1 sec. 27 of this Act, on or before March 1, 1989, each employer that is
2 subject to those sections shall file a report and make the appropriate
3 contribution for all claims existing as of December 31, 1988. The period
4 covered in the report shall be from the date of the termination report or
5 the last anniversary report filed, if one has been filed, through Decem-
6 ber 31, 1988.

7 * Sec. 44. TEMPORARY RATE REDUCTION. Notwithstanding AS 21.39.030, an
8 insurer providing workers' compensation insurance in the state shall pro-
9 vide at least a six percent reduction in the premium rate charged within
10 the state for workers' compensation insurance, for the period beginning
11 July 1, 1988, and ending January 1, 1990.

12 * Sec. 45. TRANSITIONAL PROVISION. Notwithstanding AS 23.30.041(p), as
13 amended by sec. 9 of this Act, for the period from July 1, 1988, until
14 June 30, 1989, the term "rehabilitation specialist" as used in AS 23.30.041
15 includes a person who was actively employed for at least one year before
16 June 30, 1988, in providing rehabilitation services to an injured worker
17 receiving benefits under AS 23.30.

18 * Sec. 46. APPLICABILITY. Except for secs. 8, 25, 27, 28, 40, and 44
19 of this Act, this Act applies only to injuries sustained on or after
20 July 1, 1988.

21 * Sec. 47. Section 40 of this Act applies to injuries sustained on or
22 after the effective date of sec. 40 of this Act.

23 * Sec. 48. Sections 40 and 47 of this Act takes effect immediately
24 under AS 01.10.070(c).

25 * Sec. 49. Sections 1 - 39, and 41 - 46 of this Act take effect July 1,
26 1988.

Make it all effective at once

Issue whether to restrict

Rate reduction

*grand
mother
clause*

labor

Take

#1

5-1514P
Ford
5/3/88

Original sponsor: Labor and Commerce
Committee

1 IN THE SENATE

BY THE CONFERENCE COMMITTEE

2 CONFERENCE CS FOR SENATE BILL NO. 322

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 impose a surcharge not to exceed 25 percent
20 of the premium for assigned risk pool insurance, except that a sur-
21 charge may not be applied to the first \$3,000 in premium in any policy
22 year.

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

24 Sec. 21.89.015. WORKPLACE SAFETY PROGRAM. An insurer who pro-
25 vides workers' compensation insurance in this state shall establish
26 and maintain a workplace safety rate reduction program, subject to the
27 approval of the division of insurance.

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

29 (h) The department shall [MAY] adopt [IDENTICAL] rules for all

1 panels, and procedures for the periodic selection, retention, and re-
2 moval of both rehabilitation specialists and physicians under AS 23.-
3 30.041 and 23.30.095, and shall [MAY] adopt regulations to carry out
4 the provisions of this chapter. Process and procedure under this
5 chapter shall be as summary and simple as possible. The department,
6 the board or a member of it may for the purposes of this chapter
7 subpoena witnesses, administer or cause to be administered oaths, and
8 may examine or cause to have examined the parts of the books and
9 records of the parties to a proceeding that relate [WHICH RELATED] to
10 questions in dispute. The superior court, on application of the
11 department, the board or any members of it, shall enforce the atten-
12 dance and testimony of witnesses and the production and examination of
13 books, papers, and records.

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

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

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

20 (2) there was a causal connection between the false rep-
21 resentation and the injury to the employee.

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

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

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

28 (8) An annual insurance premium that exceeds \$2,000 may be
29 paid on an installment basis of not fewer than two payments, if

1 requested by the insured. Premiums paid by installment must be struc-
 2 tured to reflect seasonal peaks in the basis of the premium. The
 3 insurer shall include this provision in the insurance policy in a
 4 manner that clearly informs the insured of the provision.

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

6 (b) If an employee suffers a compensable injury that results in
 7 temporary total disability, temporary partial disability, permanent
 8 partial disability, or permanent total disability, the employer or
 9 insurance carrier shall contribute to the second injury fund. The
 10 contribution shall be made annually at the time of the report filing
 11 required by AS 23.30.155(m) [BY ONE YEAR FROM THE DATE OF THE INJURY
 12 OR ON TERMINATION OF THE EMPLOYEE'S CLAIM, WHICHEVER IS SOONER. IF
 13 THE CLAIM IS NOT TERMINATED WITHIN ONE YEAR, SUBSEQUENT CONTRIBUTIONS
 14 SHALL BE MADE YEARLY UNTIL THE TERMINATION OF THE EMPLOYEE'S CLAIM].
 15 The amount of the contribution is the product of the compensation to
 16 which the employee is entitled for temporary total disability, tempo-
 17 rary partial disability, permanent partial disability, or permanent
 18 total disability and the applicable contribution rate set out in
 19 column A of this subsection. Payment need not be made to the second
 20 injury fund if the total contribution under this subsection is less
 21 than \$20. By December 15 of each year the commissioner shall deter-
 22 mine and make available to the public the applicable contribution rate
 23 for the following calendar year according to the reserve rate of the
 24 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

1	5	50	75
2	4	75	100
3	3	100	125
4	2	125	150
5	1	150	175
6	0	175	

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

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

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

Sec. 23.30.041. REHABILITATION OF INJURED WORKERS. (a) The board shall select and employ a reemployment benefits administrator. The board may authorize the administrator to select and employ additional staff. The administrator is in the partially exempt service under AS 39.25.120.

(b) The administrator shall perform the following functions:

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

(2) recommend regulations for adoption by the board that establish performance and reporting criteria for rehabilitation specialists;

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

(4) review on an annual basis the performance of rehabilitation specialists to determine continued eligibility for delivery of rehabilitation services;

(5) submit to the department, on or before January 1 of each year, a report of reemployment benefits provided under this

1 section for the previous fiscal year; the report must include a gener-
2 al section, sections related to each rehabilitation specialist em-
3 ployed under this section, and a statistical summary of all reha-
4 bilitation cases, including

5 (A) the estimated and actual cost of each active
6 rehabilitation plan;

7 (B) the estimated and actual time of each rehabilita-
8 tion plan;

9 (C) a status report on all individuals completing or
10 terminating a reemployment benefits program including a return to
11 work date;

12 (D) the cost of reemployment benefits;

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

15 (7) promote awareness among physicians, adjusters, injured
16 workers, employers, employees, attorneys, training providers, and
17 rehabilitation specialists of the reemployment program established in
18 this subsection.

19 (c) If an employee suffers a compensable injury that may perma-
20 nently preclude an employee's return to the employee's occupation at
21 the time of injury, the employee or employer may request an eligibil-
22 ity evaluation for reemployment benefits. The employee shall request
23 an eligibility evaluation within 90 days after the employee gives the
24 employer notice of injury unless the administrator determines the
25 employee has an unusual and extenuating circumstance that prevents the
26 employee from making a timely request. The administrator shall, on a
27 rotating and geographic basis, select a rehabilitation specialist from
28 the list maintained under (b)(6) of this section to perform the eli-
29 gibility evaluation.

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

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

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

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

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

29 (1) the employer offers employment within the employee's

1 predicted post-injury physical capacities at a wage equivalent to at
2 least the state minimum wage under AS 23.10.065 or 75 percent of the
3 worker's gross hourly wages at the time of injury, whichever is great-
4 er, and the employment prepares the employee to be employable in other
5 jobs that exist in the labor market;

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

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

2 (g) Within 10 days after the employee receives the adminis-
3 trator's notification of eligibility for benefits, an employee who
4 desires to use these benefits shall give written notice to the em-
5 ployer of the employee's selection of a rehabilitation specialist who
6 shall provide a complete reemployment benefits plan. If the employer
7 disagrees with the employee's choice of rehabilitation specialist to
8 develop the plan and the disagreement cannot be resolved, then the
9 administrator shall assign a rehabilitation specialist. The employer
0 and employee each have one right of refusal of a rehabilitation spe-
1 cialist.

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

1 condition and family support;

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

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

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

8 (6) the date the plan will commence;

9 (7) the estimated time of medical stability as predicted by
10 the physician;

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

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

16 (i) Reemployment benefits shall be selected from the following
17 in a manner that ensures remunerative employability in the shortest
18 possible time:

19 (1) on the job training;

20 (2) vocational training;

21 (3) academic training;

22 (4) self-employment; or

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

24 (j) The employee, rehabilitation specialist, and the employer
25 shall sign the reemployment benefits plan. If the employer and em-
26 ployee fail to agree on a reemployment plan, either party may submit a
27 reemployment plan for approval to the administrator; the adminis-
28 trator shall approve or deny a plan within 14 days after the plan is
29 submitted; within 10 days of the decision, either party may seek

1 review of the decision by requesting a hearing under AS 23.30.110; the
2 board shall uphold the decision of the administrator unless evidence
3 is submitted supporting an allegation of abuse of discretion on the
4 part of the administrator; the board shall render a decision within 30
5 days after completion of the hearing.

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

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

25 (m) Only a rehabilitation specialist may accept case assignments
26 as a case manager and sign eligibility determinations and reemployment
27 plans. A person who is not a rehabilitation specialist may perform
28 rehabilitation casework if the work is performed under the direct
29 supervision of a rehabilitation specialist employed in the same firm

1 and location.

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

6 (1) keep appointments;

7 (2) maintain passing grades;

8 (3) attend designated programs;

9 (4) maintain contact with the rehabilitation specialist;

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

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

15 (7) participate in any planned reemployment activity as
16 determined by the administrator.

17 (o) Upon the request of either party, the administrator shall
18 decide whether the employee has not cooperated as provided under (n)
19 of this section. A hearing before the administrator shall be held
20 within 30 days after it is requested. The administrator shall issue a
21 decision within 14 days after the hearing. Within 10 days after the
22 administrator files the decision, either party may seek review of the
23 decision by requesting a hearing under AS 23.30.110; the board shall
24 uphold the decision of the administrator unless evidence is submitted
25 supporting an allegation of abuse of discretion on the part of the
26 administrator; the board shall render a decision within 30 days after
27 completion of the hearing.

28 (p) In this section

29 (1) "administrator" means the reemployment benefits

1 administrator under AS 23.30.041(a);

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

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

- 7 (A) area of residence;
8 (B) area of last employment;
9 (C) the state;
10 (D) other states;

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

15 (5) "physical demands" means the physical requirements of
16 the job such as strength, including positions such as standing, walk-
17 ing, sitting, and movement of objects such as lifting, carrying,
18 pushing, pulling, climbing, balancing, stooping, kneeling, crouching,
19 crawling, reaching, handling, fingering, feeling, talking, hearing, or
20 seeing;

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

25 (7) "remunerative employability" means having the skills
26 that allow a worker to be compensated with wages or other earnings
27 equivalent to at least 60 percent of the worker's gross hourly wages
28 at the time of injury; if the employment is outside the state, the
29 stated 60 percent shall be adjusted to account for the difference

1 between the applicable state average weekly wage and the Alaska aver-
2 age weekly wage.

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

4 Sec. 23.30.055. EXCLUSIVENESS OF LIABILITY. The liability of an
5 employer prescribed in AS 23.30.045 is exclusive and in place of all
6 other liability of the employer and any fellow employee to the em-
7 ployee, the employee's legal representative, husband or wife, parents,
8 dependents, next of kin, and anyone otherwise entitled to recover
9 damages from the employer or fellow employee at law or in admiralty on
10 account of the injury or death. The liability of the employer is
11 exclusive even if the employee's claim is barred under AS 23.30.-
12 020(b). However, if an employer fails to secure payment of compen-
13 sation as required by this chapter, an injured employee or the em-
14 ployee's legal representative in case death results from the injury
15 may elect to claim compensation under this chapter, or to maintain an
16 action against the employer at law or in admiralty for damages on
17 account of the injury or death. In that action the defendant may not
18 plead as a defense that the injury was caused by the negligence of a
19 fellow servant, or that the employee assumed the risk of the employ-
20 ment, or that the injury was due to the contributory negligence of the
21 employee.

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

23 (b) If an [AN] employer [WHO] fails to insure and keep insured
24 employees subject to this chapter or fails to obtain a certificate of
25 self-insurance from the board, upon conviction the court shall impose
26 a fine of \$10,000 and may impose a sentence of [, IS PUNISHABLE BY A
27 FINE OF NOT MORE THAN \$1,000, OR BY] imprisonment for not more than
28 one year [, OR BY BOTH]. If an employer is a corporation, all persons
29 who, at the time of the injury or death, had authority to insure the

1 [SAID] corporation or apply for a certificate of self-insurance, and
2 the person actively in charge of the business of the [SUCH] corpo-
3 ration shall be subject to the penalties prescribed in this subsection
4 [HEREIN] and shall be personally, jointly, and severally liable to-
5 gether with the corporation for the payment of all compensation or
6 other benefits for which the corporation is liable under this chapter
7 if the [SAID] corporation at that [SUCH] time is not insured or quali-
8 fied as a self-insurer.

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

10 (a) The employer shall furnish medical, surgical, and other
11 attendants or treatment, nurse and hospital service, medicine, crutch-
12 es, and apparatus for the period which the nature of the injury or the
13 process of recovery requires, not exceeding two years from and after
14 the date of injury to the employee. However, if the condition requir-
15 ing the treatment, apparatus, or medicine is a latent one, the two-
16 year period runs from the time the employee has knowledge of the
17 nature of the employee's disability and its relationship to the em-
18 ployment and after disablement. It shall be additionally provided
19 that, if continued treatment or care or both beyond the two-year
20 period is indicated, the injured employee has the right of review by
21 the board. The board may authorize continued treatment or care or
22 both as the process of recovery may require. When medical care is
23 required, the injured employee may designate a licensed physician to
24 provide all medical and related benefits. The employee may not make
25 more than one change in the employee's choice of attending physician
26 without the written consent of the employer. Referral to a specialist
27 by the employee's attending physician is not considered a change in
28 physicians [INSIDE THE STATE TO RENDER THE CARE EXCEPT IN CASES WHERE,
29 IN THE JUDGMENT OF THE BOARD, CARE OR TREATMENT OR BOTH CAN BEST BE

1 ADMINISTERED BY THE SELECTION OF ANOTHER PHYSICIAN]. Upon procuring
2 the services of a physician, the injured employee shall give proper
3 notification of the selection to the employer within a reasonable time
4 after first being treated. Notice of a change in the attending physi-
5 cian shall be given before the change [IF FOR ANY REASON DURING THE
6 PERIOD WHEN MEDICAL CARE IS REQUIRED THE EMPLOYEE WISHES TO CHANGE TO
7 ANOTHER PHYSICIAN, THE EMPLOYEE MAY DO SO IN ACCORDANCE WITH REGU-
8 LATIONS ADOPTED BY THE BOARD].

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

10 (c) A claim for medical or surgical treatment, or treatment
11 requiring continuing and multiple treatments of a similar nature is
12 not valid and enforceable against the employer unless, within 14 days
13 following treatment, the physician or health care provider giving the
14 treatment or the employee receiving it furnishes to the employer and
15 the board notice of the injury and treatment, preferably on a form
16 prescribed by the board. The board shall, however, excuse the failure
17 to furnish notice within 14 days when it finds it to be in the inter-
18 est of justice to do so, and it may, upon application by a party in
19 interest, make an award for the reasonable value of the medical or
20 surgical treatment so obtained by the employee. When a claim is made
21 for a course of treatment requiring continuing and multiple treatments
22 of a similar nature, in addition to the notice, the physician or
23 health care provider shall furnish a written treatment plan if the
24 course of treatment will require more frequent outpatient visits than
25 the standard treatment frequency for the nature and degree of the
26 injury and the type of treatments. The treatment plan shall be furn-
27 ished to the employee and the employer within 14 days after treatment
28 begins. The treatment plan must include objectives, modalities,
29 frequency of treatments, and reasons for the frequency of treatments.

1 If the treatment plan is not furnished as required under this subsec-
2 tion, neither the employer nor the employee may be required to pay for
3 treatments that exceed the frequency standard. The board shall adopt
4 regulations establishing standards for frequency of treatment.

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

6 (e) The employee shall, after an injury, at reasonable times
7 during the continuance of the disability, if requested by the employer
8 or when ordered by the board, submit to an examination by a physician
9 or surgeon of the employer's choice authorized to practice medicine
10 under the laws of the jurisdiction in which the physician resides
11 [STATE IN WHICH THE EMPLOYEE MAY BE FOUND], furnished and paid for by
12 the employer. The employer may not make more than one change in the
13 employer's choice of a physician or surgeon without the written con-
14 sent of the employee. Referral to a specialist by the employer's
15 physician is not considered a change in physicians. An examination
16 requested by the employer not less than 14 days after injury, and
17 every 60 days thereafter, shall be presumed to be reasonable, and the
18 employee shall submit to the examination without further request or
19 order by the board. Unless medically appropriate, the physician shall
20 use existing diagnostic data to complete the examination. Facts
21 relative to the injury or claim communicated to or otherwise learned
22 by a physician or surgeon who may have attended or examined the em-
23 ployee, or who may have been present at an examination are not priv-
24 ileged, either in the hearings provided for in this chapter or an
25 action to recover damages against an employer who is subject to the
26 compensation provisions of this chapter. If an employee refuses to
27 submit to an [ANY] examination provided for in this section, the
28 employee's rights to compensation shall be suspended until the ob-
29 struction or refusal ceases, and the employee's compensation during

1 the period of suspension may, in the discretion of the board or the
2 court determining an action brought for the recovery of damages under
3 this chapter, be forfeited. The board in any case of death may re-
4 quire an autopsy at the expense of the party requesting the autopsy.
5 An autopsy may not be held without notice first being given to the
6 widow or widower or next of kin if they reside in the state or their
7 whereabouts can be reasonably ascertained, of the time and place of
8 the autopsy and reasonable time and opportunity given the widow or
9 widower or next of kin to have a representative present to witness the
10 autopsy. If adequate notice is not given, the findings from the
11 autopsy may be suppressed on motion made to the board or to the supe-
12 rior court, as the case may be.

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

14 (f) All fees and other charges for medical treatment or service
15 [ARE LIMITED TO THE CHARGES THAT PREVAIL IN THE SAME COMMUNITY FOR
16 SIMILAR TREATMENT OF INJURED PERSONS OF LIKE STANDARD OF LIVING AND]
17 shall be subject to regulation by the board but may not exceed usual,
18 customary, and reasonable fees for the treatment or service in the
19 community in which it is rendered, as determined by the board. An
20 employee may not be required to pay a fee or charge for medical treat-
21 ment or service.

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

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

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

29 (k) In the event of a medical dispute regarding determinations

1 of causation, medical stability, ability to enter a reemployment plan,
2 degree of impairment, functional capacity, the amount and efficacy of
3 the continuance of or necessity of treatment, or compensability be-
4 tween the employee's attending physician and the employer's independ-
5 ent medical evaluation, a second independent medical evaluation shall
6 be conducted by a physician or physicians selected by the board from a
7 list established and maintained by the board. The cost of the exami-
8 nation and medical report shall be paid by the employer. The report
9 of the independent medical examiner shall be furnished to the board
10 and to the parties within 14 days after the examination is concluded.
11 A person may not seek damages from an independent medical examiner
12 caused by the rendering of an opinion or providing testimony under
13 this subsection, except in the event of fraud or gross incompetence.

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

15 (a) The right to compensation for disability under this chapter
16 is barred unless a claim for it is filed within two years after the
17 employee has knowledge of the nature of the employee's disability and
18 its relation to the employment and after disablement. However, the
19 maximum time for filing the claim in any event other than arising out
20 of an occupational disease shall be four years from the date of in-
21 jury, and the right to compensation for death is barred unless a claim
22 therefor is filed within one year after the death, except that if
23 payment of compensation has been made without an award on account of
24 the injury or death, a claim may be filed within two years after the
25 date of the last payment of benefits under AS 23.30.180, 23.30.185,
26 23.30.190, 23.30.200, or 23.30.215. It is additionally provided that,
27 in the case of latent defects pertinent to and causing compensable
28 disability, the injured employee has full right to claim as shall be
29 determined by the board, time limitations notwithstanding.

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

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

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

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

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

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

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

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

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

19 (c) The insurer or adjuster [EMPLOYER] shall notify the board
20 and the employee on a form prescribed by the board that the payment of
21 compensation has begun or has been increased, decreased, suspended,
22 terminated, resumed, or changed in type. An initial report shall be
23 filed with the board and sent to the employee within 28 days after the
24 date of issuing the first payment of compensation. If at any time 21
25 days or more pass and no compensation payment is issued, a report
26 notifying the board and the employee of the termination or suspension
27 of compensation shall be filed with the board and sent to the employee
28 within 28 days after the date the last compensation payment was is-
29 sued. A report shall also be filed with the board and sent to the

1 employee within 28 days after the date of issuing a payment increas-
2 ing, decreasing, resuming, or changing the type of compensation paid.
3 If the [EMPLOYER FAILS TO NOTIFY THE] board and the employee are not
4 notified within the 28 days prescribed by this subsection for report-
5 ing, the insurer or adjuster [EMPLOYER] shall pay a civil penalty of
6 \$100 for the first day plus \$10 for each day thereafter that the
7 [EMPLOYER FAILED TO GIVE] notice was not given. Total penalties under
8 this subsection [SECTION] may not exceed \$1,000 for a failure to file
9 a required report. Penalties assessed under this subsection are
10 eligible for reduction under (m) of this section. A penalty assessed
11 under this subsection after penalties have been reduced under (m) of
12 this section shall be increased by 25 percent and shall bear interest
13 at the rate established under AS 45.45.010.

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

15 (d) If the employer controverts the right to compensation the
16 employer shall file with the board and send to the employee a notice
17 of controversion on or before the 21st day after the employer has
18 knowledge of the alleged injury or death. If the employer controverts
19 the right to compensation after payments have begun, the employer
20 shall file with the board and send to the employee a notice of con-
21 troversion within seven days after an installment of compensation
22 payable without an award is due. When payment of temporary disability
23 benefits is controverted solely on the grounds that another employer
24 or another insurer of the same employer may be responsible for all or
25 a portion of the benefits, the most recent employer or insurer who is
26 party to the claim and who may be liable shall make the payments
27 during the pendency of the dispute. When a final determination of
28 liability is made, any reimbursement required, including interest at
29 the statutory rate, and all costs and attorneys' fees incurred by the

1 prevailing employer, shall be made within 14 days of the determina-
2 tion.

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

4 (e) If any installment of compensation payable without an award
5 is not paid within seven days after it becomes due, as provided in (b)
6 of this section, there shall be added to the unpaid installment an
7 amount equal to 25 [20] percent of it. This additional amount shall
8 be paid at the same time as, and in addition to, the installment,
9 unless notice is filed under (d) of this section or unless the
10 nonpayment is excused by the board after a showing by the employer
11 that owing to conditions over which the employer had no control the
12 installment could not be paid within the period prescribed for the
13 payment.

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

15 (f) If compensation payable under the terms of an award is not
16 paid within 14 days after it becomes due, there shall be added to that
17 unpaid compensation an amount equal to 25 [20] percent of it which
18 shall be paid at the same time as, but in addition to, the compensa-
19 tion, unless review of the compensation order making the award is had
20 as provided in AS 23.30.125 and an interlocutory injunction staying
21 payments is allowed by the court.

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

23 (m) On or before March 1 of each year the insurer or adjuster
24 shall file a verified annual report on a form prescribed by the board
25 stating the total amount of all compensation by type, the number of
26 claims received and the percentage controverted, medical, and related
27 benefits, vocational rehabilitation expenses, legal fees, including a
28 separate total for fees paid to attorneys and fees paid for the other
29 costs of litigation, and penalties paid on all claims during the

1 preceding calendar year. If the annual report is timely and complete
2 when received by the board and provides accurate information about
3 each category of payments, the commissioner shall review the timeli-
4 ness of the insurer's or adjuster's reports filed during the preceding
5 year under (c) of this section. If during the preceding year the
6 insurer or adjuster filed at least 99 percent of the reports on time,
7 the penalties assessed under (c) of this section shall be waived. If
8 during the preceding year the insurer or adjuster filed at least 97
9 percent of the reports on time, 75 percent of the penalties assessed
10 under (c) of this section shall be waived. If during the preceding
11 year the insurer or adjuster filed 95 percent of the reports on time,
12 50 percent of the penalties assessed under (c) of this section shall
13 be waived. If during the preceding year the insurer's or adjuster's
14 reports have not been filed on time at least 95 percent of the time,
15 none of the penalties assessed under (c) of this section shall be
16 waived. The penalties that are not waived are due and payable when
17 the insurer or adjuster receives notification from the commissioner
18 regarding the timeliness of the reports. If the annual report is not
19 filed by March 1 of each year, the insurer or adjuster shall pay a
20 civil penalty of \$100 for the first day the annual report is late, and
21 \$10 for each additional day the report is late. If the annual report
22 is incomplete when filed, the insurer or adjuster shall pay a civil
23 penalty of \$1,000.

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

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

27 (o) The board shall promptly notify the division of insurance if
28 the board determines that the employer's insurer has frivolously or
29 unfairly controverted compensation due under this chapter. After

1 receiving notice from the board, the division of insurance shall
2 determine if the insurer has committed an unfair claim settlement
3 practice under AS 21.36.125.

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

5 Sec. 23.30.175. RATES OF COMPENSATION. (a) The weekly rate of
6 compensation for disability or death may not exceed \$700 and initially
7 may not be less than \$110. However, if the board determines that the
8 employee's spendable weekly wages are less than \$110 a week as com-
9 puted under AS 23.30.220, or less than \$154 a week in the case of an
10 employee who has furnished documentary proof of the employee's wages,
11 it shall issue an order adjusting the weekly rate of compensation to a
12 rate equal to the employee's spendable weekly wages. If the employer
13 can verify that the employee's spendable weekly wages are less than
14 \$154, the employer may adjust the weekly rate of compensation to a
15 rate equal to the employee's spendable weekly wages without an order
16 of the board. If the employee's spendable weekly wages are greater
17 than \$154, but 80 percent of the employee's spendable weekly wages is
18 less than \$154, the employee's weekly rate of compensation shall be
19 \$154. Prior payments made in excess of the adjusted rate shall be
20 deducted from the unpaid compensation in the manner the board deter-
21 mines. In any case, the employer shall pay timely compensation.

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

25 (1) the weekly rate of compensation shall be calculated by
26 multiplying the recipient's weekly compensation rate calculated under
27 AS 23.30.180, 23.30.185, 23.30.190, 23.30.200, or 23.30.215, by the
28 ratio of the cost of living of the area in which the recipient resides
29 to the cost of living in this state;

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

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

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

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

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

17 Sec. 23.30.180. PERMANENT TOTAL DISABILITY. In case of total
18 disability adjudged to be permanent 80 percent of the injured em-
19 ployee's spendable weekly wages shall be paid to the employee during
20 the continuance of the total disability. If a permanent partial
21 disability award has been made before a permanent total disability
22 determination, permanent total disability benefits must be reduced by
23 the amount of the permanent partial disability award, adjusted for
24 inflation, in a manner determined by the board. Loss of both hands,
25 or both arms, or both feet, or both legs, or both eyes, or of any two
26 of them, in the absence of conclusive proof to the contrary, consti-
27 tutes permanent total disability. In all other cases permanent total
28 disability is determined in accordance with the facts. In making this
29 determination the market for the employee's services shall be

- (1) area of residence;
- (2) area of last employment;
- (3) the state of residence; and
- (4) the State of Alaska.

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

(b) Failure to achieve remunerative employability as defined in AS 23.30.041(p) does not, by itself, constitute permanent total disability.

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

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

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

Sec. 23.30.190. COMPENSATION FOR PERMANENT PARTIAL IMPAIRMENT.

(a) In case of impairment partial in character but permanent in quality, and not resulting in permanent total disability, the compensation is \$135,000 multiplied by the employee's percentage of permanent impairment of the whole person. The percentage of permanent impairment of the whole person is the percentage of impairment to the particular body part, system, or function converted to the percentage of impairment to the whole person as provided under (b) of this section. The compensation is payable in a single lump sum, except as otherwise provided in AS 23.30.041, but the compensation may not be discounted for any present value considerations.

(b) All determinations of the existence and degree of permanent impairment shall be made strictly and solely under the whole person

1 determination as set out in the American Medical Association Guides to
2 the Evaluation of Permanent Impairment, except that an impairment
3 rating may not be rounded to the next five percent. The board shall
4 adopt a supplementary recognized schedule for injuries that cannot be
5 rated by use of the American Medical Association Guides.

6 (c) The impairment rating determined under (a) of this section
7 shall be reduced by a permanent impairment that existed before the
8 compensable injury. If the combination of a prior impairment rating
9 and a rating under (a) of this section would result in the employee
10 being considered permanently totally disabled, the prior rating does
11 not negate a finding of permanent total disability.

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

13 Sec. 23.30.200. TEMPORARY PARTIAL DISABILITY. In case of tempo-
14 rary partial disability resulting in decrease of earning capacity the
15 compensation shall be 80 percent of the difference between the injured
16 employee's spendable weekly wages before the injury and the wage-
17 earning capacity of the employee after the injury in the same or
18 another employment, to be paid during the continuance of the disabili-
19 ty, but not to be paid for more than five years. Temporary partial
20 disability benefits may not be paid for a period of disability occur-
21 ring after the date of medical stability.

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

23 (b) The wage-earning capacity of an injured employee is deter-
24 mined by the actual spendable weekly wage of the employee if the
25 actual spendable weekly wage fairly and reasonably represents the
26 wage-earning capacity of the employee. The board may, in the interest
27 of justice, fix the wage-earning capacity that is reasonable, having
28 due regard to the nature of the injury, the degree of physical impair-
29 ment, the usual employment, and other factors or circumstances in the

1 case that may affect the capacity of the employee to earn wages in a
2 disabled condition, including the effect of disability as it may
3 naturally extend into the future.

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

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

9 (1) The gross weekly earnings are computed by dividing by
10 100 the gross earnings of the employee in the two calendar years
11 immediately preceding the injury.

12 (2) If the employee was absent from the labor market for 18
13 months or more of the two calendar years preceding the injury [THE
14 BOARD DETERMINES THAT THE GROSS WEEKLY EARNINGS AT THE TIME OF THE
15 INJURY CANNOT BE FAIRLY CALCULATED UNDER (1) OF THIS SUBSECTION], the
16 board shall [MAY] determine the employee's gross weekly earnings for
17 calculating compensation by considering the nature of the employee's
18 work and work history, but compensation may not exceed the employee's
19 gross weekly earnings at the time of injury.

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

25 (4) If the employee is injured while performing duties as a
26 volunteer ambulance attendant, policeman, or fireman, the gross weekly
27 earnings for calculating compensation shall be the minimum gross
28 weekly earnings paid a full-time ambulance attendant, policeman, or
29 fireman employed in the political subdivision where the injury

1 occurred, or, if the political subdivision has no full-time ambulance
2 attendants, policemen, or firemen, at a reasonable figure previously
3 set by the political subdivision to make this determination but in no
4 case may the gross weekly earnings for calculating compensation be
5 less than the minimum wage computed on the basis of 40 hours work per
6 week.

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

8 (c) If employer contributions to a qualified pension or profit
9 sharing plan have been included in the determination of gross earnings
10 and the employee is receiving pension or profit sharing payments,
11 weekly compensation benefits payable under this chapter shall be
12 reduced by the amount paid or payable to the injured worker under the
13 plan for any week or weeks during which compensation benefits are also
14 payable. The amount of the reduction may not in any week exceed the
15 increase in weekly compensation benefits brought about by the inclu-
16 sion of employer contributions to a qualified pension or profit shar-
17 ing plan in the determination of gross earnings.

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

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

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

25 Sec. 23.30.247. DISCRIMINATION PROHIBITED. (a) An employer may
26 not discriminate in hiring, promotion, or retention policies or prac-
27 tices against an employee who has in good faith filed a claim for or
28 received benefits under this chapter. An employer who violates this
29 section is liable to the employee for damages to be assessed by the

1 court in a private civil action.

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

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

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

15 (15) "gross earnings" means periodic payments, by an em-
16 ployer to an employee for employment before any authorized or lawfully
17 required deduction or withholding of money by the employer, including
18 compensation that is deferred at the option of the employee, and
19 excluding irregular bonuses, reimbursement of expenses, expense allow-
20 ances, and any benefit or payment to the employee that is not fully
21 taxable to the employee during the pay period, except that the total
22 amount of contributions made by an employer to a qualified pension or
23 profit sharing plan during the two plan years preceding the injury,
24 multiplied by the percentage of the employee's vested interest in the
25 plan at the time of injury, shall be included in the determination of
26 gross earnings; the value of room and board if taxable to the employee
27 may be considered in determining gross earnings; however, the value of
28 room and board that would raise an employee's gross weekly earning
29 above the state [ALASKA] average weekly wage at the time of injury may

1 not be considered;

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

3 (17) "injury" means accidental injury or death arising out
4 of and in the course of employment, and an occupational disease or
5 infection which arises naturally out of the employment or which natu-
6 rally or unavoidably results from an accidental injury; "injury" [,
7 AND] includes breakage or damage to eyeglasses, hearing aids, den-
8 tures, or any prosthetic devices which function as part of the body
9 and further includes an injury caused by the wilful act of a third
10 person directed against an employee because of the employment; "in-
11 jury" does not include mental injury caused by mental stress unless it
12 is established that (A) the work stress was extraordinary and unusual
13 in comparison to pressures and tensions experienced by individuals in
14 a comparable work environment, and (B) the work stress was the predom-
15 inant cause of the mental injury; the amount of work stress shall be
16 measured by actual events; a mental injury is not considered to arise
17 out of and in the course of employment if it results from a disciplin-
18 ary action, work evaluation, job transfer, layoff, demotion, termina-
19 tion or similar action, taken in good faith by the employer;

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

21 (34) "medical stability" means the date after which further
22 objectively measurable improvement from the effects of the compensable
23 injury is not reasonably expected to result from additional medical
24 care or treatment, notwithstanding the possible need for additional
25 medical care or the possibility of improvement or deterioration re-
26 sulting from the passage of time; medical stability shall be presumed
27 in the absence of objectively measurable improvement for a period of
28 45 days; this presumption may be rebutted by clear and convincing
29 evidence.

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

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

10 * Sec. 46. TEMPORARY RATE REDUCTION; FUTURE FILINGS. (a) Notwith-
11 standing AS 21.39.030, workers' compensation rates filed by rating organi-
12 zations for use in the state may not be increased before January 1, 1990.

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

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

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

25 * Sec. 49. Section 2 of this Act applies to assigned risk pool
26 insurance policies that are entered into or renewed on or after July 1,
27 1988.

28 * Sec. 50. Section 42 of this Act applies to injuries sustained on or
29 after the effective date of sec. 42 of this Act.

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* Sec. 51. Sections 42 and 50 of this Act take effect immediately under AS 01.10.070(c).

* Sec. 52. Sections 1 - 41, and 43 - 49 of this Act take effect July 1, 1988.

Section 1

By Sund

AMENDMENT

Offered in the House

TO: HCS CSSB 322 (L&C)

Page 2, line 7:

Insert a new subsection to read:

"(e) It is the intent of the legislature in amending AS 23.30.075(b) and AS 23.30.155 that the Division of Workers' Compensation, Division of Insurance and Department of Law strictly enforce the punishment authorized under AS 23.30.075(b) and the reporting requirements in and penalties for noncompliance with AS 23.30.155, based on findings that

- 1) there has been a failure on the part of the state to impose the punishment authorized under AS 23.30.075(b) against those employers who fail to obtain workers' compensation insurance or to qualify as a self-insurer, and
- 2) there is a lack of specific data within the Division of Workers' Compensation and Division of Insurance to adequately assess the efficiency and costs of the workers' compensation system.

Section 1
Version A
A M E N D M E N T

Offered in the HOUSE

By Sund

TO: HCS CSSB 322(L&C)

Page 1, lines 14 - 17:

Delete "The legislature declares that the workers' compensation laws must not be construed by the courts in favor of any party. It is the specific intent of the legislature that workers' compensation cases be decided on their merits, except when otherwise provided by statute."

Section 1
Version B

A M E N D M E N T

Offered in the HOUSE

By Sund

TO: HCS CSSB 322(L&C)

Page 1, lines 15 - 21:

Delete all material and insert:

"be fairly and impartially construed by the courts. In order to achieve that goal, it is the intent of the legislature that the preponderance of the evidence standard be used in determining the compensability of a workers' compensation claim. "Preponderance of the evidence" means evidence that when weighed with that opposed to it, has more convincing force and a greater probability of truth. When weighing the evidence, the test is not the relative number of witnesses, but the relative convincing force of the evidence."

Section 1

A M E N D M E N T

Offered in the HOUSE

By Sund

TO: HCS CSSB 322(L&C)

Page 1, line 27:

Delete "reduce disincentives"

Insert "increase the incentives"

Section 2

By Sund

AMENDMENT

Offered in the HOUSE

TO: HCS CSSB 322 (L&C)

Page 2, lines 8 - 22:

Delete all material and write a new Sec. 2 to read:

An insurer who provides workers' compensation insurance must establish and maintain a workplace safety rate reduction program available to all insureds. The program must include:

- 1) A reduction in future workers' compensation premiums based on the insured's documented, successful implementation of a safety program, and
- 2) The availability of consulting services to the insured to establish a workplace safety program.

Section 5

A M E N D M E N T

Offered in the HOUSE

By Sund

TO: HCS CSSB 322(L&C)

Page 3, line 15:

Delete "knowingly"

Insert "intentionally"

A M E N D M E N T

Section
445

Offered in the HOUSE

By Sund

TO: HCS CSSB 322(L&C)

Page 3, lines 10 - 13:

Delete all material. - *Amendment already passed*

Insert a new subsection to read:

"(m) The department shall prescribe a written notice to be provided by an employer to a prospective employee, that advises the employee of the risk of loss of workers' compensation benefits under AS 23.30.020(b) if the employee makes a false employment application."

Page 3, line 15:

Delete "An"

Insert "If an employer furnishes a prospective employee with a written job description that indicates the physical and mental demands of the job and provides the employee with a written notice prescribed by the department that describes the risk of loss of workers' compensation benefits if the employee files a false employment application, an"

Section 10

A M E N D M E N T

Offered in the HOUSE

By Sund

TO: HCS CSSB 322(L&C)

Page 6, line 23, after "has":

Delete "unusual and extenuating physical limitations that prevent"

Insert "an unusual and extenuating circumstance that prevents"

Section 10

A M E N D M E N T

Offered in the HOUSE

By Sund

TO: HCS CSSB 322(L&C)

Page 8, line 1:

Delete "of injury"

Section 13

A M E N D M E N T

Offered in the HOUSE

By Sund

TO: HCS CSSB 322(L&C)

Page 14, line 21:

Delete "inside the state where the employee resides to render the care"

Insert "to provide all medical and related benefits"

Page 14, line 25, after "[":

Insert "INSIDE THE STATE TO RENDER THE CARE" ??

← pick explain

Section 14
AMENDMENT version A

Offered in the HOUSE

By Sund

TO: HCS CSSB 322(L&C)

Page 15, line 6:

Delete "amended"

Insert "repealed and reenacted"

Page 15, lines 7 - 27:

Delete all material and insert:

"(c) A claim for treatment is not valid and enforceable against the employer unless

(1) if the claim is for medical or surgical treatment, the physician giving the treatment or the employee receiving it furnishes to the employer and the board notice of the injury and treatment within 14 days after the treatment is received; the board shall excuse the failure to furnish notice within 14 days when the board finds it to be in the interests of justice to do so, and the board may, upon application of a party in interest, make an award for the reasonable value of the medical or surgical treatment obtained by the employee; and

(2) if a claim is for a course of treatment requiring continuing and multiple treatments of a similar nature, the treatments are carried out under a written treatment plan prescribed before the commencement of the course of treatment and the plan is completed and

signed by the attending physician and mailed to the employer within one week of the beginning of treatment; the treatment plan must include objectives, modalities, and frequency of treatment; the initial treatment plan may not include more than 20 outpatient visits in the first 60 days; if more than 20 outpatient visits are required within the first 60 days, or more than four outpatient visits a month after the first 60 days, the physician shall document the need for services in excess of the guidelines in the written treatment plan."

Section 14
Version B

A M E N D M E N T

Offered in the HOUSE

By Sund

TO: HCS CSSB 322(L&C)

Page 15, line 6:

Delete "amended"

Insert "repealed and reenacted"

Page 15, lines 7 - 27:

Delete all material and insert:

"(c) A claim for treatment is not valid and enforceable against the employer unless

(1) if the claim is for medical or surgical treatment, the physician giving the treatment or the employee receiving it furnishes to the employer and the board notice of the injury and treatment within 14 days after the treatment is received; the board shall excuse the failure to furnish notice within 14 days when the board finds it to be in the interests of justice to do so, and the board may, upon application of a party in interest, make an award for the reasonable value of the medical or surgical treatment obtained by the employee; and

(2) if a claim is for a course of treatment requiring continuing and multiple treatments of a similar nature, the treatments are carried out under a written treatment plan prescribed before the commencement of the course of treatment and the plan is completed and

signed by the attending physician and mailed to the employer within one week of the beginning of treatment; the treatment plan must include objectives, modalities, and frequency of treatment."

Section 14
Version C

A M E N D M E N T

Offered in the HOUSE

By Sund

TO: HCS CSSB 322(L&C)

Page 15, line 7, after "treatment":

Delete "is"

Insert ", or treatment requiring continuing and multiple treatments of a similar nature are [IS]"

Page 15, lines 16 - 27, after "employee.":

Delete all material.

Section 18

A M E N D M E N T

Offered in the HOUSE

By Sund

TO: HCS CSSB 322(L&C)

Page 18, lines 8 - 11:

Delete "The opinion of the independent medical examiner shall, in the absence of clear and convincing objective evidence to the contrary, be presumed to be correct."

Sections 32-33-34

5-1514Lee
Ford

TO replace
earlier amendment

AMENDMENT #12

Offered in the HOUSE

By Sund

TO: HCS CSSB 322(L&C)

Page 26, lines 8 - 10:

Delete "Temporary total disability benefits may not be paid for more than two years regardless of continuance of the disability."

Page 26, line 15:

Delete "\$240,000"

Insert "\$135,000"

Page 26, line 18, following "considerations.":

Delete all material through page 27, line 24.

Page 28, line 19:

Delete "two [FIVE]"

Insert "five"

Page 33, line 23:

Delete "takes"

Insert "take"

SB 322 - Workers - Comp

Page 1
Page 2
p 14
p 18
p 19
p 27
p 24
p 24
p 28
p 31
p 32
p 2

- 1) Section 1 (e); it is the legislature's intent to enforce the law. iws
- 2) Section ³21.89.015; delete the workplace safety program; it may increase short term rates and may have no effect. iws
- 3) Section ¹⁷11 - 23.30.075(b); increasing the fine for not carrying compensation insurance; \$10,000 is excessive. iws
- 4) Section ¹⁸17 - 23.30.095(k); the board's IME should have a more weighted opinion than either of the biased medical opinions.
- 5) Section ²⁰19 - 23.30.110(c); the language for scheduling the hearing needs tightening; re-insert the "all, all, fully".
- 6) Sections ²⁵25 & ²⁷26; fines of 25% or \$100 whichever is less; the minimum of \$100 can be excessive on smaller payments; delete the "or \$100, whichever is less". iws
- 7) Section ²⁸27 - 23.30.155(m); penalty of \$1,000 if insurer does not fully complete the form; could be excess as written; change to "may be fined up to \$1,000". iws
- 8) Section ²⁹28 - 23.30.155(p); payments must be on in state banks; this won't solve the problem being addressed. iws
- 9) Section ³¹36 - 23.30.220(a)2; to determine the weekly wage of someone out of work the previous 2 years; the original language better fits the intent of this section.
- 10) Section ⁴²40 - 23.30.265(17); the stress section; re-insert the phrase "rather than misperceptions by the employee"; this is needed to tighten this section.
- 11) Section ⁴⁶44; mandatory rate reduction; delete mandated reduction; accept the 5.7% reduction; insert language to prevent increases for 18 months. iws
- 12) Assigned risk pool amendment adopted 4/25; delete this section; if this is workable, it will likely increase overall costs. iws

#7 - NO! Increase litigation on assessment of penalties that should be mandatory!

~~#10 - NO! Increase litigation~~

~~over~~

TO: HOUSE JUDICIARY COMMITTEE MEMBERS

FROM: Shari Kochman

DATE: April 19, 1988

RE: Proposed amendments to HCS CSSB 322 (L&C)

Attached is a new amendment packet that includes all newly drafted amendments as of the meeting of April 18, 7:00 p.m., and all previously drafted amendments that have not been addressed. Please replace your former amendment packets with this packet.

Note: The attached amendments are not numbered, but are in order by bill section.

Section 1

By Sund

AMENDMENT

Offered in the House

TO: HCS CSSB 322 (L&C)

Page 2, line 7:

Insert a new subsection to read:

"(e) It is the intent of the legislature in amending AS 23.30.075 (and AS 23.30.155 that the Division of Workers' Compensation, Division of Insurance and Department of Law strictly enforce the punishment authorized under AS 23.30.075(b) and the reporting requirements in, a penalties for noncompliance with AS 23.30.155, based on findings that

- 1) there has been a failure on the part of the state to impose the punishment authorized under AS 23.30.075(b) against those employers who fail to obtain workers' compensation insurance or to qualify as a self-insurer, and
- 2) there is a lack of specific data within the Division of Workers' Compensation and Division of Insurance to adequately assess the efficiency and costs of the workers compensation system.

Section 1
Version A
AMENDMENT

Offered in the HOUSE

By Sur

TO: HCS CSSB 322(L&C)

Page 1, lines 14 - 17:

Delete "The legislature declares that the workers' compensation must not be construed by the courts in favor of any party. It is specific intent of the legislature that workers' compensation case decided on their merits, except when otherwise provided by statute."

Section 1
version B

A M E N D M E N T

Offered in the HOUSE

By Sund

TO: HCS CSSB 322(L&C)

Page 1, lines 15 - 21:

Delete all material and insert:

"be fairly and impartially construed by the courts. In order to achieve that goal, it is the intent of the legislature that the preponderance of the evidence standard be used in determining the compensability of a workers' compensation claim. "Preponderance of evidence" means evidence that when weighed with that opposed to it has more convincing force and a greater probability of truth. When weighing the evidence, the test is not the relative number of witnesses, but the relative convincing force of the evidence."

Sec. 1
Version C

A M E N D M E N T

Offered in the HOUSE

By Sund

TO: HCS CSSB 322(L&C)

Page 1, lines 14 - 21:

Delete all material.

Reletter following subsections accordingly.

Section 1

A M E N D M E N T

Offered in the HOUSE

By Sund

TO: HCS CSSB 322(L&C)

Page 1, line 27:

Delete "reduce disincentives"

Insert "increase the incentives"

Section 2

By Sund

AMENDMENT

Offered in the HOUSE

TO: HCS CSSB 322 (L&C)

Page 2, lines 8 - 22:

Delete all material and write a new Sec. 2 to read:

An insurer who provides workers' compensation insurance must establish and maintain a workplace safety rate reduction program available to all insureds. The program must include:

- 1) A reduction in future workers' compensation premiums based on the insured's documented, successful implementation of a safety program, and
- 2) The availability of consulting services to the insured to establish a workplace safety program.

Section 5

A M E N D M E N T

Offered in the HOUSE

By Sund

TO: HCS CSSB 322(L&C)

Page 3, line 15:

Delete "knowingly"

Insert "intentionally"

A M E N D M E N T

Section
4 & 5

Offered in the HOUSE

By Sur

TO: HCS CSSB 322(L&C)

Page 3, lines 10 - 13:

Delete all material. - *Amendment already passed*

Insert a new subsection to read:

"(m) The department shall prescribe a written notice to provided by an employer to a prospective employee, that advises t employee of the risk of loss of workers' compensation benefits unc AS 23.30.020(b) if the employee makes a false employment application

Page 3, line 15:

Delete "An"

Insert "If an employer furnishes a prospective employee with a writt job description that indicates the physical and mental demands of the and provides the employee with a written notice prescribed by the depart ment that describes the risk of loss of workers' compensation benefits the employee files a false employment application, an"

Sec. 7

A M E N D M E N T

Offered in the HOUSE

By Sund

TO: HCS CSSB 322(L&C)

Page 3, line 29:

Delete "semiannually"

Insert "on an installment basis of not fewer than two payments"

After "insured."

Insert "Premiums paid by installment must be structured to reflect seasonal peaks in the basis of the premium."

Section 10

A M E N D M E N T

Offered in the HOUSE

By Sun

TO: HCS CSSB 322(L&C)

Page 6, line 23, after "has":

Delete "unusual and extenuating physical limitations that prevent"

Insert "an unusual and extenuating circumstance that prevents"

Section 10

A M E N D M E N T

Offered in the HOUSE

By Sun

TO: HCS CSSB 322(L&C)

Page 8, line 1:

Delete "of injury"

Section 13

A M E N D M E N T

Offered in the HOUSE

By Sun

TO: HCS CSSB 322(L&C)

Page 14, line 21:

Delete "inside the state where the employee resides to render care"

Insert "to provide all medical and related benefits"

Page 14, line 25, after "[":

Insert "INSIDE THE STATE TO RENDER THE CARE" ??

← please explain

Section 14
AMENDMENT version A

Offered in the HOUSE

By S

TO: HCS CSSB 322(L&C)

Page 15, line 6:

Delete "amended"

Insert "repealed and reenacted"

Page 15, lines 7 - 27:

Delete all material and insert:

"(c) A claim for treatment is not valid and enforceable against the employer unless

(1) if the claim is for medical or surgical treatment, physician giving the treatment or the employee receiving it furnishes notice to the employer and the board notice of the injury and treatment within 14 days after the treatment is received; the board shall excuse the failure to furnish notice within 14 days when the board finds it to be in the interests of justice to do so, and the board may, upon the application of a party in interest, make an award for the reasonable value of the medical or surgical treatment obtained by the employee and

(2) if a claim is for a course of treatment requiring continuing and multiple treatments of a similar nature, the treatments are carried out under a written treatment plan prescribed before the commencement of the course of treatment and the plan is completed and

-1- (Continued)

4/18/88

signed by the attending physician and mailed to the employer within one week of the beginning of treatment; the treatment plan must include objectives, modalities, and frequency of treatment; the initial treatment plan may not include more than 20 outpatient visits in the first 60 days; if more than 20 outpatient visits are required within the first 60 days, or more than four outpatient visits a month after the first 60 days, the physician shall document the need for services in excess of the guidelines in the written treatment plan."

Section 14
Version B

A M E N D M E N T

Offered in the HOUSE

By Su

TO: HCS CSSB 322(L&C)

Page 15, line 6:

Delete "amended"

Insert "repealed and reenacted"

Page 15, lines 7 - 27:

Delete all material and insert:

"(c) A claim for treatment is not valid and enforceable against the employer unless

(1) if the claim is for medical or surgical treatment, physician giving the treatment or the employee receiving it furnishes notice to the employer and the board notice of the injury and treatment within 14 days after the treatment is received; the board shall excuse the failure to furnish notice within 14 days when the board finds it to be in the interests of justice to do so, and the board may, upon the application of a party in interest, make an award for the reasonable value of the medical or surgical treatment obtained by the employee and

(2) if a claim is for a course of treatment requiring continuing and multiple treatments of a similar nature, the treatments are carried out under a written treatment plan prescribed before the commencement of the course of treatment and the plan is completed

signed by the attending physician and mailed to the employer within one week of the beginning of treatment; the treatment plan must include objectives, modalities, and frequency of treatment."

Section 14
Version C

A M E N D M E N T

Offered in the HOUSE

By Sund

TO: HCS CSSB 322(L&C)

Page 15, line 7, after "treatment":

Delete "is"

Insert ", or treatment requiring continuing and multiple treatments of a similar nature are [IS]"

Page 15, lines 16 - 27, after "employee.":

Delete all material.

Section 18

A M E N D M E N T

Offered in the HOUSE

By Sun

TO: HCS CSSB 322(L&C)

Page 18, lines 8 - 11:

Delete "The opinion of the independent medical examiner shall, in absence of clear and convincing objective evidence to the contrary, presumed to be correct."

Sec 18

A M E N D M E N T

[Handwritten signature]

Offered in the HOUSE

By S

TO: HCS CSSB 322(L&C)

Page 18, lines 1 - 5:

Delete "A physician selected by the board under this subsection be qualified in the same specialty as the treating physician select the employee, unless the board or the board's panel agrees unanimously case by case basis to approve a different selection."

Sec 18

AMENDMENT

[Handwritten signature]

Offered in the HOUSE

By S

TO: HCS CSSB 322(L&C)

Page 18, line 4:

Delete "panel"

Insert "designee"

Delete "unanimously on a case by case basis"

Sec. 20

A M E N D M E N T

Offered in the HOUSE

By Sund

TO: HCS CSSB 322(L&C)

Page 19, lines 14 - 15:

Delete "a continuance may not be granted"

Insert "the parties may not stipulate to change the hearing date or to cancel, postpone, or continue the hearing, except for good cause as determined by the board"

Page 19, lines 16 - 19:

Delete "Evidence or arguments filed after the conclusion of the hearing may not be considered by the board, unless the board determines that good cause exists for failure to complete the hearing at the scheduled time."

A M E N D M E N T

~~AMENDMENT~~

Offered in the HOUSE

By

TO: HCS CSSB 322(L&C)

Sec 24-25-26

~~Page 21, line 7, after "penalty"~~
~~Insert "to the employee"~~

ON HCS

Page 21, line 8:

- Delete "\$100"
- Insert "\$1,000 [\$100]"
- Delete "\$10"
- Insert "\$100 [\$10]"

Page 21, line 10:

- Delete "\$1,000"
- Insert "\$10,000 [\$1,000]"

Page 22, after line 4:

Insert a new bill section to read:

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

(e) If any installment of compensation payable without an a is not paid within seven days after it becomes due, as provided in of this section, there shall be added to the unpaid installment amount equal to ⁵⁰~~25~~ [20] percent of it ^{or \$200} or \$100, whichever amount greater. This additional amount shall be paid at the same time

ADOPTED

and in addition to, the installment, unless notice is filed under of this section or unless the nonpayment is excused by the board a showing by the employer that owing to conditions over which employer had no control the installment could not be paid within period prescribed for the payment."

Renumber remaining bill sections accordingly.

Page 22, line 8, after "it":

Insert "^{\$10,000,} ~~\$100,~~ or ~~\$100,~~ whichever amount is greater"

Page 23, line 11:

Delete "\$100"

Insert "\$1,000"

Page 23, line 12:

Delete "\$10"

Insert "\$100"

Page 33, line 1:

Delete "sec. 27"

Insert "sec. 28"

Page 33, line 18:

Delete "27, 28, 40, and 44"

Insert "28, 29, 41, and 45"

Approved

En Hcd

Don HCO

Page 33, line 21:

Delete "Section 40"

Insert "Section 41"

Page 33, line 22:

Delete "sec. 40"

Insert "sec. 41"

Page 33, line 23:

Delete "Sections 40 and 47"

Insert "Sections 41 and 48"

Page 33, line 25:

Delete "39, and 41 - 46"

Insert "40, and 42 - 47"

Sec. 27

A M E N D M E N T

Offered in the HOUSE

By Sund

TO: HCS CSSB 322(L&C)

Page 23, line 12, after "late.":

Insert "If the annual report is incomplete when filed, the insurer or adjuster shall pay a civil penalty of \$1,000."

Sec. 27

A M E N D M E N T

Offered in the HOUSE

By Sund

TO: HCS CSSB 322(L&C)

Page 22, line 26, after "filed", through page 23, line 6:

Delete all material.

Insert "the reports in a timely manner, the commissioner may waive a percentage or all of the penalties assessed under (c) of this section."

Page 23, line 7:

Delete "waived."

Sec. 33

A M E N D M E N T

Offered in the HOUSE

By Sund

TO: HCS CSSB 322(L&C)

Page 26, line 15:

Delete "net"

Page 26, line 16, after "person":

Delete ", and"

Insert ". The percentage of permanent impairment of the whole person is the percentage of impairment to the particular body part, system, or function converted to the percentage of impairment to the whole person as provided under (b) of this section. The compensation is"

Sec 44

A M E N D M E N T

Offered in the HOUSE

By Sund

TO: HCS CSSB 322(L&C)

Page 33, line 7:

Delete "REDUCTION"

Insert "FREEZE"

Page 33, lines 8 - 11:

Delete "shall provide at least a six percent reduction in the premium rate charged within the state for workers' compensation insurance, for the period beginning July 1, 1988, and ending January 1, 1990"

Insert "may not increase the premium rate charged within the state for workers' compensation insurance during the period beginning April 18, 1988, and ending January 1, 1991"

Page 33, after line 22:

Insert a new bill section to read:

"* Sec. 48. Section 44 of this Act is retroactive to April 18, 1988."

Renumber the following bill sections accordingly.

Page 33, line 23, after "40":

Delete "and 47"

Insert ", 44, 47, and 48"

Delete "takes"

Insert "take"

Page 33, line 25:

Delete "and 41 - 46"

Insert "41 - 43, 45, and 46"

Sec 44

A M E N D M E N T

Offered in the HOUSE

By

TO: HCS CSSB 322(L&C)

Page 2, after line 6:

Insert a new bill section to read:

"* Sec. 2. AS 21.39.155 is amended by adding a new subsection to
(c) An insurer may not impose a surcharge for assigned risk
insurance unless the insured has received an experience rating."

Renumber remaining bill sections accordingly.

Page 32, line 29:

Delete "sec. 8"

Insert "sec. 9"

Page 33, line 1:

Delete "sec. 27"

Insert "sec. 28"

Page 33, line 13:

Delete "sec. 9"

Insert "sec. 10"

Page 33, line 18:

Delete "secs. 8, 25, 27, 28, 40, and 44"

Insert "secs. 9, 26, 28, 29, 41, and 45"

Page 33, line 21:

Delete "Section 40"

Insert "Section 41"

Page 33, line 22:

Delete "sec. 40"

Insert "sec. 41"

Page 33, line 23:

Delete "Sections 40 and 47"

Insert "Sections 41 and 48"

Page 33, line 25:

Delete "Sections 1 - 39, and 41 - 46"

Insert "Sections 1 - 40, and 42 - 47"

A M E N D M E N T



Offered in the HOUSE

By Su

TO: HCS CSSB ??2(L&C)

Page 31, after line 9:

Insert a new bill section to read:

** Sec. 39. AS 23.30.260 is amended to read:

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

(1) receives a fee, other consideration, or a gratuity account of services rendered to an employer, employee, insurer, insurance adjuster regarding [IN RESPECT TO] a claim, unless consideration or gratuity is approved by the board, a designee of the board, or the court; or

(2) makes it a business to solicit employment for a lawyer or for oneself in respect to a claim or award for compensation."

Page 33, line 18:

Delete "40, and 44"

Insert "41, and 45"

Page 33, line 21:

Delete "Section 40"

Insert "Section 41"

Page 33, line 22:

Delete "sec. 40"

Insert "sec. 41"

Page 33, line 23:

Delete "Sections 40 and 47"

Insert "Sections 41 and 48"

Page 33, line 25:

Delete "39, and 41 - 46"

Insert "40, and 42 - 47"

A M E N D M E N T

~~AMENDMENT~~

Offered in the HOUSE

TO: HCS CSSB 322(L&C)

Sec 24
25
26

~~Page 21 line 7, after "penalty"~~
~~Insert "to be employed"~~

ON HCS

Page 21, line 8:

Delete "\$100"

Insert "\$1,000 [\$100]"

Delete "\$10"

Insert "\$100 [\$10]"

Page 21, line 10:

Delete "\$1,000"

Insert "\$10,000 [\$1,000]"

Page 22, after line 4:

Insert a new bill section to read:

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

(e) If any installment of compensation payable without a
is not paid within seven days after it becomes due, as provided
of this section, there shall be added to the unpaid installm
amount equal to ⁵⁰~~25~~ [20] percent of it ³⁰⁰ or \$100, whichever amc
greater. This additional amount shall be paid at the same ti

ADOPTED

and in addition to, the installment, unless notice is filed u
of this section or unless the nonpayment is excused by the bo
a showing by the employer that owing to conditions over w
employer had no control the installment could not be paid wi
period prescribed for the payment."

Renumber remaining bill sections accordingly.

Page 22, line 8, after "it":

Insert "^{\$1,000,} ~~\$100,~~ whichever amount is greater"

Page 23, line 11:

Delete "\$100"

Insert "\$1,000"

Page 23, line 12:

Delete "\$10"

Insert "\$100"

Page 33, line 1:

Delete "sec. 27"

Insert "sec. 28"

Page 33, line 18:

Delete "27, 28, 40, and 44"

Insert "28, 29, 41, and 45"

ADOP. 7.12
De

EN 160

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"

Not read

*Section 1
Version A*

A M E N D M E N T

Offered in the HOUSE

By Sunc

TO: HCS CSSB 322(L&C)

Page 1, lines 14 - 17:

Delete "The legislature declares that the workers' compensation must not be construed by the courts in favor of any party. It is specific intent of the legislature that workers' compensation cases decided on their merits, except when otherwise provided by statute."

not read

Section 1
version B

A M E N D M E N T

Offered in the HOUSE

By Sund

TO: HCS CSSB 322(L&C)

Page 1, lines 15 - 21:

Delete all material and insert:

"be fairly and impartially construed by the courts. In order to achieve that goal, it is the intent of the legislature that the preponderance of the evidence standard be used in determining the compensability of a workers' compensation claim. "Preponderance of evidence" means evidence that when weighed with that opposed to it has more convincing force and a greater probability of truth. When weighing the evidence, the test is not the relative number of witnesses, but the relative convincing force of the evidence."

Sec. 1
Version C Failed

A M E N D M E N T

Offered in the HOUSE

By Sund

TO: HCS CSSB 322(L&C)

Page 1, lines 14 - 21:

Delete all material.

Reletter following subsections accordingly.

Sec. 2

A M E N D M E N T

Offered in the HOUSE

By Sund

TO: HCS CSSB 322 (Judiciary)

Page 2, line 27, after "program":

Insert "; an insurer may charge a fee separate from the premium for services provided under this paragraph."

failed

Section 13

A M E N D M E N T

version A

Offered in the HOUSE

By :

TO: HCS CSSB 322(L&C)

Page 15, line 6:

Delete "amended"

Insert "repealed and reenacted"

Page 15, lines 7 - 27:

Delete all material and insert:

"(c) A claim for treatment is not valid and enforceable against the employer unless

(1) if the claim is for medical or surgical treatment, physician giving the treatment or the employee receiving it furnishes notice to the employer and the board notice of the injury and treatment within 14 days after the treatment is received; the board shall excuse the failure to furnish notice within 14 days when the board finds it to be in the interests of justice to do so, and the board may, upon application of a party in interest, make an award for the reasonable value of the medical or surgical treatment obtained by the employee and

(2) if a claim is for a course of treatment requiring continuing and multiple treatments of a similar nature, the treatments are carried out under a written treatment plan prescribed before commencement of the course of treatment and the plan is completed

-1-(Continued)

signed by the attending physician and mailed to the employer within one week of the beginning of treatment; the treatment plan must include objectives, modalities, and frequency of treatment; the initial treatment plan may not include more than 20 outpatient visits in the first 60 days; if more than 20 outpatient visits are required within the first 60 days, or more than four outpatient visits a month after the first 60 days, the physician shall document the need for services in excess of the guidelines in the written treatment plan."

Section ~~12~~ 13
Version B

Failed

A M E N D M E N T

Offered in the HOUSE

By Su

TO: HCS CSSB 322(L&C)

Page 15, line 6:

Delete "amended"

Insert "repealed and reenacted"

~~All~~

Page 15, lines 7 - 27:

Delete all material and insert:

"(c) A claim for treatment is not valid and enforceable against the employer unless

(1) if the claim is for medical or surgical treatment, physician giving the treatment or the employee receiving it furnishes notice to the employer and the board notice of the injury and treatment within 14 days after the treatment is received; the board shall excuse the failure to furnish notice within 14 days when the board finds it to be in the interests of justice to do so, and the board may, upon the application of a party in interest, make an award for the reasonable value of the medical or surgical treatment obtained by the employee and

(2) if a claim is for a course of treatment requiring continuing and multiple treatments of a similar nature, the treatments are carried out under a written treatment plan prescribed before commencement of the course of treatment and the plan is completed

(continued)

signed by the attending physician and mailed to the employer within
one week of the beginning of treatment; the treatment plan must in-
clude objectives, modalities, and frequency of treatment."

Section ~~13~~ 13
Version C

A M E N D M E N T

Offered in the HOUSE

By Sund

TO: HCS CSSB 322(L&C)

Page 15, line 7, after "treatment":

Delete "is"

Insert ", or treatment requiring continuing and multiple treatments of a similar nature are [IS]"

Page 15, lines 16 - 27, after "employee.":

Delete all material.

Sec. 13

Ch. #1

AS 23.30.095(c)

PROPOSAL I

(c) A claim for medical or surgical treatment, or treatment requiring continuing and multiple treatments of a similar nature is not valid and enforceable against the employer unless, within 14 days following treatment, the physician or provider giving the treatment or the employee receiving it furnishes to the employer and the board notice of the injury and treatment, preferably on a form prescribed by the board. The board shall, however, excuse the failure to furnish notice within 14 days when it finds it to be in the interest of justice to do so, and it may, upon application by a party in interest, make an award for the reasonable value of the medical treatment so obtained by the employee. When a claim is made for a course of treatment requiring continuing and multiple treatments of a similar nature, in addition to the notice the physician or provider must furnish a ^{written} treatment plan if the course of treatment will require more than 20 outpatient visits in the first 60 days. The treatment plan must be furnished to the employee and the employer within 14 days after treatment begins. The treatment plan must include objectives, modalities, frequency of treatments, and reasons for the frequency of treatments. If the treatment plan is not furnished in the time provided, neither the employer nor the employee may be required to pay for treatments that exceed the frequency standard set out in this subsection.

PROPOSAL II

(c) A claim for medical or surgical treatment, or treatment requiring continuing and multiple treatments of a similar nature is not valid and enforceable against the employer unless, within 14 days following treatment, the physician or provider giving the treatment or the employee receiving it furnishes to the employer and the board notice of the injury and treatment, preferably on a form prescribed by the board. The board shall, however, excuse the failure to furnish notice within 14 days when it finds it to be in the interest of justice to do so, and it may, upon application by a party in interest, make an award for the reasonable value of the medical treatment so obtained by the employee. When a claim is made for a course of treatment requiring continuing and multiple treatments of a similar nature, in addition to the notice the physician or provider must furnish a treatment plan if the course of treatment will require more frequent outpatient visits than the standard treatment frequency for the nature and degree of the injury and the type of treatment. The treatment plan must be furnished to the employee and the employer within 14 days after treatment begins. The treatment plan must include objectives, modalities, frequency of treatments, and reasons for the frequency of treatments. If the treatment plan is not furnished in the time provided, neither the employer nor the employee may be required to pay for treatments that exceed the frequency standard.

Sec 13

ch 13

PROPOSAL III

(c) A claim for medical or surgical treatment, or treatment requiring continuing and multiple treatments of a similar nature is not valid and enforceable against the employer unless, within 14 days following treatment, the physician or provider giving the treatment or the employee receiving it furnishes to the employer and the board notice of the injury and treatment, preferably on a form prescribed by the board. The board shall, however, excuse the failure to furnish notice within 14 days when it finds it to be in the interest of justice to do so, and it may, upon application by a party in interest, make an award for the reasonable value of the medical treatment so obtained by the employee. When a claim is made for a course of treatment requiring continuing and multiple treatments of a similar nature, in addition to the notice the physician or provider must furnish a treatment plan if the course of treatment will require more frequent outpatient visits than the standard treatment frequency for the nature and degree of the injury and the type of treatments. The treatment plan must be furnished to the employee and the employer within 14 days after treatment begins. The treatment plan must include objectives, modalities, frequency of treatments, and reasons for the frequency of treatments. If the treatment plan is not furnished in the time provided, neither the employer nor the employee may be required to pay for treatments that exceed the frequency standard. The board shall adopt regulations establishing the standards for frequency of treatment.

Sec. 33

A M E N D M E N T

Offered in the HOUSE

By Sun

TO: HCS CSSB 322 (Judiciary)

Page 26, line 29, through page 27, line 2:

Delete all material.

Reletter the following subsection accordingly.

Sec. 36

A M E N D M E N T

Offered in the HOUSE



By Sund

TO: HCS CSSB 322(Judiciary)

Page 28, line 9, after "employee":

Insert "(A)"

Page 28, line 10, after "injury":

Insert "; (B) was absent from the labor market for six months or more of the two calendar years preceding the injury because the employee was receiving medical treatment, was enrolled as a student in a career education, undergraduate or graduate program, or was parenting a child;"

After "or":

Insert "(C)"

See. 36

AMENDMENT

Offered in the HOUSE

By Sund

TO: HCS CSSB 322 (L&C)

Page 28, line 17:

Delete "at the time of injury."

Insert "for the week of the injury."

A M E N D M E N T

Offered in the HOUSE

By Sund

TO: HCS CSSB 322 (Judiciary)

Page 2, after line 17:

Insert a new bill section to read:

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

(c) An insurer may not impose a surcharge for assigned risk pool insurance unless the insured has received an experience modification debit. After the insured has received an experience modification debit, the insured may impose a surcharge if ^{percentage of the} the surcharge does not exceed ~~an amount~~ ^{the percentage} applied as an experience modification debit or 25 percent of the premium developed after application of the experience modification factor, whichever is less."

Renumber remaining bill sections accordingly.

Page 31, line 24:

Delete "sec. 7"

Insert "sec. 8"

Page 31, line 25:

Delete "sec. 27"

Insert "sec. 28"

Page 32, line 8:

Delete "sec. 9"

Insert "sec. 10"

Page 32, line 13:

Delete "secs. 7, 24, 27, 28, 40, and 44"

Insert "secs. 8, 25, 28, 29, 41, and 45"

Page 32, line 16:

Delete "Section 40"

Insert "Section 41"

Page 32, line 17:

Delete "sec. 40"

Insert "sec. 41"

Page 32, line 18:

Delete "40 and 47"

Insert "41 and 48"

Page 32, line 20:

Delete "39, and 41 - 46"

Insert "40, and 42 - 47"

Sec. 44

A M E N D M E N T

Offered in the HOUSE

By Su

TO: HCS CSSB 322 (Judiciary)

Page 32, line 2, after "REDUCTION.":

Insert "(a)"

Page 32, after line 6:

Insert a new subsection to read:

"(b) This section does not apply to assigned risk pool insurance under AS 21.39.155."

OVERVIEW - WORKERS' COMPENSATION BILL
House CS CSSB 322 (Judiciary)

This bill is some 33 pages with 50 sections covering an extremely complicated subject. Its intent is to lower workers' compensation insurance premium rates by streamlining the comp delivery system, reapportioning benefits and reducing litigation. The following are highlights of the bill.

A. INJURED WORKER-RELATED ISSUES

1. Vocational Rehabilitation

- a. Change from a mandatory to a voluntary program.
- b. Limit program to those injured workers whose injury prevents them from performing duties of their profession.
- c. Limit voc rehab programs to two years.
- d. Cap rehab plan costs to \$10,000.
- e. Change purpose of rehab to make an injured worker employable versus employed.

2. Medical

- a. Subject medical payments to usual, customary and reasonable rates.
- b. Allow injured worker and employer to change treating physician and independent medical examiner respectively only once without each other's written consent.
- c. Require a written treatment plan for continuing subject to frequency guidelines to be established by the Department.
- d. Allow for a Board appointed Independent Medical Examiner (IME).

3. Compensation

- a. Change the maximum weekly benefit from 200% of state average weekly wage, currently \$1,100, to set maximum of \$700.
- b. Change the minimum weekly benefit from \$110 to \$154 if the worker submits wage documents. Without wage documents, the minimum benefit remains \$110.
- c. Allow an employee's vested pension contributions to be considered in determining weekly wage benefits and allow employers to offset comp benefits for pension benefits paid to workers.
- d. Clarify board determination of gross weekly earnings in an attempt to reduce litigation on this subject.
- e. Adjust weekly comp benefits for differences in cost of living for claimants living outside of Alaska.

4. Benefits

- a. Schedule all injuries (including presently unscheduled injuries such as back and neck) and determine the degree of disability and amount of payment based upon "whole person" concept as provided in American Medical Association guidelines. Lost earnings would not be considered. This refers only to Permanent Partial Disability payments (PPD). Temporary Total (TTD), Temporary Partial (TPD) and Permanent Total (PTD) would continue as at present.
- b. Increase the cap on PPD benefits from \$60,000 to \$135,000 and readjust the benefits so that the more severely injured workers receive higher benefits.
- c. Broaden market for employees' services to reduce claims for PTD due to lack of employment opportunities.

5. Other

- a. Bar an employee from making a workers' comp claim if the employee knowingly made false representations as to his physical condition, such representations were material to the hiring and they are connected to the injury.
- b. Remove the presumption of compensability for stress claims by requiring claimants to prove the mental injury resulted from work-related stress.
- c. Require the last employer to pay benefits if a claim is controverted on the grounds that another employer is liable.
- d. Prohibit discrimination in hiring, retaining or promoting an employee who has received workers' comp benefits.

B. INSURER/EMPLOYER-RELATED ISSUES

1. Safety Program

- a. Requires all insurers to make available to all insureds a safety program that includes consulting services and a rate reduction for successful program implementation. The cost of the services may be separate from premium rates.

2. Second Injury Fund

- a. Permits insureds to contribute to the fund annually instead of on the anniversary of each claim.
- b. Administrative costs of the fund are supported by the fund itself instead of through General Fund dollars.

3. Reporting and Penalties

- a. Clarifies reporting requirements and increases penalties for late and incomplete reports.

4. Assigned Risk Pool

- a. Restructures the pool so that not all companies are automatically charged a 20% surcharge on their premiums.
- b. Tries to make the pool more equitable in that those companies proven to be a poor risk are surcharged while those proven to be good risks are not surcharged.
- c. Reduces potential abuse of the pool as a "dumping ground" for small or new companies.

5. Rate Reduction

- a. Mandates a 6% premium rate reduction for the period July 1, 1988 through Dec. 31, 1989.

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>
<i>minor</i> 33	Rewrote "reduce disincentives" to read "increase the incentives."	1 - 27	1 - 27
<i>revised</i> 18	Added intent language urging the Administration to enforce reporting requirements and penalties under the Workers' Compensation Act.	2 - 7	2 - 7
<i>based on testimony</i> 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
<i>good clean up</i> 1	Clarified that the board retains two provider rosters -- one for rehab. specialists, one for physicians.	3 - 2	2 - 26
<i>clean up</i> 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
<i>pro ins</i> 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
<i>business</i> 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

2	4	Clarified the reference dictionary used in vocational rehab. codes.	7 - 26	7 - 24
1	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."		
MAJOR	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)		
MAJOR	27	Deleted the reference to the board IME being in the same speciality as the employee's chosen treating physician.	17 - 27	18 - 1
MAJOR	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
MINOR	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 - 1
	29		19 - 8	19 - 1
7	8	Increased penalties for late compensation payments to 50 percent or \$300, whichever is greater.	21 - 27	22 - 5
changed		(Note: This section was amended again. See attached list of amendments to	22 - 8	22 - 8

4/26/88 draft)

why not

why not

clearly

TF

TF

TF

TF

TF

??

*redundant
minor*

minor

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>
<i>MAJOR</i> 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
<i>MAJOR</i> 1	Permits an insurer to charge for safety program consulting services separately from the premium rate.	3 - 6	NA
<i>MAJOR</i> 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
<i>Minor</i> 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
<i>TF</i> 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		
<i>TF</i> 5	Deleted unnecessary language.	28 - 24	29 - 12

MAIR 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