SB

322

File 2

WHAT'S IN IT FOR WORKERS?

ITEM	PRESENT LAW	PROPOSED BILL
RELATIONSHIP COMPENSATION AND DEGREE OF INJURY		
Substantial Payment For Serious Injury	Temporary total disability paid until medically recovered Temporary total disability paid during vocational rehab.	Temporary total disability limited to 2 years and eliminated after medical stability. No provision for payment of TTD during rehab, after 2 years or after medical stability.
Significant Compensation For Permanent Partial Disability	Yes	Totally Eliminated
Payment For Medical Impairment	Yes, for scheduled injuries only	Yes, for all injuries. Complete information isn't available but often will be less than what is now treated as scheduled injuries due to the adjustment factor.
WEEKLY BENEFITS		
Medium and High Income Workers	Based on actual earnings or earning capacity of employee but maximum of 200% of the State's weekly wage	Based on past earnings to maximum of $700 per week. Right to compensation rate adjustment restricted.
Lower Income Workers	Right to establish likely future earning capacity	Right to compensation rate adjustment restricted.
Employers Right To Unilaterally Reduce Compensation Rate For Lower Paid Workers	No	Yes

ITEM	PRESENT LAW		PROPOSED BILL
FRINGE BENEFITS	Pre-1984	Post-1984	
All Fringe Benefits Included	Yes	No	No, only pension benefits included
All Members Included	Yes, under Supreme Court Decision; No under Board Decision	No	No, only vested members included
Ragland Decision Entitles Worker To Increased Compensation	Yes	No	Only if worker is not receiving pension benefits
PROVIDES PAYMENT TO INJURED WORKER PENDING DISPUTE BETWEEN MULTIPLE EMPLOYERS	No, but could be done by administrative regulation		Yes, this is a very desirable provision
DISCRIMINATION AGAINST INJURED WORKERS PROHIBITED	No		Yes, this is a very desirable provision
REHABILITATION			
Voluntary	Yes		Yes
Goal Is To Return to Earning Capacity At Time Of Injury	Yes		No, only to 60% of pre-injury earning capacity
Right To Rehabilitation Can Be Lost If Immediate Election Is Not Made By Injured Worker	No		Yes
Injured Worker Required To Pay For Own Rehabilitation Two Years After Injury or After Medical Stability	No		Yes

5-1514X

P12

Original sponsor: Labor and Commerce Committee

IN THE SENATE BY THE JUDICIARY COMMITTEE

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

IN THE LEGISLATURE OF THE STATE OF ALASKA

FIFTEENTH LEGISLATURE - SECOND SESSION

A BILL

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

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

* Section 1. LEGISLATIVE INTENT. (a) It is the intent of the legislature that AS 23.30 be interpreted so as to ensure the quick, efficient, fair, and predictable delivery of indemnity and medical benefits to injured workers at a reasonable cost to the employers who are subject to the provisions of AS 23.30.

(b) 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. It is also the intent of the legislature that the board possess the greatest possible authority in the exercise of its fact finding responsibilities and that the board's decisions be conclusive unless the court finds that a reasonable person could not have reached the conclusion made by the board.

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

(1) recognize the levels of workers' compensation benefits brought about by the high cost of living that exists in the state as compared to other localities;

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

(3) remove obstacles to the utilization of vocational rehabilitation that may be brought about by the payment of workers' compensation

benefits at the high levels provided by the Alaska workers' compensation law to individuals residing in localities with living costs lower than 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 practices to reduce work related injuries.

(e) It is the intent of the legislature in amending AS 23.30.075(b) and 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 and penalties for noncompliance under AS 23.30.155. Strict enforcement is necessary because

(1) the state has failed 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 from the division of workers' compensation and division of insurance to adequately assess the efficiency and costs of the workers' compensation system.

* 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 insurer may impose a surcharge if the percentage of the surcharge does not exceed 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.

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

Sec. 21.89.015. WORKPLACE SAFETY PROGRAM. An insurer who provides workers' compensation insurance in this state shall 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 and successful implementation of a safety program; and

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

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

* 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 preemployment questionnaire may not receive benefits under this chapter if

(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.

* 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 on an installment basis of not fewer than two payments, if requested by the insured. Premiums paid by installment must be structured to reflect seasonal peaks in the basis of the premium. The insurer shall include this provision in the insurance policy in a manner that clearly informs the insured of the provision.

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

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

than $20. By December 15 of each year the commissioner shall determine and make available to the public the applicable contribution rate for the following calendar year according to the reserve rate of the second injury fund in column B of this subsection:

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

* 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 section for the previous fiscal year; the report must include a general section, sections related to each rehabilitation specialist employed under this section, and a statistical summary of all rehabilitation cases, including

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

(B) the estimated and actual time of each rehabilitation plan;

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

(D) the cost of reemployment benefits;

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

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

(c) If an employee suffers a compensable injury that may permanently preclude an employee's return to the employee's occupation at

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

(d) Within 30 days after the referral by the administrator, the rehabilitation specialist shall perform the eligibility evaluation and issue a report of findings. The administrator may grant up to an additional 30 days for performance of the eligibility evaluation upon notification of unusual and extenuating circumstances and the rehabilitation specialist's request. Within 14 days after receipt of the report from the rehabilitation specialist, the administrator shall notify the parties of the employee's eligibility for reemployment preparation benefits. Within 10 days after the decision, either party may seek review of the decision by requesting a hearing under AS 23.30.110. The hearing shall be held within 30 days after it is requested. The board shall uphold the decision of the administrator except for abuse of discretion on the administrator's part.

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

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

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

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

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

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

(3) at the time of medical stability no permanent impairment is identified or expected.

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

specialist.

(h) Within 90 days after the rehabilitation specialist's selection under (g) of this section, the reemployment plan must be formulated and approved. The reemployment plan must include at least the following:

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

(2) an inventory of the employee's technical skills, physical and intellectual capacities, academic achievement, emotional condition and family support;

(3) a plan to acquire the occupational skills to be employable;

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

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

(6) the date the plan will commence;

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

(8) a detailed description and plan schedule; and

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

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

(1) on the job training;

(2) vocational training;

(3) academic training;

(4) self-employment; or

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

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

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

reemployment plan.

(l) The cost of the reemployment plan incurred under this section shall be the responsibility of the employer, shall be paid on an expense incurred basis, and may not exceed $10,000.

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

(n) After the employee has elected to participate in reemployment benefits, if the employer believes the employee has not cooperated the employer may terminate reemployment benefits on the date of noncooperation. Noncooperation means unreasonable failure to

(1) keep appointments;

(2) maintain passing grades;

(3) attend designated programs;

(4) maintain contact with the rehabilitation specialist;

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

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

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

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

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

(p) In this section

(1) "administrator" means the reemployment benefits administrator under AS 23.30.041(a);

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

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

(A) area of residence;

(B) area of last employment;

(C) the state;

(D) other states;

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

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

(6) "rehabilitation specialist" means a person who is a certified insurance rehabilitation specialist, a certified rehabilitation counselor, or a person who has equivalent or better qualifications as determined under regulations adopted by the department;

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

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

Sec. 23.30.055. EXCLUSIVENESS OF LIABILITY. The liability of an employer prescribed in AS 23.30.045 is exclusive and in place of all other liability of the employer and any fellow employee to the employee, the employee's legal representative, husband or wife, parents, dependents, next of kin, and anyone otherwise entitled to recover damages from the employer or fellow employee at law or in admiralty on account of the injury or death. <u>The liability of the employer is exclusive even if the employee's claim is barred under AS 23.30.020(b).</u> However, if an employer fails to secure payment of compensation as required by this chapter, an injured employee or the employee's legal representative in case death results from the injury may elect to claim compensation under this chapter, or to maintain an action against the employer at law or in admiralty for damages on account of the injury or death. In that action the defendant may not plead as a defense that the injury was caused by the negligence of a fellow servant, or that the employee assumed the risk of the employment, or that the injury was due to the contributory negligence of the

employee.

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

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

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

(a) The employer shall furnish medical, surgical, and other attendants or treatment, nurse and hospital service, medicine, crutches, and apparatus for the period which the nature of the injury or the process of recovery requires, not exceeding two years from and after the date of injury to the employee. However, if the condition requiring the treatment, apparatus, or medicine is a latent one, the two-year period runs from the time the employee has knowledge of the nature of the employee's disability and its relationship to the employment and after disablement. It shall be additionally provided that, if continued treatment or care or both beyond the two-year period is indicated, the injured employee has the right of review by

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

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

(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 health care 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 or surgical 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 health care provider shall furnish a written 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 shall 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 as required under this subsection, neither the employer nor the employee may be required to pay for treatments that exceed the frequency standard. The board shall adopt regulations establishing standards for frequency of treatment.

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

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

relative to the injury or claim communicated to or otherwise learned by a physician or surgeon who may have attended or examined the employee, or who may have been present at an examination are not privileged, either in the hearings provided for in this chapter or an action to recover damages against an employer who is subject to the compensation provisions of this chapter. If an employee refuses to submit to an [ANY] examination provided for in this section, the employee's rights to compensation shall be suspended until the obstruction or refusal ceases, and the employee's compensation during the period of suspension may, in the discretion of the board or the court determining an action brought for the recovery of damages under this chapter, be forfeited. The board in any case of death may require an autopsy at the expense of the party requesting the autopsy. An autopsy may not be held without notice first being given to the widow or widower or next of kin if they reside in the state or their whereabouts can be reasonably ascertained, of the time and place of the autopsy and reasonable time and opportunity given the widow or widower or next of kin to have a representative present to witness the autopsy. If adequate notice is not given, the findings from the autopsy may be suppressed on motion made to the board or to the superior court, as the case may be.

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

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

treatment or service.

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

(j) The board may appoint a medical services review committee, or contract with an existing organization in the state or another state, to assist and advise the board in matters involving the appropriateness, necessity, and cost of medical and related services provided under this chapter.

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

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

* 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

injury, 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 <u>of benefits under AS 23.30.180, 23.30.185, 23.30.190, 23.30.200, or 23.30.215</u>. 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 determined by the board, time limitations notwithstanding.

* Sec. 20. 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 necessary discovery, obtained necessary evidence, and is prepared for the hearing. An opposing party shall have 10 days after the hearing request is filed to file a response. If a party opposes the hearing request, the board or a board designee shall within 30 days of the filing of the opposition conduct a prehearing conference and set a hearing date. If opposition is not filed, a hearing shall be scheduled no later than 60 days after the receipt of the hearing request. The board shall give each party at least 10 days' notice of the hearing, either personally or by certified mail. After a hearing has been scheduled, 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. After completion of the hearing the board shall close the hearing record. If a settlement agreement is reached by the parties 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.

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

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

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

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

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

(a) Upon its own initiative, or upon the application of any party in interest on the ground of a change in conditions, including, for the purposes of AS 23.30.175, a change in residence, or because of a mistake in its determination of a fact, the board may, before one year after the date of the last payment of compensation <u>benefits under AS 23.30.180, 23.30.185, 23.30.190, 23.30.200, or 23.30.215</u>, whether or not a compensation order has been issued, or before one year after the rejection of a claim, review a compensation case <u>under</u> [IN ACCORDANCE WITH] the procedure prescribed in respect of claims in AS 23.30.110. <u>Under</u> [IN ACCORDANCE WITH] AS 23.30.110 the board may issue a new compensation order which terminates, continues, reinstates, increases, or decreases the compensation - award compensation.

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

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

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

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

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

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

* 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 25 [20] percent of it or $100, whichever amount is greater. This additional amount shall be paid at the same time as, and in addition to, the installment, unless notice is filed under (d) of this section or unless the nonpayment is excused by the board after a showing by the employer that owing to conditions over which the employer had no control the installment could not be paid within the period prescribed for the payment.

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

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

tory injunction staying payments is allowed by the court.

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

(m) On or before March 1 of each year the insurer or adjuster shall file a verified annual report on a form prescribed by the board stating the total amount of all compensation by type, the number of claims received and the percentage controverted, medical, and related benefits, vocational rehabilitation expenses, legal fees, including a separate total for fees paid to attorneys and fees paid for the other costs of litigation, and penalties paid on all claims during the preceding calendar year. If the annual report is timely and complete when received by the board and provides accurate information about each category of payments, the commissioner shall review the timeliness of the insurer's or adjuster's reports filed during the preceding year under (c) of this section. If during the preceding year the insurer or adjuster filed at least 99 percent of the reports on time, the penalties assessed under (c) of this section shall be waived. If during the preceding year the insurer or adjuster filed at least 97 percent of the reports on time, 75 percent of the penalties assessed under (c) of this section shall be waived. If during the preceding year the insurer or adjuster filed 95 percent of the reports on time, 50 percent of the penalties assessed under (c) of this section shall be waived. If during the preceding year the insurer's or adjuster's reports have not been filed on time at least 95 percent of the time, none of the penalties assessed under (c) of this section shall be waived. The penalties that are not waived are due and payable when the insurer or adjuster receives notification from the commissioner regarding the timeliness of the reports. If the annual report is not filed by March 1 of each year, the insurer or adjuster shall pay a civil penalty of $100 for the first day the annual report is late, and

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

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

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

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

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

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

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

less than $154, the employee's weekly rate of compensation shall be $154. Prior payments made in excess of the adjusted rate shall be deducted from the unpaid compensation in the manner the board determines. In any case, the employer shall pay timely compensation.

(b) The following rules apply to benefits payable to recipients not residing in the state at the time compensation benefits are payable:

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

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

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

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

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

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

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

disability adjudged to be permanent 80 percent of the injured employee's spendable weekly wages shall be paid to the employee during the continuance of the total disability. If a permanent partial disability award has been made before a permanent total disability determination, permanent total disability benefits must be reduced by the amount of the permanent partial disability award, adjusted for inflation, in a manner determined by the board. Loss of both hands, or both arms, or both feet, or both legs, or both eyes, or of any two of them, in the absence of conclusive proof to the contrary, constitutes permanent total disability. In all other cases permanent total disability is determined in accordance with the facts. In making this 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 determination as set out in the American Medical Association Guides to the Evaluation of Permanent Impairment, except that an impairment rating may not be rounded to the next five percent. The board shall adopt a supplementary recognized schedule for injuries that cannot be rated by use of the American Medical Association Guides.

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

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

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

another employment, to be paid during the continuance of the disability, but not to be paid for more than five years. Temporary partial disability benefits may not be paid for a period of disability occurring after the date of medical stability.

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

(b) The wage-earning capacity of an injured employee is determined by the actual spendable weekly wage of the employee if the actual spendable weekly wage fairly and reasonably represents the wage-earning capacity of the employee. The board may, in the interest of justice, fix the wage-earning capacity that is reasonable, having due regard to the nature of the injury, the degree of physical impairment, the usual employment, and other factors or circumstances in the case that may affect the capacity of the employee to earn wages in a disabled condition, including the effect of disability as it may naturally extend into the future.

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

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

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

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

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

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

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

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

(c) If employer contributions to a qualified pension or profit sharing plan have been included in the determination of gross earnings and the employee is receiving pension or profit sharing payments, weekly compensation benefits payable under this chapter shall be reduced by the amount paid or payable to the injured worker under the plan for any week or weeks during which compensation benefits are also payable. The amount of the reduction may not in any week exceed the increase in weekly compensation benefits brought about by the inclusion of employer contributions to a qualified pension or profit sharing plan in the determination of gross earnings.

* 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.

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

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

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

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

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

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

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

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

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

ary action, work evaluation, job transfer, layoff, demotion, termination or similar action, taken in good faith by the employer;

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

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

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

* Sec. 45. 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 sec. 28 of this Act, on or before March 1, 1989, each employer that is subject to those sections shall file a report and make the appropriate contribution for all claims existing as of December 31, 1988. The period covered in the report shall be from the date of the termination report or the last anniversary report filed, if one has been filed, through December 31, 1988.

* Sec. 46. TEMPORARY RATE REDUCTION; FUTURE FILINGS. (a) Notwithstanding AS 21.39.030, an insurer providing workers' compensation insurance in the state 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.

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

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

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

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

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

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

HOUSE LABOR AND COMMERCE COMMITTEE

REPRESENTATIVE DAVE DONLEY, CHAIRMAN

WORKERS' COMPENSATION LEGISLATION

Comparative Analysis - House and Senate Bills
Prepared by the House Labor and Commerce Committee
February 23, 1988

ISSUE	HB 352/SB 322	CURRENT LAW	PUBLIC TESTIMONY	CS SB 322 (L&C)
(1) Standard of evidence to uphold a Board decision	"Any evidence" standard set in AS 23.30.(b) under legislative intent language in Section 1.	"Substantial evidence"	Several participants argued that the "any evidence" standard was too broad and should be amended to read "any reasonable" or "preponderance of evidence".	The "any evidence" standard is changed to provide that a Board's decision is conclusive "unless the court finds that a reasonable person could not have reached the conclusion made by the Board".
(2) Adjust benefits by COLA	Adjusts benefits for workers by the cost of living (COLA) for their area of residence	Adjusts benefits for workers by a formula based on the difference between the hourly wage in Alaska vs the hourly wage for the same kind of work in another state.	Some participants expressed concern that this change may have constitutional problems, particularly since a reliable source of information about the COLA by states is hard to obtain. Generally, testimony favored this change.	Legislative intent langunge in Section 1. is amended to include the word "fair" under the purposes for which the workers' compensation program was created.
(3) Board established list of providers	Board establishes and maintains a list of health care providers and may choose providers on a rotating basis to conduct IME's and other services at the request of the Board.	Health care providers picked at random by employer/insurer, employee, or by the Board.	Some participants expressed concern that some providers may be "black-balled" from the list and have no recourse to address their grievance under this section.	AS 23.30.005(h) is amended to change "may" to "shall", thus requiring the Board to establish the list of providers. AS 23.30.005 (m) is amended to change "shall" immediately adopt new regulations" to "may".
(4) Reporting of prior existing injury	AS 23.30.020(b) denies benefits to a worker who "knowlingly makes a false statement" about a pre-existing injury and the employer (1) depends on that statement in hiring and (2) the prior injury has a causal relationship to the second injury.	Current law is silent on this particular circumstance although there is a general prohibition in AS 23.30.250 that makes it a felony (perjury) for anyone to make a false or misleading statement for the purposes of obtaining or denying a workers' comp benefit.	There was some testimony that a worker may make a false statement through omission or misunderstanding and later he denied benefits. Generally this addition was supported because an employer has to have the information to meet reporting requirements under the second injury fund. Fairbanks United supported this change but suggested (1) that a standardized form be used, (2) adding provisions for making a prompt determination as to whether fraud was committed and (3) that an employer have immunity from civil liability from a worker denied benefits under (b).	A new Section 5 (AS 23.30.025) is added to provide that any "all states' rider" on a workers' compensation policy issued from another state must designate whether Alaska is one of the states covered by the rider and the report must be submitted to the Department of Labor under AS 23.30.085. (Upon receipt of the report, DOL could to refuse to recognize a policy if the rates paid by the employer/firm are not adequate for Alaska coverage.) See #5 under "OTHER ISSUES". A new Section 6 (AS 23.30.030) is added to provide that a premium paid for insurance may be paid semi-annually if requested by the insured and if the annual policy is $2,000 or more and requires the insurer to notify the insured of this provision.

ISSUE	HB 352/SB 322	CURRENT LAW	PUBLIC TESTIMONY	PROPOSED (Senate) CS
				A new Section 8 (AS 23.30.040(h) is added to roll in the major provision of HB 177 to provide that administrative expenses for the second injury fund will be paid from the fund. The effect of this cost-saving measure is to give the pending legislation (HB 352/SB 322) a zero fiscal note.
(5) Vocational Rehabilitation Services Selection of Rehab Serv. Administrator	AS 23.30.041 (a) Board selects a Reemployment Services Administrator (RSA) to (b) perform functions outlined in paragraphs (1 through 4) including: enforcement of regulations, recommending regulations and monitoring the quali y and effectiveness of programs and (5) (a through d) monitoring the costs of rehab programs and following up on clients and (b) establish and maintain a list of qualified specialists and (7) promote awareness of the program	AS 23.30.041(a) provides that the Board shall select a rehabilitation administrator to (b) implement the section and study the program.	Some participants objected to what they termed as the "sweeping powers" granted to the RSA under pending legislation. Fairbanks United was not convinced that the proposed changes to the rehab section would work and suggested, (1) requirements for reporting/compiling data on the costs of rehab evaluations, (2) implementation of regulations that require timely action on cases, (3) establishing a task force to track the rehab section, and (4)redirecting the second injury fund to provide incentives for employers to rehire injured workers.	AS 23.30.041 is amended into a new format with only a few substantive changes that include:
Rotating roster for selection:	AS 23.30.041 (c) requires the RSA to establish and maintain a rotating roster of specialists to perform eligibility evaluations for rehab and to make selections from the list when needed.			AS 23.30.041(c) is further amended to provide that the list maintained by the RSA shall be "on a rotating and geographic basis".
	AS. 23.30.041 (d) provides that an employee shall be eligible for rehab services if a doctor predicts that the worker will have a permanent impairment from their injury that will leave them with less than what it it takes to do the job they were (1) doing at the time of injury or (2) held during the last ten years long enough to learn the necessary skills.	AS 23.30.041(c) provides that an employee is eligible for rehab if a doctor predicts that the injury will cause a permanent impairment that precludes a return to "gainful employment"		AS 23.30.041(e)(2) is amended to include "jobs that exist in the labor market that the employee has held or received training for within 10 years before the injury....".
Eligibility for rehab services	AS 23.30.041(e) provides that an employee is not eligible if (1) employer offers employee a job at no less than 60% of pre-injury gross hourly wage or (2) employee has been previously injured, completed a rehab program, and returned to a similar job.		Several participants complained that this section would make rehab a "once in a lifetime deal" under workers comp and asked that the section be amended to permit subsequent rehab services to an injured worker if their current injury had no substantial relationship to the first injury that resulted in rehabilitation.	AS 23.30.041(f)(1) is amended to provide that "the employer offers employment within the employee's predicted post-injury physical capacities at a wage equivalent to at least the state minimum wage under AS 23.10.065 or 60% of....".

ISSUE	HB 352/SB 322	CURRENT LAW	PUBLIC TESTIMONY	PROPOSED (Senate) CS
(5) Cont'd Rehab Services	AS 23.30.041 (f) provides that a worker eligible for rehab shall select a rehab specialist from the rotating roster.	No Board maintained roster under current law.	Several voc rehab specialists objected to being chosen from a rotating roster because, (1) it was not cost effective for doing several evaluations in adjacent communities and (2) it interferes with free enterprise and free choice by employee of a rehab specialist who has demonstrated quality results.	
Conflicts	If their is a conflict between the employee/er over the choice the RSA shall appoint a specialist to perform the eligibility determination. Both parties have one right of refusal for a specialist.	AS 23.30.041(f) provides that if there is a disagreement between the employee/er, the RS shall appoint or deny a plan by any party within 14 days and any party can seek a review of the decision within 10 days under AS 23.30.110.		AS 23.30.041(f)(2) is amended to provide that "the employee has been previously rehabilitated in a former workers' compensation claim and returned to work in the same or similar occupation in terms of physical demands required of the employee at the time of the previous injury, or"
Design of Rehab Plan	The rehabilitation plan shall include (1) the occupational goals in the labor market (2) plan to acquire skills to be employed (3) cost estimate of the plan (4) length of time the plan will take (5) date plan begins (6) date of medical stability as predicted by a doctor	AS 23.30.041(d) provides that the first evaluation shall judge whether rehab is necessary including (1) if the plan allows the worker to return to work, (2) if worker can return to work without the plan, (3) costs of plan including all costs to employer and whether worker will be more or less able to work after the plan AS 23.30.041(e) provides that the plan may consist of the following with the highest preference on that which will get the worker back to work the soonest, (1) prosthetic devices (2) work site modification, (3) on the job training, (4) vocational training for a new job, (5) academic training.		A new paragraph (3) is added to AS 23.30.041(f) to provide that "at the time of medical stability no permanent impairment is identified or expected.
Agreement to the Plan	AS 23.30.041 (h) requires employee/er to sign the plan.			AS 23.30.041(h) is amended by adding a new paragraph (2) to require an inventory of the employee's abilities in formulating a rehab plan. AS 23.30.041(h)(7) is amended to read "the estimated time of medical stability as predicted by the physician". AS 23.30.041(h) is amended by adding a new paragraph (8) to require a detailed description of the rehab plan.

ISSUE	HB 352/SB 322	CURRENT LAW	PUBLIC TESTIMONY	PROPOSED (Senate) CS
(5) Vocational Rehabilitation Services Non-cooperation	AS 23.30.041 (i) provides that noncooperation by an employee shall mean loss of benefits from the date of noncooperation which is defined as failure to: (1) keep appointments, (2) maintain average grades, (3) attend programs as assigned by the specialist, (4) maintain contact, (5)cooperate in the development of the plan and participate in assigned activities, (6) comply with employees responsibilities outlined in the plan and (7) participate in activities as determined by the RSA	AS 23.30.041 (h) provides that refusal to participate means loss of benefits for the time of refusal until refusal stops. If a person who refuses to participate begins a rehab plan within two months, completes the plan and works for at least 30 days, they shall receive a lump sum of 25% of their forfeited benefits.	There was considerable public testimony in opposition to this section because people felt, (1) it gave too much power to the RSA and rehab specialist, (2) it made "too many hoops" for an injured worker to jump through when a miss on any of them would mean a loss of rehab benefits, (3) there was no adequate way for a worker to argue in their defense if they were determined to be "noncooperative".	AS 23.30.041(n) is amended to read "noncooperation means unreasonable failure to" AS 23.30.041(n)(2) is amended by deleting "average" and inserting "passing grades". AS 23.30.041 is amended by adding a new subsection (o) to provide an appeal process in the determination of noncooperation.
Goals for Rehab Plan	AS 23.30.041 (g) sets priority goals for the plan as, (1) on the job training, (2) vocational training, (3) academic training, (4) self employment, or (5) any combination of the above.	AS 23.30.041(i) defines priority goals for the plan as restoring a workers to gainful employment (1) at the same job or similar job with the same employer or industry, (2) a job useing the same skills at a different industry, () 3 a job using different skills but the same level of academic training, (4) a job requiring higher academic skills.	There was testimony in oppostion to changing the goal of the plan from a goal of "gainful employment".	
Time Limits	AS 23.30.041 (j) establishes a time limit on rehab so that (1) reemployment benefits may not exceed 2 years, (2) an employee or employer must ask for an eligibility evaluation within 60 days of injury, (3) determination for eligibility must be complete within 30 days of referral, (4) a rehab specialist must be selected within 10 days of being determined eligible.		There was concern expressed that the two year cut-off was arbitrary and unfair, particularly to the more seriously injured worker who may need substantial rehabilitation. There was concern expressed that 60 days was too soon in some cases and that the language should be amended to allow for extenuating circumstances.	AS 23.30.041 (c) is amended to provide that a worker must request a rehab evaluation within 90 days instead of the 60 days under proposed legislation.

ISSUE	HB 352/SB 322	CURRENT LAW	PUBLIC TESTIMONY	PROPOSED (Senate) CS
(5) Vocational Rehabilitation Services Time Limits	AS 23.30.041 (j) cont'd. (5) plan must be approved by all parties within 90 days. (6) plan begins when doctor determines that worker is medically ready and		There was considerable public comment that the time limits established under this section are too tight and that more time should be allowed or that language should be added to give the RSA a mandate to allow more time when needed.	
Standard to uphold a RSA decision	As 23.30.041 (j) (7) provides that the Board will uphold a decision by the RSA unless "abuse of discretion" can be demonstrated.		Several participants testified that the "abuse of discretion" standard would be impossible to prove and that an injured party would not have an adequate ability to protest or address a grievance.	
Cost of Plan and Benefits under REhab	AS 23.30.041(k) provides that the cost of the plan may not exceed $10,000. If a worker reaches medical stability before completion of the plan, temporary total disability payments cease and permanent impairment benefits will be paid at TTD rates. If PPD benefits are exhausted before the plan is complete, the employer shall pay wages not less that 60% of the workers' pre-injury spendable weekly wage, not to exceed $525/week until completion of the plan. (k) cont'd.. Any permanent impairment benefits remaining after completion of the plan shall be paid in a lump sum. Fees paid to rehab specialists shall be paid by employer and are not included in the $10,000 limit on the cost of the plan.		There was concern expressed that the $10,000 limit was too low. Several participants expressed concern about the cut-off in TTD after medical stability, specifically because a worker will begin to assume some of the costs of the rehab plan in some cases.	

ISSUE	HB 352/SB 322	CURRENT LAW	PUBLIC TESTIMONY	PROPOSED (Senate) CS
5) Vocational ehabilitation ervices	AS 23.30.041(l) provides that only a rehab specialist may accept a case. A non-specialist may work under the direct supervision of a specialist.	See below on definition of rehab specialists.		
Definitions	AS 23.30.041 (m) is the definitions section including: (1) "employability" means the ability to but not necessarily the opportunity to engage in remunerative employment.	AS 23.30.041(l) defines a priority for restoring a worker to "gainful employment".	There was considerable public testimony in opposition to the:definition of (1) employability as the ability to hold a job as opposed the the current standard of actual having a job ("gainful employment")and	
	(2) "labor market" is the area that offers employment opportunities in the following priority: (a) area of residence, (b) area of last employemnt, (c) the state, (d) other states.		(2) the expanded definition of "labor market" that is used to determine whether a worker is eligible for rehab services.	
	(3) "physical capacity" (4) "physical demands" (5) "unemployment benefits			
	(6) "rehabilation specialist" as a person who holds at least a CIRS certificate or the equivalent or better.		Several professional groups objected to the definition of a specialist and asked that the licenses and degrees of other specialists be included in the definition and that a new section be added making a "grandmother" clause to allow currently practicing rehab specialists to continue to practice.	AS 23.30.041(p)(6) is amended to include "a certified rehabilitation counselor" under the definition of a "rehabilitation specialist".
	(7) "remunerative employability" as employment with wages equal to or greater than 50% of the gross hourly wages prior to injury, adjusted by the applicable area of residence.		There was considerable public testimony that the 60% standard for post-injury wages was too low and was unfair. Participants requested that the standard be amended so that the 60% could not be less than minimum wage.	

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	(2) "labor market" is the area that offers employment opportunities in the following priority: (a) area of residence, (b) area of last employemnt, (c) the state, (d) other states.		(2) the expanded definition of "labor market" that is used to determine whether a worker is eligible for rehab services.	
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ISSUE	HB 352/SB 322	CURRENT LAW	PUBLIC TESTIMONY	PROPOSED (Senate) CS
(6) Exclusiveness of Liability	Excludes workers' comp benefits for workers who make a false statement about a preexisting injury under AS 23.30.20(b)		Fairbanks United suggested that this section be amended to make the employer immune from liability when a worker is denied benefits under this section.	
(7) MEDICAL "Doctor Shopping"	AS 23.30.095 (a) is amended to provide that an employee can make only one change in the choice of treating physician without written permission of the employer. Referral to a specialist by a treating physician is not considered a choice. Notice of change in treating physician must be made to employer before change is made.	No limit on number of changes in the choice of doctor by either employee or employer although a changes is supposed to occur only through regulations developed by the Board.	Public comment pointed out that "doctor shopping" was as much a problem with employers as it was with employees and that an employers choice for a physician to perform IME's should be limited in the same way an employees choice is under the proposed legislation.	
"Continuous and Multiple Treatments"	AS 23.30.095 (c) is amended to provide that claims for continuing and multiple treatments are not valid unless they were submitted in a written plan before treatment commences that is completed and signed by treating physician and mailed to employer one week before beginning of treatment. Initial treatment plan shall not exceed more than 20 visits in first 60 days. If more than 20 visits in 60 days or more than 4/month after first 60 days, a physician shall document the need for services in excess of the guidelines in the plan.		Fairbanks United suggested that this approach won't work, will increase costs, and should be deleted from the hill. Participants, particularly patients of chiropractors and the doctors themselves, objected to the limits on continuing and/or multiple treatments as arbitrary, unfair, and discriminatory against a specific medical pra ctitioner. Chiropractors submitted eight pages of suggested amendmens to this section of the bill.	AS 23.30.095(e) is amended to provide that an IME requested by an employer every 60 (30) days is considered reasonable.

ISSUE	HB 352/SB 322	CURRENT LAW	PUBLIC TESTIMONY	PROPOSED (Senate) CS
(7) MEDICAL Cont'd. "Independent Medical Exams" IME's	AS 23.30.095(e) is amended to provide that an employers request for an IME within 14 days of injury and every 30 days thereafter is reasonable and that a worker is non-cooperative if they refuse to submit to an IME.	"refusal to submit to any exam".	Several participants expressed concern that employers would abuse the non-cooperation provisions to force workers to comply with unnecessary and painful tests. Suggested amendments included providing that only "reasonable" exams shall be required if they are the accepted method to detect the degree of injury and are related to the actual injury being examined. Fairbanks United suggested deleting this amended language altogether. Participants expressed concern that an employer would use the presumption of reasonableness under AS 23.30.095(e) to force workers to submit to painful, humiliating and unnecessary tests in order to coerce them into an early settlement.	AS 23.30.095(e) is further amended to add the phrase "unless medically necessary, the physician shall use existing diagnostic data to complete the examination".
"Medical Fees"	AS 23.30.095(f) is amended to require that medical fees shall not exceed "usual, customary, and reasonable fees" for treatment or services in the community as determined by the Board	Fees limited to "charges that prevail in the same community for similar treatment of injured persons with a like standard of living."	This section was strongly supported by participants, including the Alaska Medical Association.	AS 23.30.095(f) is amended by adding language that makes it clear than an employee cannot be required to pay for medical services.
"Medical eview Committee"	AS 23.30.095(j) is repealed and reenacted to authorize the Board to appoint or contract with a medical review committee or anyone to assist and advise them on medical issues.	Board shall adopt and use a schedule to determine the existance and degree of a permanent impairment consistent with the AMA guide lines.	Some participants expressed concern that this would allow the Board to hire "outsiders" and that they should be limited to advisory boards and committees that are located in Alaska. Fairbanks United testified that this section should remain as it is in current law.	

ISSUE	HB 352/SB 322	CURRENT LAW	PUBLIC TESTIMONY	PROPOSED (Senate) CS
7) MEDICAL Cont'd. "Second IME"	AS 23.30.095(k) provides that when there is a conflict between the employers' IME and the employees' treating physician, the Baord will select a physician from the rotating roster to perform a second IME whose opinion will be presumed to be correct unless rebutted by clear and convincing evidence. AS 23.30.095(k) cont'd Second IME is immune from civil liability for their opinion except in cases of fraud.	Current law is silent on this question but current practice is for the Board to try and weigh the various opinions of physicians and make a judgement as to who is correct. This practice requires the Board to basically make a medical decision without the proper training and experience to do so.	Members of the pubic and some physicians objected to the second IME's opinon having the presumption of correctness and suggested that all three physicians opinions (treating, physician, employer's IME, and Boards' IME) should have the same weight and be judged by the Board on an equal basis. Fairbanks United suggested an independent multi-discipline panel of Board certified physicians should be used to provide an independent exam. Several participants expressed concern that the "fraud" standard was to restrictive and impossible to prove and suggested that the section include "fraud, misrepresentation, and gross negligence"	AS 23.30.095(k) is further amended to provide that a person may not seek damages against the second IME except for fraud or gross incompetence".
) Stress Claims	AS 23.30.120 (c) is amended to provide that the presumption of compensibility under workers' comp does not apply to mental injuries caused by "stress" AS 23.265 (17) provides that a compensable injury does not include mental injury caused by stress unless (a) the stress was unusual and extraordinary compared to other workers doing the same or similar job and (b) work related stress was the predominant cause of the injury measured by actual events and not by an employees perception of events.	Current law is silent on the question of "stress" claims and the Courts have ruled in at least one case than an employees perception of events may he grounds for a stress claim and that the injury does not have to depend on an objective analysis of actual events. In additon, there is a presumption of compensability whenever an injury is job-related.	The majority of public testimony supported making an exception to the "presumption of conpensibility" in "stress" claims because (1) stress claims are becomming more frequent and (2) an employer can not defend against a "stress" claim, particularly when it can be based on a workers' perception of events. Some members of the public and at least one Senator expressed concern that some stress injuries resulting from racial or sexual harrassment may be precluded under the definition. Fairbanks United suggested using a "preponderence of evidence" test in this section and requested a better definition of "mental injury".	AS 23.30.125(f) is amended to provide that a finding of facts by the Board in a "stress" injury case is conclusive "unless the court specifically finds that a reasonable person could not have reached the conclusion made by the Board."

ISSUE	HB 352/SB 322	CURRENT LAW	PUBLIC TESTIMONY	PROPOSED (Senate) CS
(9) Payments of benefits in a conflict.	AS 23.30.155(d) is amended to provide that when there is a conflict over which employer/carrier is obligated to pay, but there is no conflict over whether the injury at question is compensible, the last employer shall immediately pay benefits to the workers. The employer or carrier ultimately deemed responsible will reimburse thepayee with interest.		Public testimony supported this change.	AS 23.30.155(c) is amended to provide that an insurer/adjuster (employer) is responsible for submitting certain reports to the Board. Several other changes are included to make the section consistent with this change. AS 23.30.155(c) is further amended to provide a penalties section for violation of this section. As 23.30.155(m) is amended to require the reports to be submitted by an insurer or adjuster as opposed to the employer. AS 23.30.155(m) is further amended to add a penalty provision for failure to submit reports so that "if the annual report is not filed by March 1 of each year, the insurer or adjuster shall pay a civil penalty of $100 for the first day the annual report is late, and $10 for each additional day the report is late". AS 23.30.155 is amended by adding a new subsection (n) to provide that the notification and penalty sections don't apply to self-insureds.
(10) Rates of Compensation	AS 23.30.175(a) provides that weekly compensation benefits may not be more than $700 or less than $154/week for employees with a previous wage history and not less than $110/week for workers without a wage history (or accurate history).	AS 23.30.175(a) provides that weekly compensation benefits may not be more than $1,100 or less than $110/week unless the Board determines that the workers' spendable weekly wage before the injury was less, in which case the $110/week may be decreased.	Generally, the public supported this change when they understood it. Several people said they didn't understand why the higher limit was lowered by $400 and the lower limit was raised by $44. (Majority of workers are on the low end of the scale with less than 5% qualifying for weekly benefits in excess of $700/week.) Fairbanks United supported this change but asked that someone monitor injured workers to see if they opt out of disability in order to collect unemployment benefits, which may be greater.	AS 23.30.175 (a) is amended by adding language "if the employer can verify that the employee's spendable weekly wages are less than $154, the employer may adjust the weekly rate of compensation to the employee's weekly spendable wages without an order of the Board".

ISSUE	HB 352/SB 322	CURRENT LAW	PUBLIC TESTIMONY	PROPOSED (Senate) CS
(11) Adjustment of benefits by COLA	AS 23.30.175 (b) (1-4) provides that weekly benefits for workers not residing in Alaska be adjusted by the COLA of their resident state.	AS 23.30.175(c) provides that benefits of workers not residing in Alaska be adjusted by the difference between the average weekly wage for a particular craft/job within the jurisdiction of the state where the worker now resides and the average weekly wage for the same or similar job in Alaska.	Generally, public testimony supported this change although there was some concern expressed about an accurate and reliable source of COLA information.	AS 23.30.175 (b)(1) is amended to read "...by the ratio of the cost of living of the area in which the recipient resides to the cost of living in this state." AS 23.30.175(b)(3) is amended to read "if the gross (average) weekly earnings (wage) of the recipient.....".
(12) Permanent Total Disability payments (PPD)	AS 23.30.180 (a) is amended to include a definition of "market for employee's services" as (1) area of residence (2) are of last employment and (3) the state. AS 23.30.180(b) provides that fai lure to acheive remunerative employability under AS 23.30. 041 (m) does not, in itself, constitute PTD.	AS 23.30 180(a) provides that PTD payments shall be 80% of the injured workers spendable weekly wage for the continuance of the disability.	Several participants objected to the expanded definition of labor market and expressed concern that it would force workers' to leave their home and communities if there was any job in the state that they could qualify for.	AS 23.30.180 is amended by adding a new sentence to prevent a person from improperly receiving both PPD and PTD payments. AS 23.30.180 (3) is amended to read the "state (area) of residence" and a new (4) is added to rend "the state of Alaska".
(13) Total Temporary Disability payments. (TTD)	AS 23.30.185 If amended to provide that TTD benefits will not be paid after medical stability and shall not exceed two years in any case.		Participants asked that the section be amended to allow for TTD benefits after medical stability and in excess of two years under unusual or extenuating circumstances.	

ISSUE	HB 352/SB 322	CURRENT LAW	PUBLIC TESTIMONY	PROPOSED (Senate) CS
(14) Permanent Partial Disability Payment (PPD) "Whole Man" Value	AS 23.30.190(a) repeals the current method of computing PPD and replaces it with a formula to determine benefits based on a "whole man" value of $240,000 adjusted by the percentage of net impairment, payable in a lump sum.	AS 23.30.190 (a) provides that compensation for PPD is 80% of workers spendable weekly wage plus any TTD and TPD benefits to be paid as follows - (1) through (18) lists compensation by body part, (19) provides that in addition to comp, the Board may award up to $10,000 for disfigurement or loss of use or functions of body parts not listed in the schedule, (21) provides that benefits be based on loss of each body part when there a loss of more than one.	There was substantial public testimony that his change in the method for determining PPD was (1) arbitrary and unfair, (2) it would increase litigation because the sliding scale used to determine benefits by the percentage of disability was poorly constructed so that a worker with a 10% disability would receive half the benefits that a worker with an 11% disability would receive, (3) the lower levels were too low and did not constitute fair compensation, (4) scheduling injuries in this manner provides no mechanism for judging the effect of a permanent disability on the actual job a worker held (for instance, an attorney with a 40% disability may suffer less ill effects in seeking reemployment than a heavy construction worker with a 15% disability.)	AS 23.30.190 (a) is amended to adjust the sliding scale by adding a new schedule of adjustment factors to smooth out the curve.
"AMA guidelines"	AS 23.30.190(b) provides that the determination of the percent of disability will be based on AMA guidelines and shall not be rounded to the next five percent. Also provides that the Board may adopt a supplemental guideline for rating injuries not included under AMA guidelines.	AS 23.30.190(b) provides that the total comp under this section cannot exceed $60,000.	Fairbanks United asked that the may in (b) be changed to shall.	AS 23.30.190(b) is amended to read that the Board "may adopt (and use a supplemental) a suplementary recognized schedule for injuries that cannot be rated by use of the AMA guide.
Lower limit on Compensation for PPD	AS 23.30.190 (c) provides that an injured worker will not receive less than $250.00			
"Combination of prior and current injuries"	AS 23.30.190(d) provides that an impairment rating is reduced by any permanent impairment that existed before the compensated injury although, if the total of the past and current injury equal PTD the Board is not precluded from making a determination of PTD.	AS 23.30.205 (a)and(b) addresses the circumstance of a combination of prior and current injuries and provides that benefits shall be paid out of the second injury fund after 104 weeks. (c) through (f) of this section provide for reporting requirements to the second injury fund, defines what constitutes a pre-existing condition and provides guidelines for reporting when proper notice was not given.		

ISSUE	HB 352/SB 322	CURRENT LAW	PUBLIC TESTIMONY	PROPOSED (Senate) CS
(15) Temporary Partial Disability payments (TPD)	AS 23.30.200 provides that TPD benefits may not be paid in excess of 2 years.	TTP benefits may not be paid in ecesss of five years and are caluclated under AS 23.30. 200.	Some participants expressed concern that the 2 year cut-off may be too soon in some unusual circumstances and that the language should be amended to allow for that.	
"Determining wage earyning cap-capacity and spendable weekly wages).	AS 23.30.200 is amended by including a new (b) to read that the wage-earning capacity of a worker is determined by the actual spendable weekly wage of the employee if it fairly and reasonably represents the wage-earning capacity of the employee. The Board may, in the interest of justice, fix the wage-earning capacity that is reasonable, having due regard to the nature of the injury the degree of impairment, usual employment, and other factors or circumstances.	AS 23.30.200 provides that TPD benefits shall be 80% of the difference between the injured workers SWW before injury and their wage-earning capacity after injury. AS 23.30.210 provides a method for determining the wage-earning capacity of a worker by actual SWW if the SWW fairly and reasonably represents the true wage-earning capacity. If not, the Board may set the wage earning capacity	Several participants testified that conflicts over the determination of spendable weekly wage cause a substantial amount of litigation	
	AS 23.30.220(a)(2) is amended to allow the Board the ability to set the SWW if the employee had no earnings during the preceeding calendar year or was voluntarily absent from the labor market for 18 months or more of the two preceeding calendar years. However, in no case may the compensation exceed the employee's earnings at the time of injury	AS 23.30.220(a)(2) authorizes the Board to set the SWW if they determine that the gross weekly earnings at the time of injury cannot be fairly calculated under AS 23.30.229(a)(1).	Some participants expressed concern that the language in this section could result an unfair determination of a workers' SWW if they had no (or inadequate) work history and had only worked part of a week when they were injured. Since this section prohibits a workers' benefits from exceeding their weekly wage, the concern is that their SWW will be based on the partial work week at the time of injury.	The Senate CS amends this section to provide that the SWW may be based on the projected weekly wage of the worker at the time of injury.

ISSUE	HB 352/SB 322	CURRENT LAW	PUBLIC TESTIMONY	PROPOSED (Senate) CS
(16) Determination of gross earnings.	AS 23.30.225 includes a new section requiring that vested pension and profit sharing benefits be included as part of a workers' wage for the purposes of determining gross earnings.	Vested benefits are not considered in determining gross earnings under current law.	Participants supported this change although some expressed concern that only vested beneftis were included. This section was included in the bill in response to the Nagland decision.	*
(17) Discrimination	AS 23.30.247 (a) prohibits an employer from discriminating against a worker who has filed a workers' compensation claim in the past.	Current law is silent on the question of discrimination for previous filings.	Participants supported this change although some expressed concern over how it would be implemented and enforced and whether it would actually protect workers from retribution for filing compensation claims.	
(18) Medical Stability	AS 23.30.265(24) defines "medical stability" as the date after which further objectively measurable improvements from the incapacity caused by the injury is not reasonably expected to result from additional care or treatment, notwithstanding additional care or the possibility of improvement or deterioration resulting from the passage of time. Medical stability is presumed in the absence of improvement for a period of 45 days. The finding of medical stability may be rebutted with clear and convincing evidence.		There was some public testimony in opposition to this definition because of fear that it did not adequately address a situation where continuing treatment may prevent further problems or deterioration but will not produce any additional positive healing results. Fairbanks United asked for a better definition of medical stability.	

OTHER ISSUES:

1. Mandated rate decrease - Several participants asked the Committee to include language in the bill that would mandate a rate decrease for workers' compensation premiums for the second half of 1988 by at least 10%.

2. Unemployment Compensation - Several participants suggested amending the proposed bills to provide that an injured worker who was eligible for unemployment compensation can collect unemployment benefits when their workers' compensation benefits are exhausted and they have still been unable to find employment.

3. Mandated reporting requirements - Numerous participants, particularly legislators, expressed dismay at the lack of usable statistical data on Alaska's workers compensation system. A change proposed in AS 23.30.040(b) (HB 352) would require all information related to paid claims in Alaska (costs of claim benefit by type such as PPD or TPD, payments for medical and rehab services, payments for legal fees for both employer/ee etc.) to be submitted annually (instead of annually on the date of the injury, as it is under current law).

4. On-going task force - Several participants, including Fairbanks United, asked that a group or task force be appointed to make an on-going study of Alaska's workers' compensation system to monitor the current system, the effects of newly adopted legislation, and to make recommendations for future changes.

5. "All states rider" - Several participants complained that non-resident firms (particularly in the construction industry) are not required to pay Alaska workers' compensation rates because they have purchased an "all states rider" on their home state policy which covers them for Alaska compensation at a cost considerably less than what resident firms must pay. Several participants asked that pending legislation be amended to specifically require that all companies with employees working in Alaska must pay the same rates for workers' compensation premiums (by classification and risk type) as Alaskan businesses do and that a stiff penalty clause should be included for companies who are found to be in violation of the requirement for Alaska workers' compensation.

6. "Alaska money" - Some participants complained that they receive workers' compensation benefits by checks drawn on "outside" banks which results in constant delays in getting their checks credited locally. They asked for a requirement under law that compensation benefits be paid by checks drawn on local banks.

5-1514X
Ford
4/20/88

Original sponsor: Labor and Commerce Committee

IN THE SENATE BY THE JUDICIARY COMMITTEE

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

IN THE LEGISLATURE OF THE STATE OF ALASKA

FIFTEENTH LEGISLATURE - SECOND SESSION

A BILL

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

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

* Section 1. LEGISLATIVE INTENT. (a) It is the intent of the legislature that AS 23.30 be interpreted so as to ensure the quick, efficient, fair, and predictable delivery of indemnity and medical benefits to injured workers at a reasonable cost to the employers who are subject to the provisions of AS 23.30.

(b) 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. It is also the intent of the legislature that the board possess the greatest possible authority in the exercise of its fact finding responsibilities and that the board's decisions be conclusive unless the court finds that a reasonable person could not have reached the conclusion made by the board.

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

(1) recognize the levels of workers' compensation benefits brought about by the high cost of living that exists in the state as compared to other localities;

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

(3) remove obstacles to the utilization of vocational rehabilitation that may be brought about by the payment of workers' compensation

benefits at the high levels provided by the Alaska workers' compensation law to individuals residing in localities with living costs lower than 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 practices to reduce work related injuries.

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

(1) the state has failed 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 from the division of workers' compensation and division of insurance to adequately assess the efficiency and costs of the workers' compensation system.

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

Sec. 21.89.015. WORKPLACE SAFETY PROGRAM. An insurer who provides worker' compensation insurance in this state shall 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 and successful implementation of a safety program; and

(2) consulting services available to the insured to establish a workplace safety program.

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

(h) The department <u>shall</u> [MAY] adopt [IDENTICAL] rules for all

panels, and procedures for the periodic selection, retention, and removal of both 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 or a member of it may for the purposes of this chapter subpoena witnesses, administer or cause to be administered oaths, and may examine or cause to have examined the parts of the books and records of the parties to a proceeding that relate [WHICH RELATED] to questions in dispute. The superior court, on application of the department, the board or any members of it, shall enforce the attendance and testimony of witnesses and the production and examination of books, papers, and records.

* Sec. 4. 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 preemployment questionnaire may not receive benefits under this chapter if

(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.

* Sec. 5. 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. 6. 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 on an installment basis of not fewer than two payments, if

requested by the insured. Premiums paid by installment must be structured to reflect seasonal peaks in the basis of the premium. The insurer shall include this provision in the insurance policy in a manner that clearly informs the insured of the provision.

* Sec. 7. AS 23.30.040(b) is amended to read:

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

Column A	Column B	
Second Injury Fund	Reserve Rate	
Contribution Rate	At Least	But Less Than
(Percent)	(Percent)	(Percent)
6	0	50

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

* Sec. 8. 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. 9. 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

section for the previous fiscal year; the report must include a general section, sections related to each rehabilitation specialist employed under this section, and a statistical summary of all rehabilitation cases, including

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

(B) the estimated and actual time of each rehabilitation plan;

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

(D) the cost of reemployment benefits;

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

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

(c) If an employee suffers a compensable injury that may permanently preclude an employee's return to the employee's occupation at the time of injury, the employee or employer may request an eligibility evaluation for reemployment benefits. The employee shall request an eligibility evaluation within 90 days after the employee gives the employer notice of injury unless the administrator determines the employee has an unusual and extenuating circumstance that prevents the employee from making a timely request. The administrator shall, on a rotating and geographic basis, select a rehabilitation specialist from the list maintained under (b)(6) of this section to perform the eligibility evaluation.

(d) Within 30 days after the referral by the administrator, the rehabilitation specialist shall perform the eligibility evaluation and issue a report of findings. The administrator may grant up to an additional 30 days for performance of the eligibility evaluation upon notification of unusual and extenuating circumstances and the rehabilitation specialist's request. Within 14 days after receipt of the report from the rehabilitation specialist, the administrator shall notify the parties of the employee's eligibility for reemployment preparation benefits. Within 10 days after the decision, either party may seek review of the decision by requesting a hearing under AS 23.30.110. The hearing shall be held within 30 days after it is requested. The board shall uphold the decision of the administrator except for abuse of discretion on the administrator's part.

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

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

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

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

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

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

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

(3) at the time of medical stability no permanent impairment is identified or expected.

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

(h) Within 90 days after the rehabilitation specialist's selection under (g) of this section, the reemployment plan must be formulated and approved. The reemployment plan must include at least the following:

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

(2) an inventory of the employee's technical skills, physical and intellectual capacities, academic achievement, emotional

condition and family support;

(3) a plan to acquire the occupational skills to be employable;

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

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

(6) the date the plan will commence;

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

(8) a detailed description and plan schedule; and

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

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

(1) on the job training;

(2) vocational training;

(3) academic training;

(4) self-employment; or

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

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

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

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

(l) The cost of the reemployment plan incurred under this section shall be the responsibility of the employer, shall be paid on an expense incurred basis, and may not exceed $10,000.

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

and location.

(n) After the employee has elected to participate in reemployment benefits, if the employer believes the employee has not cooperated the employer may terminate reemployment benefits on the date of noncooperation. Noncooperation means unreasonable failure to

(1) keep appointments;

(2) maintain passing grades;

(3) attend designated programs;

(4) maintain contact with the rehabilitation specialist;

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

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

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

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

(p) In this section

(1) "administrator" means the reemployment benefits

administrator under AS 23.30.041(a);

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

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

(A) area of residence;

(B) area of last employment;

(C) the state;

(D) other states;

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

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

(6) "rehabilitation specialist" means a person who is a certified insurance rehabilitation specialist, a certified rehabilitation counselor, or a person who has equivalent or better qualifications as determined under regulations adopted by the department;

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

between the applicable state average weekly wage and the Alaska average weekly wage.

* Sec. 10. AS 23.30.055 is amended to read:

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

* Sec. 11. AS 23.30.075(b) is amended to read:

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

[SAID] corporation or apply for a certificate of self-insurance, and the person actively in charge of the business of the [SUCH] corporation shall be subject to the penalties prescribed in this subsection [HEREIN] and shall be personally, jointly, and severally liable together with the corporation for the payment of all compensation or other benefits for which the corporation is liable under this chapter if the [SAID] corporation at that [SUCH] time is not insured or qualified as a self-insurer.

* Sec. 12. AS 23.30.095(a) is amended to read:

(a) The employer shall furnish medical, surgical, and other attendants or treatment, nurse and hospital service, medicine, crutches, and apparatus for the period which the nature of the injury or the process of recovery requires, not exceeding two years from and after the date of injury to the employee. However, if the condition requiring the treatment, apparatus, or medicine is a latent one, the two-year period runs from the time the employee has knowledge of the nature of the employee's disability and its relationship to the employment and after disablement. It shall be additionally provided that, if continued treatment or care or both beyond the two-year period is indicated, the injured employee has the right of review by the board. The board may authorize continued treatment or care or both as the process of recovery may require. When medical care is required, the injured employee may designate a licensed physician to provided all medical and related benefits. The employee may not make more than one change in the employee's choice of attending physician without the written consent of the employer. Referral to a specialist by the employee's attending physician is not considered a change in physicians [INSIDE THE STATE TO RENDER THE CARE EXCEPT IN CASES WHERE, IN THE JUDGMENT OF THE BOARD, CARE OR TREATMENT OR BOTH CAN BEST BE

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

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

(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 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 or surgical treatment so obtained by the employee. A written treatment plan requiring continuing and multiple treatments of a similar nature must include objectives, modalities, and frequency of treatment. The physician shall document the need for services in excess of the guidelines in the written treatment plan.

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

(e) The employee shall, after an injury, at reasonable times during the continuance of the disability, if requested by the employer or when ordered by the board, submit to an examination by a physician or surgeon of the employer's choice authorized to practice medicine

under the laws of the jurisdiction in which the physician resides [STATE IN WHICH THE EMPLOYEE MAY BE FOUND], furnished and paid for by the employer. The employer may not make more than one change in the employer's choice of a physician or surgeon without the written consent of the employee. Referral to a specialist by the employer's physician is not considered a change in physicians. An examination requested by the employer not less than 14 days after injury, and every 60 days thereafter, shall be presumed to be reasonable, and the employee shall submit to the examination without further request or order by the board. Unless medically appropriate, the physician shall use existing diagnostic data to complete the examination. Facts relative to the injury or claim communicated to or otherwise learned by a physician or surgeon who may have attended or examined the employee, or who may have been present at an examination are not privileged, either in the hearings provided for in this chapter or an action to recover damages against an employer who is subject to the compensation provisions of this chapter. If an employee refuses to submit to an [ANY] examination provided for in this section, the employee's rights to compensation shall be suspended until the obstruction or refusal ceases, and the employee's compensation during the period of suspension may, in the discretion of the board or the court determining an action brought for the recovery of damages under this chapter, be forfeited. The board in any case of death may require an autopsy at the expense of the party requesting the autopsy. An autopsy may not be held without notice first being given to the widow or widower or next of kin if they reside in the state or their whereabouts can be reasonably ascertained, of the time and place of the autopsy and reasonable time and opportunity given the widow or widower or next of kin to have a representative present to witness the

autopsy. If adequate notice is not given, the findings from the autopsy may be suppressed on motion made to the board or to the superior court, as the case may be.

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

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

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

(j) The board may appoint a medical services review committee, or contract with an existing organization in the state or another state, to assist and advise the board in matters involving the appropriateness, necessity, and cost of medical and related services provided under this chapter.

* Sec. 17. AS 23.30.095 is amended by adding a new subsection to read:

(k) In the event of a medical dispute regarding determinations of causation, medical stability, ability to enter a reemployment plan, degree of impairment, functional capacity, the amount and efficacy of the continuance of or necessity of treatment, or compensability between the employee's attending physician and the employer's independent medical evaluation, a second independent medical evaluation shall be conducted by a physician or physicians selected by the board from a list established and maintained by the board. The cost of the examination and medical report shall be paid by the employer. The report of the independent medical examiner shall be furnished to the board

and to the parties within 14 days after the examination is concluded. A person may not seek damages from an independent medical examiner caused by the rendering of an opinion or providing testimony under this subsection, except in the event of fraud or gross incompetence.

* Sec. 18. 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 injury, 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 <u>of benefits under AS 23.30.180, 23.30.185, 23.30.190, 23.30.200, or 23.30.215</u>. 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 determined by the board, time limitations notwithstanding.

* Sec. 19. 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 necessary discovery, obtained necessary evidence, and is prepared for the hearing. An opposing party shall have 10 days after the hearing request is filed to file a response. If a party opposes the hearing request, the board or a board designee shall within 30 days of the filing of the opposition conduct a pre-hearing conference and set a hearing date. If opposition is not

filed, a hearing shall be scheduled no later than 60 days after the receipt of the hearing request. The board shall give each party at least 10 days' notice of the hearing, either personally or by certified mail. After a hearing has been scheduled, 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. After completion of the hearing the board shall close the hearing record. If a settlement agreement is reached by the parties 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.

* Sec. 20. AS 23.30.120 is amended by adding a new subsection to read:

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

* Sec. 21. AS 23.30.125 is amended by adding a new subsection to read:

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

* Sec. 22. AS 23.30.130(a) is amended to read:

(a) Upon its own initiative, or upon the application of any party in interest on the ground of a change in conditions, including, for the purposes of AS 23.30.175, a change in residence, or because of a mistake in its determination of a fact, the board may, before one

year after the date of the last payment of compensation benefits under AS 23.30.180, 23.30.185, 23.30.190, 23.30.200, or 23.30.215, whether or not a compensation order has been issued, or before one year after the rejection of a claim, review a compensation case under [IN ACCORDANCE WITH] the procedure prescribed in respect of claims in AS 23.30.110. Under [IN ACCORDANCE WITH] AS 23.30.110 the board may issue a new compensation order which terminates, continues, reinstates, increases, or decreases the compensation, or award compensation.

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

(c) The insurer or adjuster [EMPLOYER] shall notify the board and the employee on a form prescribed by the board that the payment of compensation has begun or has been increased, decreased, suspended, terminated, resumed, or changed in type. An initial report shall be filed with the board and sent to the employee within 28 days after the date of issuing the first payment of compensation. If at any time 21 days or more pass and no compensation payment is issued, a report notifying the board and the employee of the termination or suspension of compensation shall be filed with the board and sent to the employee within 28 days after the date the last compensation payment was issued. A report shall also be filed with the board and sent to the employee within 28 days after the date of issuing a payment increasing, decreasing, resuming, or changing the type of compensation paid. If the [EMPLOYER FAILS TO NOTIFY THE] board and the employee are not notified within the 28 days prescribed by this subsection for reporting, the insurer or adjuster [EMPLOYER] shall pay a civil penalty of $100 for the first day plus $10 for each day thereafter that the [EMPLOYER FAILED TO GIVE] notice was not given. Total penalties under this subsection [SECTION] may not exceed $1,000 for a failure to file a required report. Penalties assessed under this subsection are

eligible for reduction under (m) of this section. A penalty assessed under this subsection after penalties have been reduced under (m) of this section shall be increased by 25 percent and shall bear interest at the rate established under AS 45.45.010.

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

(d) If the employer controverts the right to compensation the employer shall file with the board and send to the employee a notice of controversion on or before the 21st day after the employer has knowledge of the alleged injury or death. If the employer controverts the right to compensation after payments have begun, the employer shall file with the board and send to the employee a notice of controversion within seven days after an installment of compensation payable without an award is due. When payment of temporary disability benefits is controverted solely on the grounds that another employer or another insurer of the same employer may be responsible for all or a portion of the benefits, the most recent employer or insurer who is party to the claim and who may be liable shall make the payments during the pendency of the dispute. When a final determination of liability is made, any reimbursement required, including interest at the statutory rate, and all costs and attorneys' fees incurred by the prevailing employer, shall be made within 14 days of the determination.

* Sec. 25. 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 50 [20] percent of it or $300, whichever amount is greater. This additional amount shall be paid at the same time as, and in addition to, the installment, unless notice is filed under (d)

of this section or unless the nonpayment is excused by the board after a showing by the employer that owing to conditions over which the employer had no control the installment could not be paid within the period prescribed for the payment.

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

(f) If compensation payable under the terms of an award is not paid within 14 days after it becomes due, there shall be added to that unpaid compensation an amount equal to 50 [20] percent or $300 whichever is greater of it, which shall be paid at the same time as, but in addition to, the compensation, unless review of the compensation order making the award is had as provided in AS 23.30.125 and an interlocutory injunction staying payments is allowed by the court.

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

(m) On or before March 1 of each year the insurer or adjuster shall file a verified annual report on a form prescribed by the board stating the total amount of all compensation by type, the number of claims received and the percentage controverted, medical, and related benefits, vocational rehabilitation expenses, legal fees, including a separate total for fees paid to attorneys and fees paid for the other costs of litigation, and penalties paid on all claims during the preceding calendar year. If the annual report is timely and complete when received by the board and provides accurate information about each category of payments, the commissioner shall review the timeliness of the insurer's or adjuster's reports filed during the preceding year under (c) of this section. If during the preceding year the insurer or adjuster filed at least 99 percent of the reports on time, the penalties assessed under (c) of this section shall be waived. If during the preceding year the insurer or adjuster filed at least 97 percent of the reports on time, 75 percent of the penalties assessed

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.

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

(f) If compensation payable under the terms of an award is not paid within 14 days after it becomes due, there shall be added to that unpaid compensation an amount equal to 50 [20] percent or $300 whichever is greater of it, which shall be paid at the same time as, but in addition to, the compensation, unless review of the compensation order making the award is had as provided in AS 23.30.125 and an interlocutory injunction staying payments is allowed by the court.

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

(m) On or before March 1 of each year the insurer or adjuster shall file a verified annual report on a form prescribed by the board stating the total amount of all compensation by type, the number of claims received and the percentage controverted, medical, and related benefits, vocational rehabilitation expenses, legal fees, including a separate total for fees paid to attorneys and fees paid for the other costs of litigation, and penalties paid on all claims during the preceding calendar year. If the annual report is timely and complete when received by the board and provides accurate information about each category of payments, the commissioner shall review the timeliness of the insurer's or adjuster's reports filed during the preceding year under (c) of this section. If during the preceding year the insurer or adjuster filed at least 99 percent of the reports on time, the penalties assessed under (c) of this section shall be waived. If during the preceding year the insurer or adjuster filed at least 97 percent of the reports on time, 75 percent of the penalties assessed

under (c) of this section shall be waived. If during the preceding year the insurer or adjuster filed 95 percent of the reports on time, 50 percent of the penalties assessed under (c) of this section shall be waived. If during the preceding year the insurer's or adjuster's reports have not been filed on time at least 95 percent of the time, none of the penalties assessed under (c) of this section shall be waived. The penalties that are not waived are due and payable when the insurer or adjuster receives notification from the commissioner regarding the timeliness of the reports. If the annual report is not filed by March 1 of each year, the insurer or adjuster shall pay a civil penalty of $100 for the first day the annual report is late, and $10 for each additional day the report is late. If the annual report is incomplete when filed, the insurer or adjuster shall pay a civil penalty of $1,000.

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

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

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

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

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

Sec. 23.30.175. RATES OF COMPENSATION. (a) The weekly rate of compensation for disability or death may not exceed $700 and initially

may not be less than $110. However, if the board determines that the employee's spendable weekly wages are less than $110 a week as computed under AS 23.30.220, or less than $154 a week in the case of an employee who has furnished documentary proof of the employee's wages, it shall issue an order adjusting the weekly rate of compensation to a rate equal to the employee's spendable weekly wages. If the employer can verify that the employee's spendable weekly wages are less than $154, the employer may adjust the weekly rate of compensation to a rate equal to the employee's spendable weekly wages without an order of the board. If the employee's spendable weekly wages are greater than $154, but 80 percent of the employee's spendable weekly wages is less than $154, the employee's weekly rate of compensation shall be $154. Prior payments made in excess of the adjusted rate shall be deducted from the unpaid compensation in the manner the board determines. In any case, the employer shall pay timely compensation.

(b) The following rules apply to benefits payable to recipients not residing in the state at the time compensation benefits are payable:

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

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

(3) if the gross weekly earnings of the recipient and the resulting compensation rate is determined under AS 23.30.220(a)(2), the calculation required by this subsection applies only to the

portion of the recipient's weekly compensation rate attributable to wages earned in the state;

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

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

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

Sec. 23.30.180. PERMANENT TOTAL DISABILITY. In case of total disability adjudged to be permanent 80 percent of the injured employee's spendable weekly wages shall be paid to the employee during the continuance of the total disability. <u>If a permanent partial disability award has been made before a permanent total disability determination, permanent total disability benefits must be reduced by the amount of the permanent partial disability award, adjusted for inflation, in a manner determined by the board.</u> Loss of both hands, or both arms, or both feet, or both legs, or both eyes, or of any two of them, in the absence of conclusive proof to the contrary, constitutes permanent total disability. In all other cases permanent total disability is determined in accordance with the facts. <u>In making this determination the market for the employee's services shall be</u>

<u>(1) area of residence;</u>

<u>(2) area of last employment;</u>

<u>(3) the state of residence; and</u>

<u>(4) the State of Alaska.</u>

* Sec. 31. 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. 32. 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. 33. 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 determination as set out in the American Medical Association Guides to the Evaluation of Permanent Impairment, except that an impairment rating may not be rounded to the next five percent. The board shall adopt a supplementary recognized schedule for injuries that cannot be rated by use of the American Medical Association Guides.

(c) An employee with an actual permanent impairment as

determined under (b) of this section may not receive less than $250 for the impairment.

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

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

Sec. 23.30.200. TEMPORARY PARTIAL DISABILITY. In case of temporary partial disability resulting in decrease of earning capacity the compensation shall be 80 percent of the difference between the injured employee's spendable weekly wages before the injury and the wage-earning capacity of the employee after the injury in the same or another employment, to be paid during the continuance of the disability, but not to be paid for more than five years. Temporary partial disability benefits may not be paid for a period of disability occurring after the date of medical stability.

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

(b) The wage-earning capacity of an injured employee is determined by the actual spendable weekly wage of the employee if the actual spendable weekly wage fairly and reasonably represents the wage-earning capacity of the employee. The board may, in the interest of justice, fix the wage-earning capacity that is reasonable, having due regard to the nature of the injury, the degree of physical impairment, the usual employment, and other factors or circumstances in the case that may affect the capacity of the employee to earn wages in a disabled condition, including the effect of disability as it may naturally extend into the future.

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

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

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

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

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

(4) If the employee is injured while performing duties as a volunteer ambulance attendant, policeman, or fireman, the gross weekly earnings for calculating compensation shall be the minimum gross weekly earnings paid a full-time ambulance attendant, policeman, or fireman employed in the political subdivision where the injury occurred, or, if the political subdivision has no full-time ambulance attendants, policemen, or firemen, at a reasonable figure previously

set by the political subdivision to make this determination but in no case may the gross weekly earnings for calculating compensation be less than the minimum wage computed on the basis of 40 hours work per week.

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

(c) If employer contributions to a qualified pension or profit sharing plan have been included in the determination of gross earnings and the employee is receiving pension or profit sharing payments, weekly compensation benefits payable under this chapter shall be reduced by the amount paid or payable to the injured worker under the plan for any week or weeks during which compensation benefits are also payable. The amount of the reduction may not in any week exceed the increase in weekly compensation benefits brought about by the inclusion of employer contributions to a qualified pension or profit sharing plan in the determination of gross earnings.

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

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

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

(c) This section may not be construed to prohibit an employer from requiring a prospective employee to fill out a preemployment

questionnaire or application regarding the person's prior health or disability history as long as it is meant to either document written notice for second injury fund reimbursement under AS 23.30.205(c) or to determine whether the employee has the physical or mental capacity to meet the documented physical or mental demands of the work.

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

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

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

(17) "injury" means accidental injury or death arising out of and in the course of employment, and an occupational disease or infection which arises naturally out of the employment or which naturally or unavoidably results from an accidental injury; "injury" [, AND] includes breakage or damage to eyeglasses, hearing aids, dentures, or any prosthetic devices which function as part of the body

and further includes an injury caused by the wilful act of a third person directed against an employee because of the employment; "injury" does not include mental injury caused by mental stress unless it is established that (A) the work stress was extraordinary and unusual in comparison to pressures and tensions experienced by individuals in a comparable work environment, and (B) the work stress was the predominant cause of the mental injury; the amount of work stress shall be measured by actual events; a mental injury is not considered to arise out of and in the course of employment if it results from a disciplinary action, work evaluation, job transfer, layoff, demotion, termination or similar action, taken in good faith by the employer;

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

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

* Sec. 42. AS 23.30.210 and 23.30.265(28) are repealed.

* Sec. 43. TRANSITIONAL PROVISIONS. Notwithstanding AS 23.30.040(b), as amended by sec. 7 of this Act, and AS 23.30.155(m), as amended by sec. 27 of this Act, on or before March 1, 1989, each employer that is subject to those sections shall file a report and make the appropriate contribution for all claims existing as of December 31, 1988. The period covered in the report shall be from the date of the termination report or the last anniversary report filed, if one has been filed, through

December 31, 1988.

* Sec. 44. TEMPORARY RATE REDUCTION. Notwithstanding AS 21.39.030, an insurer providing workers' compensation insurance in the state 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.

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

* Sec. 46. APPLICABILITY. Except for secs. 7, 24, 27, 28, 40, and 44 of this Act, this Act applies only to injuries sustained on or after July 1, 1988.

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

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

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

5-1514X
Ford
4/26/88

Original sponsor: Labor and Commerce Committee

IN THE SENATE BY THE JUDICIARY COMMITTEE

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

IN THE LEGISLATURE OF THE STATE OF ALASKA

FIFTEENTH LEGISLATURE - SECOND SESSION

A BILL

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

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

* Section 1. LEGISLATIVE INTENT. (a) It is the intent of the legislature that AS 23.30 be interpreted so as to ensure the quick, efficient, fair, and predictable delivery of indemnity and medical benefits to injured workers at a reasonable cost to the employers who are subject to the provisions of AS 23.30.

(b) 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. It is also the intent of the legislature that the board possess the greatest possible authority in the exercise of its fact finding responsibilities and that the board's decisions be conclusive unless the court finds that a reasonable person could not have reached the conclusion made by the board.

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

(1) recognize the levels of workers' compensation benefits brought about by the high cost of living that exists in the state as compared to other localities;

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

(3) remove obstacles to the utilization of vocational rehabilitation that may be brought about by the payment of workers' compensation

benefits at the high levels provided by the Alaska workers' compensation law to individuals residing in localities with living costs lower than 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 practices to reduce work related injuries.

(e) It is the intent of the legislature in amending AS 23.30.075(b) and 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 and penalties for noncompliance under AS 23.30.155. Strict enforcement is necessary because

(1) the state has failed 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 from the division of workers' compensation and division of insurance to adequately assess the efficiency and costs of the workers' compensation system.

* 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 insurer may impose a surcharge if the percentage of the surcharge does not exceed 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.

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

Sec. 21.89.015. WORKPLACE SAFETY PROGRAM. An insurer who provides workers' compensation insurance in this state shall 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 and successful implementation of a safety program; and

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

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

* 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 preemployment questionnaire may not receive benefits under this chapter if

(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.

* 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 on an installment basis of not fewer than two payments, if requested by the insured. Premiums paid by installment must be structured to reflect seasonal peaks in the basis of the premium. The insurer shall include this provision in the insurance policy in a manner that clearly informs the insured of the provision.

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

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

than $20. By December 15 of each year the commissioner shall determine and make available to the public the applicable contribution rate for the following calendar year according to the reserve rate of the second injury fund in column B of this subsection:

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

* 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 section for the previous fiscal year; the report must include a general section, sections related to each rehabilitation specialist employed under this section, and a statistical summary of all rehabilitation cases, including

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

(B) the estimated and actual time of each rehabilitation plan;

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

(D) the cost of reemployment benefits;

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

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

(c) If an employee suffers a compensable injury that may permanently preclude an employee's return to the employee's occupation at

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

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

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

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

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

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

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

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

(3) at the time of medical stability no permanent impairment is identified or expected.

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

specialist.

(h) Within 90 days after the rehabilitation specialist's selection under (g) of this section, the reemployment plan must be formulated and approved. The reemployment plan must include at least the following:

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

(2) an inventory of the employee's technical skills, physical and intellectual capacities, academic achievement, emotional condition and family support;

(3) a plan to acquire the occupational skills to be employable;

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

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

(6) the date the plan will commence;

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

(8) a detailed description and plan schedule; and

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

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

(1) on the job training;

(2) vocational training;

(3) academic training;

(4) self-employment; or

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

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

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

reemployment plan.

(l) The cost of the reemployment plan incurred under this section shall be the responsibility of the employer, shall be paid on an expense incurred basis, and may not exceed $10,000.

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

(n) After the employee has elected to participate in reemployment benefits, if the employer believes the employee has not cooperated the employer may terminate reemployment benefits on the date of noncooperation. Noncooperation means unreasonable failure to

(1) keep appointments;

(2) maintain passing grades;

(3) attend designated programs;

(4) maintain contact with the rehabilitation specialist;

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

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

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

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

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

(p) In this section

(1) "administrator" means the reemployment benefits administrator under AS 23.30.041(a);

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

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

(A) area of residence;

(B) area of last employment;

(C) the state;

(D) other states;

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

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

(6) "rehabilitation specialist" means a person who is a certified insurance rehabilitation specialist, a certified rehabilitation counselor, or a person who has equivalent or better qualifications as determined under regulations adopted by the department;

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

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

Sec. 23.30.055. EXCLUSIVENESS OF LIABILITY. The liability of an employer prescribed in AS 23.30.045 is exclusive and in place of all other liability of the employer and any fellow employee to the employee, the employee's legal representative, husband or wife, parents, dependents, next of kin, and anyone otherwise entitled to recover damages from the employer or fellow employee at law or in admiralty on account of the injury or death. <u>The liability of the employer is exclusive even if the employee's claim is barred under AS 23.30.-020(b).</u> However, if an employer fails to secure payment of compensation as required by this chapter, an injured employee or the employee's legal representative in case death results from the injury may elect to claim compensation under this chapter, or to maintain an action against the employer at law or in admiralty for damages on account of the injury or death. In that action the defendant may not plead as a defense that the injury was caused by the negligence of a fellow servant, or that the employee assumed the risk of the employment, or that the injury was due to the contributory negligence of the

employee.

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

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

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

(a) The employer shall furnish medical, surgical, and other attendants or treatment, nurse and hospital service, medicine, crutches, and apparatus for the period which the nature of the injury or the process of recovery requires, not exceeding two years from and after the date of injury to the employee. However, if the condition requiring the treatment, apparatus, or medicine is a latent one, the two-year period runs from the time the employee has knowledge of the nature of the employee's disability and its relationship to the employment and after disablement. It shall be additionally provided that, if continued treatment or care or both beyond the two-year period is indicated, the injured employee has the right of review by

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

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

(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 health care 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 or surgical 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 health care provider shall furnish a written 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 shall 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 as required under this subsection, neither the employer nor the employee may be required to pay for treatments that exceed the frequency standard. The board shall adopt regulations establishing standards for frequency of treatment.

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

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

relative to the injury or claim communicated to or otherwise learned by a physician or surgeon who may have attended or examined the employee, or who may have been present at an examination are not privileged, either in the hearings provided for in this chapter or an action to recover damages against an employer who is subject to the compensation provisions of this chapter. If an employee refuses to submit to an [ANY] examination provided for in this section, the employee's rights to compensation shall be suspended until the obstruction or refusal ceases, and the employee's compensation during the period of suspension may, in the discretion of the board or the court determining an action brought for the recovery of damages under this chapter, be forfeited. The board in any case of death may require an autopsy at the expense of the party requesting the autopsy. An autopsy may not be held without notice first being given to the widow or widower or next of kin if they reside in the state or their whereabouts can be reasonably ascertained, of the time and place of the autopsy and reasonable time and opportunity given the widow or widower or next of kin to have a representative present to witness the autopsy. If adequate notice is not given, the findings from the autopsy may be suppressed on motion made to the board or to the superior court, as the case may be.

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

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

treatment or service.

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

(j) The board may appoint a medical services review committee, or contract with an existing organization in the state or another state, to assist and advise the board in matters involving the appropriateness, necessity, and cost of medical and related services provided under this chapter.

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

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

* 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

injury, 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 determined by the board, time limitations notwithstanding.

* Sec. 20. 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 necessary discovery, obtained necessary evidence, and is prepared for the hearing. An opposing party shall have 10 days after the hearing request is filed to file a response. If a party opposes the hearing request, the board or a board designee shall within 30 days of the filing of the opposition conduct a prehearing conference and set a hearing date. If opposition is not filed, a hearing shall be scheduled no later than 60 days after the receipt of the hearing request. The board shall give each party at least 10 days' notice of the hearing, either personally or by certified mail. After a hearing has been scheduled, 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. After completion of the hearing the board shall close the hearing record. If a settlement agreement is reached by the parties 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.

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

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

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

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

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

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

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

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

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

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

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

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

* 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 25 [20] percent of it or $100, whichever amount is greater. This additional amount shall be paid at the same time as, and in addition to, the installment, unless notice is filed under (d) of this section or unless the nonpayment is excused by the board after a showing by the employer that owing to conditions over which the employer had no control the installment could not be paid within the period prescribed for the payment.

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

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

tory injunction staying payments is allowed by the court.

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

(m) On or before March 1 of each year the insurer or adjuster shall file a verified annual report on a form prescribed by the board stating the total amount of all compensation by type, the number of claims received and the percentage controverted, medical, and related benefits, vocational rehabilitation expenses, legal fees, including a separate total for fees paid to attorneys and fees paid for the other costs of litigation, and penalties paid on all claims during the preceding calendar year. If the annual report is timely and complete when received by the board and provides accurate information about each category of payments, the commissioner shall review the timeliness of the insurer's or adjuster's reports filed during the preceding year under (c) of this section. If during the preceding year the insurer or adjuster filed at least 99 percent of the reports on time, the penalties assessed under (c) of this section shall be waived. If during the preceding year the insurer or adjuster filed at least 97 percent of the reports on time, 75 percent of the penalties assessed under (c) of this section shall be waived. If during the preceding year the insurer or adjuster filed 95 percent of the reports on time, 50 percent of the penalties assessed under (c) of this section shall be waived. If during the preceding year the insurer's or adjuster's reports have not been filed on time at least 95 percent of the time, none of the penalties assessed under (c) of this section shall be waived. The penalties that are not waived are due and payable when the insurer or adjuster receives notification from the commissioner regarding the timeliness of the reports. If the annual report is not filed by March 1 of each year, the insurer or adjuster shall pay a civil penalty of $100 for the first day the annual report is late, and

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

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

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

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

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

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

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

less than $154, the employee's weekly rate of compensation shall be $154. Prior payments made in excess of the adjusted rate shall be deducted from the unpaid compensation in the manner the board determines. In any case, the employer shall pay timely compensation.

(b) The following rules apply to benefits payable to recipients not residing in the state at the time compensation benefits are payable:

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

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

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

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

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

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

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

disability adjudged to be permanent 80 percent of the injured employee's spendable weekly wages shall be paid to the employee during the continuance of the total disability. If a permanent partial disability award has been made before a permanent total disability determination, permanent total disability benefits must be reduced by the amount of the permanent partial disability award, adjusted for inflation, in a manner determined by the board. Loss of both hands, or both arms, or both feet, or both legs, or both eyes, or of any two of them, in the absence of conclusive proof to the contrary, constitutes permanent total disability. In all other cases permanent total disability is determined in accordance with the facts. In making this 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 determination as set out in the American Medical Association Guides to the Evaluation of Permanent Impairment, except that an impairment rating may not be rounded to the next five percent. The board shall adopt a supplementary recognized schedule for injuries that cannot be rated by use of the American Medical Association Guides.

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

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

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

another employment, to be paid during the continuance of the disability, but not to be paid for more than five years. Temporary partial disability benefits may not be paid for a period of disability occurring after the date of medical stability.

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

(b) The wage-earning capacity of an injured employee is determined by the actual spendable weekly wage of the employee if the actual spendable weekly wage fairly and reasonably represents the wage-earning capacity of the employee. The board may, in the interest of justice, fix the wage-earning capacity that is reasonable, having due regard to the nature of the injury, the degree of physical impairment, the usual employment, and other factors or circumstances in the case that may affect the capacity of the employee to earn wages in a disabled condition, including the effect of disability as it may naturally extend into the future.

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

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

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

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

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

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

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

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

(c) If employer contributions to a qualified pension or profit sharing plan have been included in the determination of gross earnings and the employee is receiving pension or profit sharing payments, weekly compensation benefits payable under this chapter shall be reduced by the amount paid or payable to the injured worker under the plan for any week or weeks during which compensation benefits are also payable. The amount of the reduction may not in any week exceed the increase in weekly compensation benefits brought about by the inclusion of employer contributions to a qualified pension or profit sharing plan in the determination of gross earnings.

* Sec. 39. AS 23.30 is amended by adding a new section to read:

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

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

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

* Sec. 40. AS 23.30.265(15) is amended to read:

(15) "gross earnings" means periodic payments, by an employer to an employee for employment before any authorized or lawfully required deduction or withholding of money by the employer, including compensation that is deferred at the option of the employee, and excluding irregular bonuses, reimbursement of expenses, expense allowances, and any benefit or payment to the employee that is not <u>fully</u> taxable to the employee during the pay period<u>, except that the total amount of contributions made by an employer to a qualified pension or profit sharing plan during the two plan years preceding the injury,</u>

multiplied by the percentage of the employee's vested interest in the plan at the time of injury, shall be included in the determination of gross earnings; the value of room and board if taxable to the employee may be considered in determining gross earnings; however, the value of room and board that would raise an employee's gross weekly earning above the state [ALASKA] average weekly wage at the time of injury may not be con idered;

* Sec. 41. AS 23.30.265(17) is amended to read:

(17) "injury" means accidental injury or death arising out of and in the course of employment, and an occupational disease or infection which arises naturally out of the employment or which naturally or unavoidably results from an accidental injury; "injury" [, AND] includes breakage or damage to eyeglasses, hearing aids, dentures, or any prosthetic devices which function as part of the body and further includes an injury caused by the wilful act of a third person directed against an employee because of the employment; "injury" does not include mental injury caused by mental stress unless it is established that (A) the work stress was extraordinary and unusual in comparison to pressures and tensions experienced by individuals in a comparable work environment, and (B) the work stress was the predominant cause of the mental injury; the amount of work stress shall be measured by actual events; a mental injury is not considered to arise out of and in the course of employment if it results from a disciplinary action, work evaluation, job transfer, layoff, demotion, termination or similar action, taken in good faith by the employer;

* Sec. 42. AS 23.30.265 is amended by adding a new paragraph to read:

(34) "medical stability" means the date after which further objectively measurable improvement from the effects of the compensable injury is not reasonably expected to result from additional medical

care or treatment, notwithstanding the possible need for additional medical care or the possibility of improvement or deterioration resulting from the passage of time; medical stability shall be presumed in the absence of objectively measurable improvement for a period of 45 days; this presumption may be rebutted by clear and convincing evidence.

* Sec. 43. AS 23.30.210 and 23.30.265(28) are repealed.

* Sec. 44. 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 sec. 28 of this Act, on or before March 1, 1989, each employer that is subject to those sections shall file a report and make the appropriate contribution for all claims existing as of December 31, 1988. The period covered in the report shall be from the date of the termination report or the last anniversary report filed, if one has been filed, through December 31, 1988.

* Sec. 45. TEMPORARY RATE REDUCTION; FUTURE FILINGS. (a) Notwithstanding AS 21.39.030, an insurer providing workers' compensation insurance in the state 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.

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

* Sec. 46. TRANSITIONAL PROVISION. Notwithstanding AS 23.30.041(p), as enacted by sec. 10 of this Act, for the period from July 1, 1988, until June 30, 1989, the term "rehabilitation specialist" as used in AS 23.30.041 includes a person who was actively employed for at least one year before June 30, 1988, in providing rehabilitation services to an injured worker receiving benefits under AS 23.30.

* Sec. 47. APPLICABILITY. Except for secs. 8, 25, 28, 29, 41, and 45 of this Act, this Act applies only to injuries sustained on or after July 1, 1988.

* Sec. 48. Section 41 of this Act applies to injuries sustained on or after the effective date of sec. 41 of this Act.

* Sec. 49. Sections 41 and 48 of this Act take effect immediately under AS 01.10.070(c).

* Sec. 50. Sections 1 - 40, and 42 - 47 of this Act take effect July 1, 1988.

TO: Rep. Sund

FROM: Shari Kochman

DATE: April 30, 1988

RE: PTD changes in SB 322

Present law - AS 23.30.180

Present law does not specifically address location of potential work in determining whether to declare an injured worker as Permanently Totally Disabled (PTD) (statute attached).

Present practice

The Workers' Comp Board tends to look at two work areas in determining whether someone is PTD:

1) Place of residence
2) Place of work at injury

The Board uses that criteria to address the following type of scenario:

Someone working on the pipeline gets injured and returns to Wrangell, declaring that home. The worker then requests a similar job in Wrangell or PTD benefits. There are obviously no pipeline related jobs in Wrangell. To prevent this potential abuse of the system, the Board also takes into consideration the work location in reemploying the worker.

Alaska is prone to "traveling workers." The system would be hardpressed to find comparable employment in declared locations of residences.

Jackie told of a case in which someone was injured on the pipeline, then moved to a remote area of Washington state; declared it home; and insisted on comparable work there or PTD benefits.

Stats

The Division did not have the time to pull complete stats on the number and amount of PTD cases per year and how they are settled.

However, Jackie McClintock said there are very few such cases -- perhaps two or three per year.

Don Koch, of the Division of Insurance, said that in a two year period, PTD (including related medical benefits) costs total about 8% of the costs of the entire system.

Results - Litigation

Most PTD cases are litigated and get settled as opposed to ending in actual PTD life benefits (80% of spendable weekly wages for life).

Jackie said that declaring PTD is often a tool to force litigation and subsequent settlements (compromise and release - C&R).

Reason for limits in bill

In determining PTD, the bill requires the Board to consider:

1) area of residence
2) area of last employment
3) state of residence
4) state of Alaska

Important to note is that there was a trade-off here between Labor and Management.

Present statute does not require that any job subsequent to injury reach a minimum threshold of pay. It just required the availability of "suitable gainful employment" - definition of which is attached.

The bill requires that post-injury jobs pay at least 60% of pre-injury wages. In other words, management asked for the broadened areas of potential work in return for which labor asked for a minimum wage standard. The following scenario explains why: (Based on true story).

Scenario:

A heavy equipment operator in Fairbanks, who makes a very healthy wage, is injured and unable to return to the same type of work. The only local job that the employer's insurance company can find for him is menial work at a local pizza parlor which pays around minimum wage. The insurer holds that that job withstands the "suitable gainful employment" standard. Neither the Board nor the rehab administrator agreed. However, this is the type of problem that the bill is trying to address.

Finally:

The real question comes down to the purpose of the Workers' Comp system -- to guarantee "employment" or to guarantee "employability."

Compare it to unemployment. What would a person do if the logging/mining/etc. job in their remote home simply dried up? Would he/she move elsewhere to find employment? Should Workers' Comp be treated any differently?

medicine and prosthetic devices, physical rehabilitation, and treatment for the fitting and training for use of such devices as may reasonably be required which arises out of or is necessitated by an injury, and transportation charges to the nearest point where adequate medical facilities are available;

(21) "parent" includes stepparents and parents by adoption, parents-in-law, and a person who for more than three years before the death of the deceased employee stood in the place of a parent to the employee, if dependent on the injured employee;

(22) "payroll taxes" means

(A) the amount that would be withheld under withholding tables in effect on the January 1 preceding the injury under the Internal Revenue Code of 1954 as amended and regulations issued under the code, as though the employee had claimed the maximum number of dependents for actual dependency, blindness, and old age to which the employee is entitled on the date on which the employee is injured; and

(B) the amount that is or would be deducted or withheld as of the January 1 preceding the injury under the Social Security Act of 1935 as amended from the amount of earnings of the employee at the time of the injury as if the earnings were earned at the beginning of the calendar year in which the employee was injured and regardless of whether the amount was actually withheld or the earnings were subject to withholding;

(23) "physician" includes doctors of medicine, surgeons, chiropractors, osteopaths, dentists, and optometrists;

(24) "prosthetic devices" includes but is not limited to eye glasses, hearing aids, dentures, and such other devices and appliances, and the repair or replacement of the devices necessitated by ordinary wear and arising out of an injury;

(25) "regularly organized volunteer fire department" means a volunteer fire department registered with the state fire marshal which has official recognition and financial support from the political subdivision where it is situated;

(26) "reserve rate" means the unencumbered second injury fund balance on October 31 of each year as a percentage of disbursements from the second injury fund during the 12-month period ending on June 30 of the same calendar year;

(27) "self-insurer" means an employer who, instead of insuring liability under this chapter as it provides, elects to pay directly the compensation provided for, and who has furnished to the board satisfactory proof of the employer's financial ability to make the direct payments;

(28) "suitable gainful employment" means employment that is reasonably attainable in light of an individual's age, education, previous occupation, and injury, and that offers an opportunity to restore the individual as soon as practical to a remunerative occupation and as nearly as possible to the individual's gross weekly earnings as determined at the time of injury;

the average weekly wage also changes, periodically until 1981, with fluctuations in the state's average weekly wage. Wien Air Alaska v. Arant, Sup. Ct. Op. No. 1796 (File Nos. 3620, 3717), 592 P.2d 352 (1979).

Effect of 1977 amendment. — The 1977 amendment still gives recipients an increasing percentage, but an increasing percentage relative to the same amount, i.e., the weekly wage in effect at the date of injury. Wien Air Alaska v. Arant, Sup. Ct. Op. No. 1796 (File Nos. 3620, 3717), 592 P.2d 352 (1979).

Effect of "in effect on the date of injury" language in subsection (a). — The 1977 amendment adding the phrase "in effect on the date of injury" in subsection (a) of this section merely fixed the average weekly wage for benefits computation at the level existing at the time of death or a disability. It did not limit the application of the rate percentages to that existing at the time of death or disability. Seward Marine Servs., Inc. v. Anderson, Sup. Ct. Op. No. 2486 (File No. 5791), 643 P.2d 493 (1982).

Subsection (a) of this section requires calculation of maximum rates at an increasing percentage of the state's average weekly wage for injuries or death occurring after August 31, 1977, though the average weekly wage is frozen at that "in effect on the date of injury." Seward Marine Servs., Inc. v. Anderson, Sup. Ct. Op. No. 2486 (File No. 5791), 643 P.2d 493 (1982).

Whether the 1977 amendment was intended to clarify or change the prior law is unclear. If it was intended as a clarification, it governs the maximum limitation on all awards. If it was a change in policy, it governs the limitation only for injuries occurring after August 31, 1977, the effective date of the amendment. Wien Air Alaska v. Arant, Sup. Ct. Op. No. 1796 (File Nos. 3620, 3717), 592 P.2d 352 (1979).

Compensation under prior law. — See London v. Fairbanks Mun. Util., Employers Group, Sup. Ct. Op. No. 635 (File No. 1155), 473 P.2d 639 (1970).

Recovery of money for permanent total disability would not preclude subsequent compensation for temporary total disability. London v. Fairbanks Mun. Util., Employers Group, Sup. Ct. Op. No. 635 (File No. 1155), 473 P.2d 639 (1970).

It was improper for the board to presume that the amount of compensation afforded to a totally disabled worker should limit in scope the recovery available to one who is partially disabled. London v. Fairbanks Mun. Util., Employers Group, Sup. Ct. Op. No. 635 (File No. 1155), 473 P.2d 639 (1970).

Deductibility of money paid under employment contract from temporary disability award. — Money paid to defendant under provision of a contract of employment requiring payment of wages or earnings for remainder of fishing season, regardless of any disability incurred in the meantime, could not be deducted from the award for temporary disability where the contract was not introduced in evidence by plaintiff. Libby, McNeill & Libby v. Alaska Indus. Bd., 12 Alaska 584 (1950), aff'd, 13 Alaska 401, 191 F.2d 262 (9th Cir. 1951), cert. denied, 13 Alaska 582, 342 U.S. 913, 72 S. Ct. 359, 96 L. Ed. 683 (1952).

Applied in J.B. Warrack Co. v. Roan, Sup. Ct. Op. No. 366 (File No. 684), 418 P.2d 986 (1966); Hood v. State, Sup. Ct. Op. No. 1559 (File No. 3289), 574 P.2d 811 (1978).

Quoted in Bradley v. Mercer, Sup. Ct. Op. No. 1424 (File No. 3057), 563 P.2d 880 (1977).

Cited in Ketchikan Gateway Borough v. Saling, Sup. Ct. Op. No. 2006 (File No. 3020), 604 P.2d 590 (1979).

Sec. 23.30.180. Permanent total disability. In case of total disability adjudged to be permanent 80 percent of the injured employee's spendable weekly wages shall be paid to the employee during the continuance of the total disability. Loss of both hands, or both arms, or both feet, or both legs, or both eyes, or of any two of them, in the absence of conclusive proof to the contrary, constitutes permanent total disability. In all other cases permanent total disability is determined in accordance with the facts. (§ 7(1) ch 193 SLA 1959; am § 3 ch 83 SLA 1975; am § 5 ch 70 SLA 1983)

disability adjudged to be permanent 80 percent of the injured employee's spendable weekly wages shall be paid to the employee during the continuance of the total disability. If a permanent partial disability award has been made before a permanent total disability determination, permanent total disability benefits must be reduced by the amount of the permanent partial disability award, adjusted for inflation, in a manner determined by the board. Loss of both hands, or both arms, or both feet, or both legs, or both eyes, or of any two of them, in the absence of conclusive proof to the contrary, constitutes permanent total disability. In all other cases permanent total disability is determined in accordance with the facts. In making this 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.

THE ALASKA CHAPTER

ASSOCIATED GENERAL CONTRACTORS OF AMERICA, INC.

SKILL
RESPONSIBILITY
INTEGRITY

BOX 92500 • ANCHORAGE, ALASKA 99509
TELEPHONE (907) 561-5354

3201 SPENARD ROAD
ANCHORAGE

WILLIAM E. SCHNEIDER
EXECUTIVE DIRECTOR

January 15, 1988

Senator Tim Kelly
Chairman, Senate Labor & Commerce Committee
Alaska State Legislature
P.O. Box V (M.S. 3100)
Juneau, AK 99811

Dear Senator Kelly:

On behalf of the membership of the Associated General Contractors of Alaska, we strongly support the recommendations of the Management/Labor ADHOC Committee For Workers' Compensation Reform.

Your efforts in this critical area are appreciated by all of those individuals who make their living in the construction industry.

We encourage you and your fellow senators to expeditiously pass this legislation.

Sincerely,

ASSOCIATED GENERAL
CONTRACTORS OF ALASKA

William E. Schneider
Executive Director

NCCI National Council on Compensation Insurance

Stanley V. Sparks
Director
Government, Consumer
and Industry Affairs

April 5, 1988

APR 5 1988

Honorable Paul Roller
Director of Insurance
State of Alaska
Department of Commerce and Economic Development
Division of Insurance
State Office Building - 9th Floor
Pouch D
Juneau, Alaska 99811

Re: Senate Bill 322

Dear Director Roller:

The Alaska Classification and Rating Committee met via telephone conference call on April 4, 1988 to discuss the progress of the workers compensation insurance reform legislation which is pending in Juneau. By unanimous decision the Committee in effect acknowledged that the potential overall cost savings contained in the existing version of SB 322 amounted to 5.7 percent. Accordingly, if the bill is enacted in its present form, the Committee will direct NCCI to file a law amendment rate filing in Alaska which provides for an overall rate decrease of 5.7 percent on new, renewal and outstanding policies effective as of July 1, 1988.

The Committee wishes to make it clear that such a mid-term rate adjustment would not in any way interfere or preclude the normal review of Alaska experience and the making of an appropriate 1/1/89 rate filing based upon that experience.

Sincerely,

Stanley V. Sparks

Stanley V. Sparks
Director
Government, Consumer
and Industry Affairs

SVS/gls

cc: Alaska Classification and Rating Committee
Don Koch
R. Fein
M. Mulvaney

Suite 850, One S.W. Columbia Street
Portland, Oregon 97258, Tel. (503) 228-4173

THE ALASKA CHAPTER

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3201 SPENARD ROAD
ANCHORAGE

WILLIAM E. SCHNEIDER
EXECUTIVE DIRECTOR

January 15, 1988

Representative Dave Donley
Chairman, House Labor & Commerce Committee
Alaska State Legislature
P.O. Box V (M.S. 3100)
Juneau, AK 99811

Dear Representative Donley:

On behalf of the membership of the Associated General Contractors of Alaska, we strongly support the recommendations of the Management/Labor ADHOC Committee For Workers' Compensation Reform.

Your efforts in this critical area are appreciated by all of those individuals who make their living in the construction industry.

We encourage you and your fellow representatives to expeditiously pass this legislation.

Sincerely,

ASSOCIATED GENERAL
CONTRACTORS OF ALASKA

William E. Schneider
Executive Director

FAIRBANKS BUILDING & CONSTRUCTION TRADES COUNCIL AFL-CIO

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315 5th Avenue
Fairbanks, Alaska 99701-4566
(907) 456-4248
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JIM CARROLL
President

JOHN GIUCHICI
Secretary/Treasurer

January 14, 1988

Bob Anders
Labor and Management Ad Hoc Committee

Dear Bob,

The Fairbanks Building and Construction Trades Council voted to Endorse your workers compensation bill. We have some concerns about some areas of the bill but, feel in the long run it will be beneficial to lowering the high insurance rates.

Fraternally Yours

J.N. Carroll
President

WESTERN ALASKA BUILDING and CONSTRUCTION TRADES COUNCIL

AFFILIATED WITH

A.F.L. - C.I.O.

BUILDING AND CONSTRUCTION TRADES DEPARTMENT

Phillip A. Thingstad

PRESIDENT

407 Denali Street

ADDRESS

ANCHORAGE, ALASKA 99501

SECRETARY

407 Denali Street

ADDRESS

ANCHORAGE, ALASKA 99501

January 14, 1988

Alaska State Legislators

Dear Ladies and Gentlemen,

This letter accompanies a proposed piece of legislation, one in which alot of time and effort was put into by both Labor and Management in an attempt to help close the loopholes and solve many of the problems of the Workers Compensation Law.

The Bi-partisan work put into this proposal was extensive and a very good product was the result, one in which all appear to be happy with as it will help the workers as well as the employers. The only people who oppose such legislation are the "Out of State" insurance companies and the lawyers, both of whom make a great deal of money off the current ambiguous law.

The Western Alaska Building and Construction Trades supports, with great enthusiasm, this possible revamping of the Workers Compensation Law.

Sincerely,

Phil Thingstad/lk

Phil Thingstad
President
Western Alaska Building
and Construction Trades

PT/lk
Attachment

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

SECTIONAL ANALYSIS

APRIL 6, 1988

House Judiciary Committee

Section 1. This intent language is meant to give a clear message to the courts that they are not to construe workers' compensation laws in favor of any party but to be fair and to decide cases upon their merit and always within the confines of the written statute. It is also intended that the Board possess the weight of fact-finding authority and that its decision is conclusive unless the court finds that a reasonable person could not have reached the conclusion made by the board.

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

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

Section 2. This section encourages workplace safety by mandating a 10% premium rebate for employers in an assigned risk pool and a 5% premium rebate for employers not in an assigned risk pool if they have a safety program that meets the standards established under the occupational safety code and have had no OSHA violations subject to fines during the period covered by the annual premium.

Section 3. This section creates departmental authority to establish and maintain a board roster of rehabilitation specialists and physicians consistent with the

repeal and reenactment of AS 23.30.041 in section 10 and enactment of AS 23.30.095(k) in section 18.

Section 4. This section mandates the department to adopt new regulations if an existing regulation is held invalid by the supreme court. The intent of this section is to assure that any new regulation adopted under this section have retroactive as well as prospective application so that everyone is treated equally.

Section 5. This section enacts a new provision that denies benefits to an employee who knowingly makes a false statement about his/her physical condition on an employment application or preemployment questionnaire if reliance on the false representation was a substantial factor in the hiring and there was a causal connection between the false representation and the employee's injury. Its purpose is to codify the result in the following board decision and order: Robinett v. Ensearch Alaska Construction, AWCB No. 870210 (September 4, 1987).

Section 6. This section requires that an insurer who extends workers' compensation insurance coverage to an out-of-state employer under another state's coverage policy must provide notice to the Department of Labor. This section addresses the problem of out-of-state employers using out-of-state insurance rates to obtain contracts at lower bid prices than Alaska employers. This will allow the department to investigate employers using other state's coverage policies to assure that all employers doing business in Alaska are paying Alaska premium rates.

Section 7. This section allows an employer to pay an insurance premium on a semi-annual basis if the annual policy is $2,000 or more.

Section 8. This section changes the method and time period the employer must contribute to the second injury fund. Currently, the employer/insurer pays into the fund on the anniversary date of each employee's injury or on termination of each claim, whichever is sooner. This change will allow the employer/insurer to issue one check on all claims annually at the time the annual report is filed under AS 23.30.155(m), instead of issuing hundreds of checks throughout the year. This will not only save time and expense for employers/insurers but save administrative costs as well.

Section 9. This section provides that expenses incurred in the administration of the second injury fund be paid from the fund itself instead of from the general fund of the state. This approach returns to the pre-1981 method of paying the fund's administrative expenses. The financial condition of the fund has improved considerably because of the funding formula enacted in 1981, and the second injury fund can now bear the costs of its administration without jeopardizing the integrity of the fund.

Section 10. This section repeals prior law and reenacts a fundamentally changed workers' compensation rehabilitation system. The most significant changes are these:

1) Under this section the system is no longer mandatory. Thus, an employee who is eligible for

rehabilitation benefits may elect whether or not to receive them. If he/she opts for rehabilitation, the employer is obliged to provide rehabilitation benefits. The purpose of this change is to reduce the use of rehabilitation as a tool for litigation and extorting higher settlements and encouraging the use of rehabilitation services for people most likely to benefit from those persons who truly desire and need them.

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

3) This section establishes short but adequate time lines for each step in the rehabilitation process. Although the current law purportedly requires early evaluations, because it also establishes permanent disability, a status normally determined after the healing period, as an eligibility requirement, early rehabilitation referral has been discouraged. The purpose of this change is to encourage early rehabilitation intervention based on the conclusions of all known rehabilitation studies that early

rehabilitation is much more likely to result in return to work than later efforts.

4) This section provides for the following benefits during the evaluation and rehabilitation process: temporary benefits during the healing period, permanent partial disability (PPD) benefits after medical stability, and if PPD benefits end before rehabilitation is completed, a slightly reduced wage. The current system provides for the payment of temporary benefits during the entire process. The purpose of this change is to encourage employee cooperation and rehabilitation success, based on study conclusions that employees who invest in their own rehabilitation are more likely to succeed.

5) This section establishes a two-year maximum for rehabilitation services and a $10,000 maximum for the costs of the plan. Under current law the maximum time for most plans is 37 weeks with provisions for 74 weeks of services in exceptional cases and no dollar maximum for plan costs. The purpose of these changes is to provide more flexible time periods to meet varying needs, and to encourage efficient and realistic use of rehabilitation monies by placing a reasonable limit on them.

The overall goal of these changes is to promote a prompter, more efficient, more cost-effective, successful, and less litigated rehabilitation system.

Section 11. This section adds a provision that preserves the exclusiveness of employer liability under workers' compensation law even if an employee's claim is

barred under AS 23.30.020(b). See comments to section 5.

Section 12. This section increases the penalty for an employer's failure to insure and keep insured its liability for workers' compensation from $1,000 to $10,000 and makes the fine mandatory.

Section 13. This section adds language that clarifies when the employee can seek medical treatment and limits the employee to no more than one change in choice of attending physician without the written consent of the employer. It also requires the employee to give prior notice of the change. Its purpose is to prevent the abuse of frequent physician changes, with its resultant costly overtreatment, by those seeking opinions to support their claims.

Section 14. This section adds language invalidating a course of medical care that requires continuing and multiple treatment unless a written treatment plan is prescribed and submitted to the employer by the attending physician. The section limits initial and continuing treatment unless the attending physician documents the need for excess services in the written treatment plan. Its purpose is to prevent overtreatment, which, by definition, increases costs to employers without enhancing the employee's healing process.

Section 15. This section clarifies that, at reasonable times throughout disability, the employee must submit to an examination by a physician or surgeon of the employer's choice and establishes a presumption of reasonableness. It also limits the employer to no

more than one change in choice of physicians without the written consent of the employee. It is the intent of sections 13 and 15 to afford equal rights to the employee and employer in the selection and change of their respective physicians.

Section 16. This section adds language establishing a medical fee standard, as determined by the board, but not to exceed usual, customary and reasonable fees for the treatment or services in the community in which it is rendered. It also provides that an employee may not be held responsible for the payment of a fee or charge for medical treatment or service.

Section 17. This section is repealed and reenacted authorizing the board to appoint or contract with a medical services review committee to assist and advise on the appropriateness, necessity and cost of medical and related services.

Section 18. This section adds a new provision which grants the board authority to establish a list of physicians and select a physician from the list to conduct an independent medical examination in the event of medical disagreement between the employee's and the employer's physicians. The employer will pay for the examination. It also establishes a presumption that the board's independent medical examiner's opinion is correct and provides the examiner with protection from damages for rendering an opinion or giving testimony.

The original purpose of this section was to resolve medical disagreements quickly and to reduce litigation caused by the need for the board to

resolve disputes resulting from differing medical opinions. However, the House Labor and Commerce amendment to this section requiring that the board's physician be the same specialty as the employee's treating physician unless the board agrees unanimously on a case to case basis to approve a different selection will, according to testimony by the Workers' Compensation Division, defeat that purpose and substantially increase litigation costs to the administration and all parties to the system.

Section 19. This section codifies the board's interpretation of the meaning of compensation for statute of limitation purposes under AS 23.30.105 and partially complies with the Supreme Court's directive 14 years ago in Williams v. Safeway Stores, 525 P.2d 1087, 1089 n.6 (Alaska 1974), that the legislature clarify when compensation includes medical and other benefits and when it means time loss benefits only. For the purposes of filing a claim for additional disability compensation, the board has consistently concluded that when compensation payments have been made without an award, the claim must be filed within two years after the last payment of disability or death benefits and cannot be extended by the payment of medical benefits only.

Section 20. This section addresses the delays being experienced by the parties to the workers' compensation system in getting disputed cases before the board and the board's problems in timely docketing cases for hearing. While budget and staff constraints set an outside limit on the number of cases that can be heard, the board's analysis of the current backlog problem is that it is caused in large part because

of excessive continuances and the unpreparedness of the parties in presenting their case to the board, which results in the hearing record remaining open.

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

Section 21. This section shifts the burden of proof to the employee for establishing a compensable claim for mental injury resulting from work-related stress, consistent with the amendment to AS 23.30.265(17) found in section 40.

Section 22. This section codifies legislative intent in section 1 that findings of fact made by the board in its orders are conclusive unless the court specifically finds that a reasonable person could not have reached the board's conclusion.

Section 23. This section codifies the board's interpretation of the meaning of compensation for statute of limitations purposes under AS 23.30.130, which provides that a request for modification of a compensation award must be made within one year after the last payment of disability or death benefits. This is consistent with the amendment to AS 23.30.105 found in section 19.

Section 24. This section reflects changes consistent with the repeal and reenactment of AS 23.30.155(m) found in

section 27, concerning the reduction of reporting penalties.

Section 25. This section provides protection for the injured worker whose benefits are denied solely on the grounds that another employer or insurer may be liable for all or some of the benefits. This section requires that the most recent employer or insurer who is party to the claim and may be liable must pay the injured worker temporary disability benefits during the pendency of disputes over liability between various employers and insurers. This section also requires that when liability has been determined, any reimbursement, including interest and all attorney's costs and fees, must be paid within 14 days.

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

Section 26. This section increases the employer's penalty from 20% to 25% for late payment of compensation to an employee.

Section 27. This section repeals and reenacts employer/insurer reporting provisions requiring that an annual, instead of an anniversary, report be filed with the

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

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

Section 28. This section clarifies that if the employer is self-insured, the requirements of AS 23.30.155(c) and (m) in sections 24 and 27 apply to the employer.

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

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

Section 29. This section repeals and reenacts the minimum and maximum rates of compensation to be paid an Alaska injured worker. It decreases the maximum weekly compensation rate from 200% of the state's average weekly wage, which for 1988 is $547 equalling a weekly compensation rate of $1094, to an absolute maximum of $700 per week. It increases the minimum weekly compensation rate from $110 to $154 per week, except in those cases where the employee does not provide documentary proof of past wages or the employee's spendable weekly wages are less than $154 per week. The minimum of $154 approximates the Alaska minimum wage. The purpose of this section is to redistribute workers' compensation dollars to provide a more livable compensation rate for low wage earners without unduly increasing employer costs. It is further the purpose of this section to override the Alaska Supreme Court's holding in Peck v. Alaska Aeronautical Inc., Op. No. 3240 (October 30, 1987), by providing for a fixed maximum compensation rate which can be predicted.

This section also reenacts the provision that Alaska rates of compensation shall be adjusted for those employees who leave the state, except for medical or rehabilitation services not available in Alaska, by the ratio of the cost of living in the locality the employee resides to that of Alaska. It also provides that the board, by regulation, shall determine and annually update living costs for the state and

other localities. A similar law providing for the adjustment of the Alaska compensation rate by ratios of states' average weekly wages to those of Alaska was struck down as unconstitutional in Alaska Pacific Assurance Co. v. Brown, 687 P.2d 264, 271 (Alaska 1984). However, the court suggested that an adjustment based on actual cost of living may pass constitutional muster.

Section 30. This section provides that if an employee is paid a permanent partial disability award and it is subsequently determined that the employee is permanently totally disabled, the permanent total disability benefits must be reduced by the permanent partial disability award, adjusted for inflation, as determined by the board.

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

Section 31. This section clarifies that failure to satisfy the remunerative employability definition as defined in AS 23.30.041(p)(2) does not mean that an employee is automatically permanently totally disabled.

Section 32. This section imposes a cap on temporary total disability by payment of benefits only up to the time of medical stability, as defined in AS 23.30 .265(34) found in section 41, but in no case longer than two years from the date of disability. This is consistent with the concept that temporary total disability be paid during the healing period, which in most cases occurs well within a one-year period. Following medical stability, the worker is paid permanent partial impairment benefits as reflected in section 33.

Section 33. This section repeals prior law and reenacts a totally new concept in permanent partial disabilities. All payments for permanent partial impairment will be based on a whole man concept in accordance with the American Medical Guides to Evaluation of Permanent Impairment Compensation. Under the Guides the impairment of any body part is computed as to how it affects total body functioning. Compensation is computed by multiplying the employee's actual degree of impairment by the appropriate adjustment factor by the maximum compensation rate of $240,000, but no permanent partial impairment payment may be less than $250. The section also provides that an impairment rating be reduced by a pre-existing permanent impairment; however, the prior rating will not negate a finding of permanent total disability.

Current law provides maximum schedules for fourteen various body parts, ranging from $2,800 to $59,000, plus a maximum unscheduled benefit of $60,000 based on loss of earning capacity for back and neck injuries. This section represents a redistribution

of benefits to those workers who have more significant injuries and disabilities from those with minor impairments that have little or no effect on employment status or earning capacity. In addition to providing for a more accurate and equitable compensation system, this section will significantly reduce current disputes and litigation in attempting to predict future loss of earning capacity, which is speculative, at best. It will also remove disincentives to minimize disabilities that are inherent in any loss of wage-earning capacity system.

Section 34. This section provides for payment of temporary partial disability benefits only up to the time of medical stability, consistent with the amendment to AS 23.30.185 found in section 32. It also reduces the maximum period for paying temporary partial disability benefits from five to two years.

Section 35. This section reenacts language necessary to determine an employee's wage-earning capacity for purposes of temporary partial disability. This language, which was previously found in AS 23.30.210 and is now repealed in section 42, pertains only to the payment of temporary partial benefits. It is consistent with the changes made in AS 23.30.190 found in section 33.

Section 36. This section amends AS 23.30.220(a) to narrow the instances where an employee's gross weekly earnings cannot be computed under AS 23.30.220(a)(1) based upon past earnings. Only in those rare cases in which the employee had no earnings or was voluntarily absent from the labor market for 18 months or

more during the two calendar years before injury will the gross weekly earnings be calculated under AS 23.30.220(a)(2). The board is then mandated to consider the nature of the employee's work and work history in determining the gross weekly earnings for calculating compensation, but in no event can the compensation exceed the employee's earnings at the time of injury.

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

Section 37. This section provides that if contributions to a qualified pension or profit sharing plan have been included in an employee's gross earnings, as reflected in AS 23.30.265(15) found in section 39, the employer may offset compensation benefits by a like amount when the employee receives pension or profit sharing payments.

Section 38. This section enacts a new provision that prohibits an employer from discriminating in the hiring, promotion or retention of an employee who has in good faith filed a claim for or received compensation benefits. An employer who violates this section is liable for damages assessed by the court in a private civil action.

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

Section 39. This section amends the definition of an employee's gross earnings to include total contributions by an employer to a qualified pension or profit sharing plan for the two prior years multiplied by the percentage of vested interest at the time of injury. This change is consistent with the board's interpretation of the Supreme Court's ruling in Ragland v. Morrison-Knudsen Co., Inc., 724 P.2d 579 (Alaska 1986).

Section 40. This section amends the definition of injury by providing specific language that the term does not include mental injury caused by mental stress unless the work stress was extraordinary and unusual in the profession and the work stress was the predominant cause of the mental injury. Specifically excluded are those mental injuries that result from disciplinary actions or changes in job status taken in good faith by the employer. Unlike all other types

of injuries, it further places the burden on the employee to provide work-connection. See the proposed amendment to AS 23.30 .120 found in Section 21.

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

Section 41. This section adds a new definition which provides that medical stability means the date after which no further measurable improvement is expected to result from additional medical treatment or care. This codifies the meaning of the healing period during which time temporary total or temporary partial disability benefits are paid, and is consistent with the changes made in sections 10, 32 and 34. Currently, temporary disability benefits are paid until economic or employment stability regardless of time factors or the status of the employee's medical condition.

Section 42. This section repeals provisions that are unnecessary or inconsistent with the repeal and reenactment of AS 23.30.200(b) found in section 35.

Section 43. This section contains transitional language necessary to change reporting from an anniversary to an annual system. It specifically provides that each

employer is subject to this change for all claims existing as of December 31, 1988.

Section 44. This section mandates a rate decrease for workers' compensation premiums of no less than 6%, effective July 1, 1988 through January 1, 1990.

Section 45. This section contains transitional language to include a grandperson clause to allow current rehabilitation specialists who do not have the credentials required under AS 23.30.041(p)(6) to continue to practice for one year after adoption of this bill, at which time they must have gained the required credentials or be barred from further practice as a rehabilitation specialist in the workers' compensation system.

Section 46. This section delineates the amendments to the Act that apply only to injuries sustained on or after July 1, 1988.

Section 47. This section provides that the amendment to the Act under section 40 applies to injuries sustained on or after the effective date of section 40.

Section 48. This section provides that sections 40 and 47 of this Act takes effect immediately under AS 01.10 070(c).

Section 49. This section provides that sections 1-39, and 41-46 of this Act take effect July 1, 1988.

National
Council
on Compensation
Insurance

Stanley V. Sparks
Director
Government, Consumer
and Industry Affairs

April 5, 1988

APR 5 1988

Honorable Paul Roller
Director of Insurance
State of Alaska
Department of Commerce and Economic Development
Division of Insurance
State Office Building - 9th Floor
Pouch D
Juneau, Alaska 99811

Re: Senate Bill 322

Dear Director Roller:

The Alaska Classification and Rating Committee met via telephone conference call on April 4, 1988 to discuss the progress of the workers compensation insurance reform legislation which is pending in Juneau. By unanimous decision the Committee in effect acknowledged that the potential overall cost savings contained in the existing version of SB 322 amounted to 5.7 percent. Accordingly, if the bill is enacted in its present form, the Committee will direct NCCI to file a law amendment rate filing in Alaska which provides for an overall rate decrease of 5.7 percent on new, renewal and outstanding policies effective as of July 1, 1988.

The Committee wishes to make it clear that such a mid-term rate adjustment would not in any way interfere or preclude the normal review of Alaska experience and the making of an appropriate 1/1/89 rate filing based upon that experience.

Sincerely,

Stanley V. Sparks
Director
Government, Consumer
and Industry Affairs

SVS/gls

cc: Alaska Classification and Rating Committee
Don Koch
R. Fein
M. Mulvaney

Suite 850, One S.W. Columbia Street
Portland, Oregon 97258, Tel. (503) 226-4173

THE ALASKA CHAPTER*

ASSOCIATED GENERAL CONTRACTORS OF AMERICA, INC.

SKILL
RESPONSIBILITY
INTEGRITY

BOX 92500 • ANCHORAGE, ALASKA 99509
TELEPHONE (907) 561-5354

3201 SPENARD ROAD
ANCHORAGE

WILLIAM E. SCHNEIDER
EXECUTIVE DIRECTOR

January 15, 1988

Representative Dave Donley
Chairman, House Labor & Commerce Committee
Alaska State Legislature
P.O. Box V (M.S. 3100)
Juneau, AK 99811

Dear Representative Donley:

On behalf of the membership of the Associated General Contractors of Alaska, we strongly support the recommendations of the Management/Labor ADHOC Committee For Workers' Compensation Reform.

Your efforts in this critical area are appreciated by all of those individuals who make their living in the construction industry.

We encourage you and your fellow representatives to expeditiously pass this legislation.

Sincerely,

ASSOCIATED GENERAL
CONTRACTORS OF ALASKA

William E. Schneider
Executive Director

JIM CARROLL
President

FAIRBANKS BUILDING & CONSTRUCTION TRADES COUNCIL AFL-CIO

North of the 63rd Parallel
315 5th Avenue
Fairbanks, Alaska 99701-4566
(907) 456-4248
(907) 456-1206

JOHN GIUCHICI
Secretary/Treasurer

January 14, 1988

Bob Anders
Labor and Management Ad Hoc Committee

Dear Bob,

The Fairbanks Building and Construction Trades Council voted to Endorse your workers compensation bill. We have some concerns about some areas of the bill but, feel in the long run it will be beneficial to lowering the high insurance rates.

Fraternally Yours

J.N. Carroll
President

WESTERN ALASKA BUILDING and CONSTRUCTION TRADES COUNCIL

AFFILIATED WITH

A.F.L. - C.I.O.

BUILDING AND CONSTRUCTION TRADES DEPARTMENT

Phillip A. Thingstad
PRESIDENT
407 Denali Street
ADDRESS
ANCHORAGE, ALASKA 99501

SECRETARY
407 Denali Street
ADDRESS
ANCHORAGE, ALASKA 99501

January 14, 1988

Alaska State Legislators

Dear Ladies and Gentlemen,

This letter accompanies a proposed piece of legislation, one in which alot of time and effort was put into by both Labor and Management in an attempt to help close the loopholes and solve many of the problems of the Workers Compensation Law.

The Bi-partisan work put into this proposal was extensive and a very good product was the result, one in which all appear to be happy with as it will help the workers as well as the employers. The only people who oppose such legislation are the "Out of State" insurance companies and the lawyers, both of whom make a great deal of money off the current ambiguous law.

The Western Alaska Building and Construction Trades supports, with great enthusiasm, this possible revamping of the Workers Compensation Law.

Sincerely,

Phil Thingstad/lk

Phil Thingstad
President
Western Alaska Building
and Construction Trades

PT/lk
Attachment

GUIDE TO

INSURANCE REHABILITATION SPECIALISTS

CERTIFICATION

CERTIFICATION OF INSURANCE REHABILITATION SPECIALISTS COMMISSION

A DIVISION OF

BOARD FOR REHABILITATION CERTIFICATION

1156 SHURE DRIVE, SUITE 350
ARLINGTON HEIGHTS, ILLINOIS 60004

SECTION 3. CRITERIA FOR ELIGIBILITY:

To be eligible to sit for the CIRS examination, an applicant must meet ALL requirements in ONE of the categories listed below. Education and employment experience requirements must have been fully satisfied by the application deadline date **(JANUARY 1, OR JULY 1)**. Applications not meeting the eligibility criteria of one of the following categories at the application deadline date will be referred to the Credentials Committee for review to determine eligibility. Please be reminded, the application processing fee is non-refundable. Read categories carefully. **CIRSC will charge a $20.00 handling fee for any check returned for non-sufficient funds.**

CATEGORY ONE

Degree or Certification or License:	Current Registered Nurse (RN) Valid Certified Rehabilitation Counselor (CRC) **or** Master's degree or Doctorate degree in: Rehabilitation Counseling, Rehabilitation Administration, Work Adjustment, Vocational Rehabilitation, Job Placement, or Psychology.
Acceptable Employment Experience Required: (See definition Section 4)	A minimum of two years full-time (or the equivalent) employment providing direct or indirect rehabilitation services to a disabled population receiving benefits from a disability compensation system.

CATEGORY TWO

Degree Required:	Bachelor's, Master's, or Doctorate in any other discipline.
Acceptable Employment (See definition Section 4)	A minimum of four years of full-time (or the equivalent) employment providing direct or indirect services to a disabled population receiving benefits from a disability compensation system.

JOHN H. LEWIS
Post Office Box 330550
Coconut Grove, Florida 33233
(305) 443-8111

Education: B.S.B.A., University of Florida, 1963
J.D., Duke University School of Law, 1967

Experience: Assistant to Dr. Arthur Larson
Larson's The Law of Workmen's Compensation
1965-1974

Instructor In Law
University of Miami School of Law
1973

Chief Counsel and Associate Executive Director, National Commission on State Workmen's Compensation Laws, 1971-1972

Florida Governor's Task Force on Workmen's Compensation, Vice-Chairman, 1972-1973

Florida Workmen's Compensation Advisory Council, Chairman, 1974-1977, Vice-Chairman, 1977-1980

Legal Advisor, Florida Self-Insurance Rules Advisory Committee, 1976-1977

Research Analyst, Interdepartmental Workers' Compensation Task Force, 1975-1976

Consultant: U.S. Senate, U.S. Department of Labor, Alaska State Legislature, Pennsylvania State Legislature, Alaska Workers' Compensation Board, Rhode Island Department of Business Regulation, Delaware State Chamber of Commerce, Louisiana Association of Business and Industry, Alaska State A.F.L.-C.I.O, California Workers' Compensation Institute, Office of the

Governor-State of Rhode Island, Massachusetts House of Representatives, Kentucky Legislative Research Commission, Maryland State Chamber of Commerce, California State Senate, National Conference of State Legislatures, The Government of the Territory of American Samoa, Oregon Workers' Compensation Department, Michigan Department of Labor-Department of Commerce, Office of Inspector General-U.S. Department of Labor, Minnesota Department of Labor and Industry, Maine Bureau of Insurance, United States General Accounting Office, Office of the Governor-State of Illinois.

Practice of law, 1967-80, with emphasis on civil litigation and workers compensation matters.

Reports and Articles:

A Workmen's Restoration System, Supplemental Studies for the National Commission on State Workmen's Compensation Laws, 1972.

An Analysis of State Workers' Compensation Agency Activities, Report for the Interdepartmental Workers' Compensation Task Force, 1977.

An Analysis of the Alaska Workers' Compensation System, Report for the Alaska State Legislature, 1982.

Cost Implications of the Hawaii Workers' Compensation System: An Analysis of Cases, Costs and Law, 1984.

The Alaska Workers' Compensation Law: Fact-Finding, Appellate Review, and the Presumption of Compensability, Alaska Law Review, Volume 2, June 1985, Number 1 (With Arthur Larson).

Permanent Partial Disability Benefit Recipients In The Kentucky Workers' Compensation System, Report for the Kentucky Legislative Research Commission, 1985.

Major Issues In The Oregon Workers' Compensation System, Report for the Oregon Workers' Compensation Department, 1987.

Minnesota debates work comp cuts

By MEG FLETCHER John-fyi

ST. PAUL, Minn.—Employers and workers compensation surers are squaring off against organized labor in a politicly charged battle to cut the high cost of workers compensaon in Minnesota.

The Legislature last week—amid intense lobbying efforts employers, insurers and labor—was hammering out a bill at would cut workers compensation benefits, roll back and eze workers comp rates for a period and strengthen the te's workers comp rate regulatory system.

The state's Democrat-controlled Legislature and statese have made it clear that they will approve cuts in workcompensation benefits only if rate regulation is inased.

Reports released recently by the state's auditor and labor d industry department blamed high benefits for the high t of Minnesota's workers comp system, which the reports is among the most costly of all states.

Legislators and lobbyists worked feverishly last week to to determine what level of rate regulation would be suffint to persuade legislators to vote for benefit cuts before ir adjournment, tentatively scheduled for tomorrow.

"The situation now is confused and unclear, as everyone is ing to find the right mix," said Brad Lehto, administrator he House Committee on Labor Management Relations.

"It's a constant pulling and tugging, and the politics are y intense," said Robert Johnson, senior vp of the Insure Federation of Minnesota.

Legislators last week struggled to come up with a bill that v. Rudy Perpich would sign, because it is unlikely the ernor's veto could be overridden, most legislative observsaid.

Gov. Perpich is looking for "fair and reasonable" legisla that first addresses any unreasonable costs or inefficiens by insurers, lawyers and medical providers, said Ray n, commissioner of the Minnesota Department of Labor Industry. "The injured worker should be at the back of line," he added.

However, the auditor's office report said: "Insurer adminative expenses and profits are not significant factors that e to explain why Minnesota's workers compensation s are higher than rates in comparable states."

Workers compensation has been a concern to the Legisla for more than a decade, according to separate reports ased earlier this year by Mr. Bohn's department and Office of the Legislative Auditor.

gnificant reforms were enacted in the early 1980s, inling changing to competitive rating from administered ing and creating a competitive state fund.

owever, there is a "continuing and growing concern that nesota's system is costly, complex and not serving well interests of either employers or employees," the auditor's rt said.

From 1983 to 1986, workers compensation premiums dou in Minnesota, while they increased only 54% in the rest e nation," the Labor Department report said.

e report noted that only 26% of the premium increase due to increases in payroll in the state.

"Workers compensation rates also have increased," the Labor Department report said. "In 1984, Minnesota had the 14th-highest rates out of 39 states with comparable data; in 1987 they were the fourth-highest among the 39 states."

In fact, Minnesota's workers comp rates in 1987 were about twice as high as the rates in Wisconsin, Iowa and South Dakota, the auditor's report found.

In addition, the state's special compensation fund has an unfunded liability of about $1.5 billion, the auditor's report says. The fund helps spread the cost of benefits for totally disabled workers, handicapped workers and uninsured employers among all insurers.

"Minnesota's workers compensation costs are high mainly because benefits are high, and those costs can be most directly brought under control by limiting certain benefits and eliminating others," the auditor's office concluded.

The report said benefits are "substantially" more generous than benefits in other states because Minnesota:

- Is one of 12 states with a cost-of-living escalator. The escalator is expected to add about $45 million to benefits paid to workers injured in 1986, excluding benefits paid under self-insured programs.
- Offers minimum benefits and supplementary benefits that are among the nation's most generous.
- Allows temporary partial benefits to last indefinitely, instead of ending when the healing period does.
- Has long-term disability cases that account for 3% of all cases but create 73% of the total benefit cost. "The great majority of expensive long-term cases do not involve catastrophic injuries," the auditor's office report found. "Quite a few are medically not very serious."

Many of the proposed recommendations in the auditor's report are incorporated in S.F. 2428, the bill legislators were working on last week, according to John Lennes, a lobbyist for the approximately 80 large employers that belong to the Minnesota Business Partnership.

The bill was introduced by Sen. Florian Chmielewski, a member of the Democratic Farm Labor Party from Sturgeon Lake, Minn.

A spokesman Sen. Chmielewski said the bill would:

- Cap temporary partial benefits at two-thirds of the difference between the higher wage an employee made before his injury and the lower wage he made after his return to work. This measure would save an estimated $52 million in benefits annually.
- Limit permanent total benefits by imposing a new 20% minimum disability requirement before permanent benefits can be collected and make it clear that a lack of jobs in a claimant's area does not make him eligible for permanent total benefits. Currently, there is no minimum disability requirement for employees to collect permanent total benefits. This provision of the bill is expected to save $40 million annually.
- Clarify that temporary total benefits end 90 days after maximum medical improvement is reached or the employee returns to work, retires or refuses to take a job he can perform.
- Reduce the state's cost-of living adjustment and delay implementation of the escalator to three years after injury rather than one year after an injury.
- Abolish the state's Workers Compensation Court of Appeals.
- Freeze all medical and rehabilitation provider fees, excluding hospital charges, through Sept. 30, 1990.
- Limit coverage under second-injury funds—which pay employees that return to work for a different employer after an injury and again are injured—to employees that are at least 25% disabled after the second injury. However, the second employer would be liable for up to $3,500 in medical expenses, an increase from the current $2,000.
- Totally integrate the state's workers comp benefits with Social Security benefit payouts, which should reduce the state's payout.
- Limit defense attorney's fees to the $6,500 maximum currently in effect for plaintiff's attorneys.
- Change the minimum benefit from $75 per week to 20% of the state's average weekly wage or an individual's actual wage, whichever is less.
- Assign all work comp administrative costs to the state's general revenue fund instead of the state's special compensation fund, which is generated by insurer assessments.

In addition, the bill would change the way workers compensation insurers file rates in the state. Currently, the state has an open competition system, under which rates must be filed within 15 days after being implemented; however, the state insurance commissioner must approve the rates unless he finds them unfair or discriminatory.

The bill would institute a file-and-use system, under which insurers would be required to file rates before they were implemented. In addition, the bill would make it easier for the commissioner to disapprove rates.

The bill also calls for a 15% reduction in workers compensation rates from Aug. 1, 1988, to Jan. 1, 1989. That would save employers about $160 million, Mr. Michaels said.

In addition, the bill proposes a freeze on additional rate increases through the end of this year for insurers that have already increased rates in 1988.

Mr. Lennes said that most employers in the organization he represents would not be affected by the rate rollback and freeze provisions of the bill because they self-insure their workers comp exposures.

However, he said some smaller employers that buy insurance may favor those proposals.

Michael Frohman, counsel for The Alliance of American Insurers Workers Compensation Department, said insurers generally want to keep pricing as it is and oppose the freeze and rate reduction. "We think pricing reflects the system. It's not a cause of the problem, but a symptom of it," he said.

"However, to get benefit cuts, the industry will look at some changes," he said.

Many sources say chances are better than 50-50 that some work comp proposal—but not necessarily the Chmielewski bill—will be passed by the Legislature this session.

However, an earlier proposal by another state legislator to establish a monopolistic state fund is considered dead.

Labor generally supported that measure, but because of the cost of establishing the program, legislators turned deaf ears, said a spokesman for the state AFL-CIO. ■

Business

E

Put in my Work Comp file.

Comp bill flawed, Croft says

By Yereth Rosen
Times Writer

The workers' compensation legislation that sailed through the Alaska Senate by a vote of 15-0 and, in revised form, appears to have enough support to pass the House is loaded with too many problems to save employers money in their workers' compensation insurance premiums, an attorney specializing in workers' compensation claims said Wednesday.

Chancy Croft, a claimants' attorney and former state legislator, presented his argument against the legislation that's scheduled to be heard by the House Judiciary Committee. Croft spoke at a luncheon sponsored by the Anchorage Job Service Employer Committee.

The legislation is aimed at simplifying and controlling a compensation system that has escalated in cost to employers and in complexity to employees. Both employers and workers are frustrated with a system in which insurance premiums have risen an average of 40 percent in the last two years and the time to settle workers' claims has expanded 70 percent, Croft said.

But the workers' compensation law pending in the Alaska Legislature might make matters worse, not better, he argued.

Croft said the current workers' compensation legislation is flawed, much like the workers' compensation legislation drawn up in the late 1970s — legislation that he as a legislator voted against — was flawed.

"No legislature, in my experience as a legislator, had produced more legislation by anecdote than workers' comp legislation," he said.

As before, he said, legislators have drafted a workers' compensation bill without some crucial information about what is driving premiums.

"One real problem with the legislation is there is an expectation now for premium reductions," he said.

If the hikes in insurance premiums have been justified, and the legislature isn't addressing the real causes of the premium increases, then non-Alaska insurers will have no choice but to pull out of the state, he said.

Croft criticized what he said were the arbitrary limits the legislators hope to place on injured workers' benefits.

Much has been made of the maximum weekly benefit of over $1,100 that the current workers' compensation statutes allow injured workers, he said. In fact, less than 0.1 percent of Alaska's injured workers are awarded weekly compensation in excess of $700, the dollar maximum that the legislation would impose.

Still, Croft argued, the $700 limit is arbitrary and might not meet the needs of some injured workers who've suffered extreme economic losses due to their injuries.

Another arbitrary limit the legislation would impose is the two-year maximum for temporary disability payments, Croft said. Severely in-

See Workers, page E-4

Chancy Croft
... cites policy departure

Workers: Expectations high

Continued from page E-1

jured workers, such as those suffering brain trauma or burns, might be able to recover from their injuries but might need more than two years to do so, he said.

Croft said he's troubled by the aim of the pending legislation to pay benefits for permanent partial disabilities based on the severity of the injury instead of on the basis of lost earning power.

That emphasis on medical impairment rather than earnings impairment is contrary to the tradition of workers' compensation, he said.

Authors of the legislation say it's written so that the most seriously injured workers get the most money in compensation, Croft said.

"That may be good or bad. You may like it or not. But that is a significant and major departure" from previous workers' compensation law in Alaska.

The "arbitrary" nature of the legislation "places too high a premium on getting the matter resolved," Croft said. "And it loses sight of the fact that what we're dealing with is human beings."

An injury at work "probably affects the average person as seriously as anything in their life," Croft said.

Computer

good point

Get Cal. study — Severity of disab. does track well w/ loss of earning cap — That's assuming that loss of earn cap. is a fair method. And some will make more under this bill

ALASKA STATE AFL-CIO

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819 1st Ave.
Fairbanks, Alaska 99701
(907) 456-2030

MANO FREY
Executive President

TO: ALL HOUSE AND SENATE MEMBERS
FROM: MANO FREY, EXECUTIVE PRESIDENT
RE: WORKER'S COMPENSATION

The Joint Labor-Management Task Force has worked for more than a year negotiating changes to the current Worker's Compensation Law that would result in premium reductions to the employer; and, at the same time, maintain fairness in compensating the injured worker.

The legislation now being considered is a result of the task forces' efforts. It certainly does not attempt to address every complaint or concern regarding the current worker's compensation statute, but it does accomplish the stated goal of providing some necessary relief to the employer while providing benefit safeguards for the employee. In addition, reforms are included to several areas of the law that caused abuse and hardship to the employees in the past.

I strongly urge your support for this bill.

January 14, 1988

Senator Tim Kelly, Chairman
Senate Labor and Commerce Committee
Representative Dave Donley, Chairman
House Labor and Commerce Committee
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Senator Kelly, Representative Donley and members of your committees:

As Co-chairmen of the Management/Labor ad hoc committee we are pleased to present our proposal for changes to the current workers' compensation act. Our proposals represent the culmination of more than a years effort by hundreds of professionals from many different walks of life. It is not intended to be a final solution to the high cost of workers' compensation in Alaska, but represents instead our most recent step in our ongoing effort to improve the benefit levels for injured workers while at the same time reducing the cost that must be borne by Alaskan employers.

BACKGROUND

PRE AD HOC COMMITTEE

In 1968, the Alaska weekly maximum workers' compensation benefit was $113. By 1974, the maximum weekly compensation rate rose to $175. During this period of time, Congress established the National Commission of State Worker's Compensation Laws to "undertake a comprehensive study and evaluation of State workmen's compensation laws, in order to determine if such laws provide an adequate, prompt and equitable system of compensation."

In a pro-labor atmosphere and in reaction to some of the National Commission's findings, the Alaska legislature in 1975 amended the Alaska Workers' Compensation Act (Act) by providing a gradual phase-in of the 200% of state average weekly wage maximum, doubling the scheduled permanent partial disability maximum in the Act, and eliminating the $30,000 limit on unscheduled permanent partial disability.

Management bitterly contested the 1975 labor-sponsored amendments. As a result, little thought was given by labor, management or the legislature to workers' compensation as an effective delivery system. Only a portion of the 1972 Commission's recommendations were enacted, but due to the changes that were adopted, workers' compensation insurance premiums increased 35.2% in 1975, 13.0% in 1976, and 6% in 1977.

In 1977, management successfully sponsored legislation reimposing a limit on "unscheduled" permanent partial disability -- this time at $60,000. Other meaningful changes were impossible to achieve and in 1979, a pro-management group, the Alaska Conference of Employers (ACE), was established to study the problems and recommend legislative changes necessary to reduce the high cost of workers' compensation in Alaska. The employers also created another group, the Workers' Compensation Committee of Alaska (WCCA) and charged that group with the task of placing the recommendations of the ACE study into legislation. The pressure of these two management groups led to the creation of the 1980 Legislative task force to study the Alaska workers' compensation system and recommend changes. The committee, co-chaired by Senator Terry Stimson and Representative Brian Rogers, included representatives from labor, management, and the insurance industry. Ultimately the joint effort failed at the close of the 1981 legislative session and no corrective legislation was recommended.

At that time, WCCA commissioned a study by Daryl Cody and Associates on the problems with workers' compensation in Alaska and their recommendations for changes. This study was presented to Representative Terry Martin in January, 1982 with the recommendation that the suggested changes be incorporated into legislation.

With the Cody study, the opportunity for the classic management vs labor confrontation on workers' compensation presented itself. This time however, logic prevailed. Labor, represented by the AFL-CIO, and management, represented by WCCA, called for a joint public meeting for the purpose of selecting representatives to sit on an "ad hoc committee" to recommend changes to the Alaska workers' compensation statutes.

THE LABOR/MANAGEMENT AD HOC COMMITTEE

The first order of business for the new ad hoc committee was to formulate the objectives of the group. The following were adopted at the first meeting:

1. Provide an effective system for the delivery of benefits and services;

2. Discourage fraudulent claims and fraudulent statements to obtain or deny workers' compensation benefits;

3. Provide an effective deterrent for those employers failing to provide required workers' compensation insurance;

4. Increase incentives and decrease disincentives for returning to work after an injury;

5. Encourage safety;

6. Provide for effective rehabilitation of an injured worker;

7. Redistribute dollars from those workers not severely injured to those seriously injured workers who have lost the ability to be gainfully employed as a result of their injury;

8. Reduce or minimize the impact of workers' compensation premiums on the employer;

9. Continue to study the Alaska workers' compensation system to identify problems and recommend solutions; and,

10. Stabilize the atmosphere for discussing proposed changes to the Alaska Workers' Compensation Act.

Due to time problems, the Ad Hoc committee agreed to limit its initial efforts to:

1. Providing for the early identification of injured workers who potentially need rehabilitation;

2. Providing for the early return to direct employment;

3. Providing incentives to return to work and reduce disincentives to return to work;

4. Providing for appropriate criminal penalties for willful misrepresentation of facts for the purpose of obtaining or denying benefits; and,

5. Providing a mechanism for cease and desist orders to be issued against uninsured employers.

The Ad Hoc committee was successful in having its legislation agenda passed in 1982 and 1983.

Since 1983, the Ad Hoc committee has continued to meet to work on problems that became apparent or problems that were created by the court system in their interpretation of the statute. For

the most part, however, the committee dealt primarily on relatively minor problems and had not undertaken an in-depth review of the system and its evolution since the legislation passed in 1982 and 1983.

CURRENT EFFORTS OF THE AD HOC COMMITTEE

The cost increase for workers compensation announced in November of 1986 caused the ad hoc committee to reexamine the problems with the system and the need for changes. It was apparent that the system had deteriorated significantly since the last major modifications in 1983. The quality of service to the injured worked had decreased and the cost to the employer had increased. In fact, from 1983 to 1986, the incurred cost of workers' compensation increased from $70.2 million to $150.3 million while employment in the state decreased. Since the incidence rate of injuries remained relatively constant during this period, it was apparent that the cost per claim had more than doubled.

In this setting, the ad hoc committee decided that the best approach was a complete examination of the current statute. In order to establish priorities, both management and labor met with their respective constituents and developed a list of issues that needed attention. These lists were then compared, merged and a plan of action developed. Since the problems were complex, it was decided to concentrate on the issues of vocational rehabilitation, medical services, compensation and benefits in 1987 and defer other items until 1988.

The current members of the ad hoc committee are:

Robert Anders - Co-chair and labor member of the Workers' Compensation Board; business agent - Operating Engineers

Mary Pierce - Co-chair and management member of the Workers' Compensation Board; Executive Director, Medical Indemnity Corporation of Alaska

Richard Cattanach - Vice President, Finance, Unit Company

Kevin Dougherty - AFL-CIO

David Gottstein - Director of Distribution, Carr Gottstein, Inc.

Ralph Lewis - Vice President - Ketchikan Pulp and Paper

Ralph Mingo - Safety Engineer, Teamsters Local 959

Stephen Rehnberg, CMA - Vice President, Finance, Tanadgusix Corporation

Joseph Thomas - Business Agent, Laborers Union

Kenneth Weist - Business Agent, Roofers

During the past year, the ad hoc committee met weekly in an attempt to define the various problems and explore potential solutions. The advice and suggestions of hundreds of professionals were sought. Medical doctors, chiropractors, vocational rehabilitation providers, lawyers, and others knowledgeable in workers' compensation were consulted and provided input to either the ad hoc committee or a WCCA study committee. During the entire process, the committee sought the advice and counsel of the Division of Workers' Compensation and at least one member of the division was in attendance at all the committee meetings.

Briefly, the proposed legislative changes for 1988 can be outlined as follows:

Vocational Rehabilitation

1. Change the current system from being mandatory to voluntary;

2. Limit the program to those injured workers prevented from performing the duties of their profession;

3. Limit rehabilitation programs to two years;

4. Limit rehabilitation plan costs to $10,000;

5. Pay a permanent partial disability or a total permanent disability at the total temporary disability rate until plan completion or termination. The remainder, if any, is to be paid in a lump sum;

6. Establish employability, not employment, as the goal of rehabilitation;

Medical

1. Subject medical payments to the usual, customary and reasonable fees charged in an area;

2. Allow the injured worker to make one change in treating physician before seeking the consent of the employer;

3. Limit treatment plans to no more than 20 visits within 60 days;

4. In the case of a dispute, allow the board to appoint an Independent medical examiner whose opinion shall, in the absence of clear and convincing objective evidence to the contrary, be presumed to be correct;

Compensation

1. Change the maximum weekly benefit from $1108 to $700, and increase the minimum from $110 to $154;

2. Allow an employees vested pension contributions to be considered in determining the weekly wage;

3. Limit the controversy in the determination of weekly earnings by clarifying the process for such determinations;

4. Adjust the weekly compensation benefits for differences in the cost of living for claimants residing outside Alaska;

Benefits

1. Schedule all injuries and base disability payments on the "whole man" concept;

2. Increase the permanent partial disability benefit for the more severely injured worker;

3. Limit temporary total disability payments to two years;

Other

1. Provide legislative intent language for the courts and future legislatures;

2. Bar workers' compensation claims if the employee falsified his application and the falsification contributed to a subsequent injury;

3. Establish criteria for stress claims;

4. Prohibit discrimination of an employees who files a workers compensation claim;

5. Assure the maintenance of workers' compensation payments to employees when questions exist as to the ultimate responsibility for liability;

It is the belief of the ad hoc committee that the changes recommended should lead to an improved delivery system for workers' compensation at a lower cost to Alaskan employers. We believe that the savings will come primarily from a reduction in the amount of litigation, a reduction in the number of injured workers entering vocational rehabilitation programs, and a reduction in expenditures for medical services. These reductions

should not however negatively impact the quality or quantity of services available to an injured worker. Rather, it is our belief that the injured worker will be able to avail themselves of better services in a more timely manner.

Determining the cost impact of the proposed changes will be difficult and will require a certain amount of faith. An evaluation of the cost savings due to a reduction in litigation, the impact of a voluntary vocational rehabilitation system, the acceptance of a usual, customary, and reasonable limit on medical expenses, the limitation on medical utilization, scheduling those injuries that are currently unscheduled, and other similar items will be difficult if not impossible. Quantification and estimation necessary for a precise actuarial determination of the impact of these recommendation is not possible and accordingly, will require assumptions as to what "might be". The net result will only be as good as the assumptions that were used to determine what "might be". It may be necessary for the legislature to accept, as management and labor has, that the changes should logically lead to lower costs in the system with no adverse impact on the injured worker. If the legislature can make this commitment of faith, we would like to ask them to join us as we measure the actual results of our changes and work with us to continue to make modification when and where appropriate.

Sincerely,

Robert Anders

Mary Pierce

SECTIONAL ANALYSIS OF WORKERS' COMPENSATION
TASK FORCE SB 322 AND HB 352

Section 1. Parts A and B:

This intent language is meant to give a clear message to the courts that they are not to construe workers' compensation laws in favor of any party but to be fair and to decide cases upon their merit and always within the confines of the written statute. It is also intended that the Board possess the weight of fact-finding authority and that its decision, if supported by evidence, is conclusive.

Part C:

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

Section 2. This section gives the Department the authority to establish and maintain a roster of rehabilitation specialists or physicians that are needed for dispute resolutions under two other sections: AS 23.30.041 (vocational rehabilitation) and AS 23.30.095 (medical benefits).

Section 3. This section mandates the department to adopt new regulations if one is declared invalid by the supreme court.

It is our intention to insure that any new regulations adopted under this section have retroactive as well as prospective application, so that everyone is treated equally. We question whether the legislative drafter's language fulfills this intent, and request that a definitive answer be obtained.

Section 4. This section provides the employer with protection against an employee who falsely represents his/her physical condition, and the employer relies upon knowledge of his/her physical condition for job placement, and the employee is then injured. The intent of this section is to uphold the Board's decision in Robinett v. Enserch Alaska Construction, AWCB No. 870210 (September 4, 1987), and is a contract of hire issue.

Section 5. This section is a minor change made by the administration to provide more timely payments to the Second Injury Fund.

Section 6. In this section we have completely revised the vocational rehabilitation statute.

Parts A and B:

This subsection defines a reemployment services administrator and his duties. This reemployment services administrator is selected by the Board and serves to perform several functions, some of which include enforcing regulations, recommending regulations, establishing performance and reporting criteria to be adopted by the Board, enforcing the reemployment benefits provided under AS 23.30.041, and reviewing on an annual basis the performance of the rehabilitation specialists. The reemployment services administrator is also charged with submitting to the Department a variety of reports relating to vocational rehabilitation statistics.

Part C:

This is a guide to the employee's opportunity to enter into a voluntary rehabilitation program. This sets forward an eligibility evaluation to establish the employee's eligibility for future vocational rehabilitation services. It is important to note here that either an employee or an employer may request the eligibility evaluation. The rehabilitation specialist that is chosen to do the eligibility evaluation comes from a roster maintained by the reemployment services administrator. This system should provide for a fair evaluation to each employee without any bias toward a specific rehabilitation specialist. Unfortunately the dispute resolution process for eligibility disputes was omitted during the drafting of the bill.

Part D:

If found eligible for rehabilitation benefits the employee is responsible to request in writing his/her desire to enter into a vocational rehabilitation program. Part D also sets out the criteria under which an employee will be found eligible for such a program.

Part E:

This section specifically speaks to an employee's ineligibility for reemployment benefits. If the employer offers employment that is within the employee's physical capacities at a wage equivalent to 60% of the worker's gross hourly wages at the time of the injury and that new employment allows the employee to be employable in other jobs that exist in the labor market, then the employee is not eligible for reemployment benefits. If the employee has been previously rehabilitated in a former workers' compensation claim and then proceeded to return to work in the same or similar occupation, the new employer is not responsible for further rehabilitation. This criteria should be an incentive for employers to return to work an injured employee, if possible.

Part F:

This part outlines the choice of reemployment specialist and the employee's and employer's involvement in that choice. It also outlines the goals of the reemployment plan and the criteria that must be met.

Part G:

This part lists the various outcomes of a reemployment program. These must be achieved in the shortest possible time and insure remunerative employability but <u>not</u> remunerative employment. This is meant to discourage elaborate rehabilitation plans and encourage an injured worker to return to the work force.

Part H:

This discusses who are parties to this contract.

Part I:

This part addresses non-cooperation by the injured worker. Not included here, although it should be, is the resolution process we propose in a situation where there is non-cooperation.

Part J.

This part outlines time limits in the reemployment benefits process. Time limits are: (1) benefits may

not extend past two years from the date of plan acceptance at the discretion of the employer; (2) the employee, if electing reemployment benefits, must do so within 60 days of the employers notice of injury. (If the employee is in fact unable to make this selection because of an unusual physical injury perhaps in a coma or in the hospital with severe injuries, then there is an exception to this 60-day limitation); (3) the chosen rehabilitation specialist has 30 days to determine the employee's eligibility for reemployment benefits (if there are unusual or extenuating circumstances the reemployment services administrator may grant additional time); (4) the employee and employer have 10 days to select a rehabilitation specialist; (5) the plan must be developed and submitted within 90 days of the determination of eligibility; (6) is to caution against employees that would not be physically able to engage in the plan and allow them to do so upon their physician's approval. All of these time lines are intended to assist the employee in a speedy rehabilitation plan and not to prolong an employee's entrance back into the work force. This section also sets forth various disputes and resolution processes with final decision-making power by the Board.

Part K:

This discusses costs of the plan and compensation to the employee while in the plan. The total cost of the plan shall not exceed $10,000.00. In order to encourage the employee to complete the plan, the employee's temporary total disability benefits cease after he/she reaches medical stability. But if these benefits cease before the plan is complete, we have established a mechanism whereby the permanent impairment benefits will then be paid at the temporary total disability rate. In order to further protect the employee if the permanent impairment benefits are exhausted, the employee will continue to be paid at a rate of wages equal to 60% of the employee's spendable weekly wages not exceeding $525.00. Any remaining permanent impairment benefits after the employee has completed the plan will be paid in a single lump sum. The purpose of this section is to provide the employee with the necessary money to enable for self-support during the rehabilitation program.

Part L:

In this part of the vocational rehabilitation statute we are trying to establish some professional standards regarding who is allowed to complete eligibility evaluations.

Part M:

In this part we have included several definitions specific to vocational rehabilitation.

(1) Employability is defined to mean an employee has the ability to engage in employment but he/she hasn't necessarily achieved employment. (2) Labor markets have been expanded to include geographical areas outside of the State or in a different part of the State. (3) Further, there are definitions of physical capacity and physical demands. (4) A rehabilitation specialist is defined as a Certified Insurance Rehabilitation Specialist. (5) Remunerative employability is defined in this section also.

Note on Section 6:

As part of the legislative process we moved quickly from a work draft to a bill. There are certain sections of the vocational rehabilitation statute, AS 23.30.041, that are erroneous, and items not included in the bill. It is our intent to request the opportunity to look at this section and recommend some changes consistent with our intent. This is applicable only to AS 23.30.041.

Section 7. This section was amended to add the additional protection for an employer whose employee's claim is barred under AS 23.30.020(b) (false representation as to physical condition) from being sued in a court action. (See Section 4.)

Sections 8, 9, 10, 11, 12, and 13 all speak to medical benefits as provided under the Workers' Compensation Act. Our intent was first to try and curb abuses that have occurred under this system and the cost of those abuses. Currently Alaska, with medical costs at 38%, has the highest medical costs of any state in the nation (percentage of total costs of workers' compensation).

Section 8. The employee in this section still has the opportunity to choose a physician but is limited to a single change of a treating physician. An additional change can be made only with written consent of the employer. We are not intending to hamper an employee's attending physician from referring that employee to a specialist when necessary.

Section 9. This section clarifies that, at reasonable times throughout disability, the employee must submit to an examination by a physician or surgeon of the employer's choice and establishes a presumption of reasonableness.

Section 10. This section allows the employer to check on the reasonableness of treatment without discontinuing the employee's medical treatment by controversion. This section also sets forth a process of dispute resolution by providing the employer with the right to a separate evaluation.

Section 11. This section adds language establishing a medical fee standard as usual, customary, and reasonable. The intent was for fees to be paid using HIAA (Health Insurance Association of America) as a standard for what is usual, customary and reasonable. We allow the Board to determine what is used as the standard because in subsequent years HIAA may not be considered to be the best choice of a standard. (HIAA is a national service which provides medical fees by zip code). Physicians are familiar with this standard as it is normal for usual, customary, and reasonable fees to be paid in non-occupational benefits. Also, our intent is that in no case would an employee be charged for any medical services. The physician will be paid at 100% of the HIAA's usual, customary and reasonable fee.

Section 12. This section is repealed and reenacted authorizing the board to appoint or contract with a medical services review committee to assist and advise on the appropriateness, necessity and cost of medical and related services.

Section 13. This new subsection gives the Board the opportunity to select a physician to resolve a medical dispute from a list established and maintained by the Board. It is presumed that greater weight be given to the opinion of that independent medical examiner, and he will be presumed to be correct unless there is absolutely clear and convincing objective evidence to the contrary. Also, this section provides some protection to the selected physician in the rendering of his opinion. We felt it was very important to provide a dispute resolution process in the new statute to resolve medical issues by medical experts.

Section 14. This section codifies the board's interpretation of the meaning of compensation for statute of limita-

tion purposes under AS 23.30.105. It also complies with the Supreme Court's directive 14 years ago in Williams v. Safeway Stores, 525 P.2d 1087, 1089 n.6 (Alaska 1974), that the legislature clarify when compensation includes medical and other benefits and when it means time loss benefits only. For the purposes of filing a claim for additional disability compensation, the board has consistently concluded that when compensation payments have been made without an award, the claim must be filed within two years after the last payment of disability or death benefits and cannot be extended by the payment of medical benefits only.

Section 15. This section shifts the burden of proof to the employee for establishing a compensable claim for mental injury resulting from work-related stress, consistent with the amendment to AS 23.30.165(17) found in section 32.

Section 16. This new subsection enforces findings by the Board to be conclusive if supported by any evidence. This is a message to the higher courts.

Section 17. This section codifies the board's interpretation of the meaning of compensation for statute of limitations purposes under AS 23.30.130, which provides that a request for modification of a compensation award must be made within one year after the last payment of disability or death benefits. This is consistent with the amendment to AS 23.30.105 found in section 14.

Section 18. This section reflects changes consistent with the repeal and reenactment of AS 23.30.155(m) found in section 20, concerning the reduction of reporting penalties.

Section 19. This section was amended to assure that an employee continues to receive benefits if his/her claim is controverted solely on the grounds that one or more employer is liable. We were concerned about cases where an employee had a legitimate claim but was not receiving benefits because two insurers were fighting over who should pay. We have added a penalty in the form of attorney's fees and costs and interest as a further disincentive.

Section 20. This section repeals and reenacts employer/insurer reporting provisions requiring that an annual, instead of an anniversary, report be filed with the board by March 1 of each year showing the total

amount of all compensation by type, medical and related benefits, vocational rehabilitation expenses, legal fees, and penalties paid on all claims during the preceding calendar year. Currently, data is collected on a per claim basis through interim and claim anniversary reports. However, there is no data collected showing what employers/insurers have paid for claims on an annual basis, making it impossible to meaningful analyze insurance rates or to make effective changes in the workers' compensation system.

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

Because of the insurers' past reporting record, we will also be recommending changes that will include a penalty provision for failure to file an annual report.

Section 21. The intent here is to limit the weekly compensation rate for recipients residing inside or outside the state to a maximum of $700. The bill unfortunately doesn't address the maximum "outside the state" and needs to be corrected. It also allows for an employee who can document wages to receive a minimum of the lesser of his spendable weekly wage or $154 per week. An employee who does not document his wages will receive no less than $110 per week.

In Part B of Section 21 the weekly rate of compensation is adjusted based upon the cost of living of the locality in which the recipient resides compared to the cost of living of the State of Alaska. This section addresses the constitutionality under Alaska Pacific Assurance Co. v. Brown, 687 P.2d 264 (Alaska 1984). It allows the Board the opportunity to pick what shall be used as the standard for cost of living indexes.

Four corrections that need to be made in this section are deletion of the statement "for a recipient residing in the state" at line 29, and insert "average" before cost of living in lines 20 and 21 on page 19, and line 5 on page 20. Substitute the term "gross" for average and "earnings" for wage in line 25 and "are" for is in line 26.

Section 22. This section was amended to conform AS 23.30.041's definition of a labor market and to broaden the market for the employee's service in determining permanent total disability.

Section 23. This is a new section that further clarifies that a failure to satisfy the remunerative employability definition as a wage goal as defined in AS 23.30.041 does not mean that an employee is automatically permanently totally disabled.

Section 24. This section defines when permanent impairment benefits begin. In no case will temporary total disability benefits be paid beyond the date of medical stability, and temporary total disability benefits may not be paid for more than two years regardless of the continuance of the disability. Our intent here was to disallow the continuance of temporary total disability benefits as it is under the current system and also to conform with the limitation as provided in AS 23.30.041 where a reemployment plan may not exceed two years.

Section 25. This section was repealed and reenacted. In this section permanent partial impairment payments are based upon the "whole man" concept as set out in the American Medical Association's Guides to the Evaluation of Permanent Impairment. Compensation paid to claimants under this section is based upon total disability of $240,000 multiplied by the claimant's percentage of net permanent impairment. Impairment levels below 30% are further adjusted by a factor less than one, but in no case is the impairment compensation less than $250. The intent of this section was to redistribute benefits so that those employees who have a greater percentage of injury receive awards commensurate with their injuries whereas those with minor injuries receive a proportionately less amount of compensation.

Section 26. This section provides for payment of temporary partial disability benefits only up to the time of medical stability, consistent with the amendment to AS 23.30.185 found in section 24. It also reduces the maximum period for paying temporary partial disability benefits from five to two years.

In the last sentence of this section the statement "unless otherwise provided under AS 23.30.041" should be deleted.

Section 27. This is a new subsection intended to further define what the wage-earning capacity of an injured employee is. It also allows the Board to fix the wage-earning capacity based upon reasonable regard for the nature of the injury, degree of physical impairment, usual employment, and other factors and circumstances.

Section 28. This section was amended to define what will be used to compute the spendable weekly wage of an employee. Specifically, we were addressing several Supreme Court decisions which fixed spendable weekly wage on future earnings. These cases, such as Johnson v. RCA-OMS, 681 P.2d 905 (Alaska 1984), and its progeny, have made the determination of spendable weekly wage impossible because it is based on the predictability of what someone might be making at some future point in time. We intend to clearly base the determination of spendable weekly wage on the employees' past earnings history except under some very specific cases listed in AS 23.30. 220(a)(2) and (3). We believe this change will markedly decrease the amount of litigation over determination of spendable weekly wage.

Section 29. This section is an offset for a future section, section #31, which defines what gross earnings are. This section allows the employer to offset those contributions made to a qualified pension or profit sharing plan that have in fact been paid or are payable to an injured worker under the plan for any week or weeks during which compensation benefits are also available.

Section 30. This section addresses and prohibits discrimination by an employer in hiring, promoting, or firing an employee just because they have filed a workers' compensation claim. This does not prevent an employer from basing his hiring, firing, or promotion practices or policies on the consideration of safety and safe practices. It also allows the employer to require a prospective employee to fill out a pre-employment questionnaire and to use that questionnaire as documentation for the Second Injury Fund or to determine if the employee has the physical or medical capacity to meet the documented physical or medical demands of a particular job.

Section 31. This section amends the definition of employee gross earnings to include total contributions by an employer to a qualified pension or profit sharing plan for the two prior years multiplied by the

percentage of vested interest at the time of injury. This change is consistent with the board's interpretation of the Supreme Court's ruling in Ragland v. Morrison-Knudsen Co., Inc., 724 P.2d 579 (Alaska 1986).

Section 32. This section amends the definition of injury by providing specific language concerning mental injury caused by mental stress. This section is meant to address the ever increasing possibility of stress-related workers' compensation claims. Such a claim is Wade v. Anchorage School District, 741 P.2d 634 (Alaska 1987). In the Wade case the employee perceived that work stress caused him to have a mental injury and therefore he was injured. Under this amendment work stress does not cause a mental injury unless the work stress was extraordinary and unusual in the profession and a predominant cause. The burden, unlike other injuries, is placed on the employee to prove the mental injury is work connected.

Section 33. This section adds a new paragraph to define what is meant by medical stability. This is consistent with changes made in Sections 6, 24, and 26. This is in direct opposition to current legislation where temporary disability benefits are paid until employment or release for employment regardless of medical stability.

Section 34. This section repeals provisions that are unnecessary or inconsistent with the repeal and reenactment of AS 23.30.200(b) found in section 27.

Section 35. This section is an administrative section amended to require employers to file a annual rather than an anniversary report. The purpose of this section was to allow us to have future opportunity to have correct and complete reporting information which we have not had in the past.

Section 36. This section specifically mandates that only future injuries sustained after July 1, 1988 will come under the jurisdiction of this proposed legislation. This legislation will not be considered retrospective in any way except for the changes in reporting requirements. (See Sections 5, 18, 20 and 35).

Section 37. This section provides that the Act takes effect July 1, 1988.

It may be necessary to change the effective date for some section of this bill.

WCCA

Worker's Compensation Committee of Alaska, Inc., 11401 Olive, Anchorage, AK 99515

Rep. Dave Donley and Sen. Tim Kelly
House and Senate Labor and Commerce Committee Chairs
Juneau, Ak.

Gentlemen:

I want to take this opportunity to thank you both for the tremendous support you two have shown in the recent months and reiterate our support for the task force. I have been asked many times whether the WCCA would have a separate agenda for the session. The answer is emphatically, no.

The efforts of the very best people we could find in Alaska from the ranks of management and organized labor have contributed to our effort. The WCCA believes that effort has produced an impressively thorough, first look at the major cost components of the Alaska worker's compensation system.

In our legislation you will find answers to the problems of soaring unregulated medical costs, unrealistic Alaska benefits and the failure of private vocational rehabilitation. It attempts to look at the history and the future of worker's compensation in Alaska in addressing the intent of the law and the new frontier of claims -- stress. Underlying all of the features of this bill is the effort to reduce the needless dispute and litigation that seems to haunt the system. But perhaps its most redeeming quality is that it represents the thoughts, hard work and aspirations of the two most important parties in the system: those who pay and those who benefit.

We were warned we should not leave the bill at the doorstep of State agencies. We took that message to heart and produced a piece of legislation without a single fiscal note attached that will significantly reduce the cost of worker's compensation insurance for all Alaska employers.

My constituency anxiously awaits the outcome of your efforts in Juneau and trusts you will help us honor the agreement between labor and management that produced this extraordinary document.

Sincerely,

Steve Haag

Article 2. Payment of Wages.

Sec. 23.10.040. Payment of wages in state. (a) An employer of labor performing services in this state shall pay the wages or other compensation for the services with lawful money of the United States or with negotiable checks, drafts or orders payable upon presentation without discount by a bank or depository inside the state.

(b) *[Repealed, § 2 ch 28 SLA 1971.]*

(c) *[Repealed, § 2 ch 28 SLA 1971.]*

(d) A person who violates a provision of this section is guilty of a misdemeanor. (§ 43-2-12 ACLA 1949; am § 1 ch 35 SLA 1967; am §§ 1, 2 ch 28 SLA 1971)

Cross references. — For sentences for misdemeanors, see AS 12.55.135.

Collateral references. — 48A Am. Jur. 2d, Labor and Labor Relations, § 2584. 53 Am. Jur. 2d, Master and Servant, § 82. 51B C.J.S., Labor Relations, § 1179. 56 C.J.S., Master and Servant, §§ 120, 121.

Sec. 23.10.043. Deposit of wages. An employer may not deposit wages due or to become due or an advance on wages to be earned in an account in a bank, savings and loan association or credit union unless the employee has voluntarily authorized the deposit. All deposits under this section shall be in a bank, savings and loan association or credit union of the employee's choice. (§ 1 ch 120 SLA 1976)

Revisor's notes. — Enacted as AS 23.10.040(e). Renumbered in 1976.

Sec. 23.10.045. Payments into benefit fund. (a) If an employer agrees with an employee to make payments to a fund for the benefit of the employees, including but not limited to a fund for medical, health, hospital, welfare and pension benefits or any of them, or has entered into a collective bargaining agreement providing for these payments, the employer may not without just cause fail to make the payments required by the terms of the agreement.

(b) Each violation of this section is a separate offense and a person found guilty of a violation is punishable in accordance with the schedule of punishment set out in AS 23.10.415. (§ 43-2-13 ACLA 1949; added by § 1 ch 23 SLA 1957; am § 1 ch 111 SLA 1959; am § 10 ch 2 SLA 1964)

Sec. 23.10.047. Employee's lien. (a) If an employer agrees with an employee or group of employees to make payment to a medical, health, hospital, welfare, or pension fund or such other fund for the benefit of

ed the use of special limiting standards in determining mental stress claims. We specifically examined and rejected the "greater than all employees must experience" test; we also rejected "any other additional 'objective' threshold requirement." [5] *Id.* at 982. We rejected the "honest perception" test proposed by Fox, by which the mental disability would be compensable if the employee honestly, even if mistakenly, perceived that job stress caused the disability. *Id.* at 983.

The board found that Wade's evidence established a presumption of compensability, but that the ASD rebutted the presumption. The board then held that Wade failed to prove compensability because he failed to show that he experienced greater stress than was usual in the profession. The board also rejected Wade's expert testimony, which established that his work stress was a significant factor in his disability, because it was based on Wade's inaccurate perceptions of his work environment. This case thus raises two issues not clearly resolved by *Fox*: (1) can the "unusual stress in the profession" test be used to evaluate a stress claim once the presumption of compensability has been established; and (2) can the board reject expert testimony that a claimant's mental injury is related to job stress if the experts have no independent knowledge of the actual circumstances of the claimant's job?

1. Rejection of the "unusual stress in the profession" test

[1] In *Delaney v. Alaska Airlines*, 693 P.2d at 864, we rejected an airline pilot's claim that job stress aggravated his preexisting physical condition (Crohn's disease) resulting in his disability. One reason we gave for denying the claim was that Delaney "was a 'usual' pilot and not subject to 'unusual' stress not shared by others in his profession." *Id.* *Fox* expressly rejected this "greater than all employees must experience" test and other objective threshold requirements for mental injury claims. 718 P.2d at 982. In *Fox*, we explained that the *Delaney* decision was based upon the employer's unequivocal expert testimony that job stress was not a factor in producing Delaney's disability. *Id.* at 983.

In this case, the board used the "unusual stress in the profession" test as the sole criterion for its determination that the ASD rebutted Wade's presumption of compensability. Furthermore, it was the most important criterion for the board's decision that Wade had failed to meet his burden of proving compensability. Insofar as the "unusual stress in the profession" test is dispositive of a stress claim, it is a "threshold" requirement and is precluded by *Fox*. Therefore, we must reverse the board's decision that Wade's mental injury was not substantially related to his job stress.

Unusual stress in the profession may be relevant to determining whether a stress disability suffered by an employee was job related. An employee who experienced greater stress on the job than his colleagues, and suffered a stress-related injury, may use evidence of this comparison as part of his proof that the stress was job related. However, the fact that an employ-

must bear the burden of proof as to each element of the claim. *Delaney*, 693 P.2d at 862; *see* AS 23.30.120(1) ("In a proceeding for the enforcement of a claim for compensation under this chapter it is presumed, in the absence of substantial evidence to the contrary, that (1) the claim comes within the provisions of this chapter ...").

5. The "greater than all employees must experience" test compares the stress experienced by a claimant to that experienced by other employees generally. *Fox*, 718 P.2d at 981–83; *see School Dist. No. 1 v. Dep't of Industry, Labor and Human Relations*, 62 Wis.2d 370, 215 N.W.2d 373, 377 (1974). Thus, a librarian, whose job is generally low in stress, may find it difficult to establish a stress injury, while a highly stressed executive may have an easier time establishing such an injury. Another test for job related stress may be called the "unusual stress in the profession test." This test compares the stress experienced by the claimant to that experienced by others in the same profession. *E.g.*, *Sloss v. Industrial Comm'n*, 121 Ariz. 10, 588 P.2d 303, 305 (1978). This test would deny benefits to an "eggshell" claimant in a stressful job, apparently on the theory that he assumed the risk of the stress when he took the job. *See* Sersland, Mental Disability Caused by Mental Stress: Standard of Proof in Worker's Compensation Cases, 33 Drake L.Rev. 751, 775–79 (1983–84).

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ee did *not* suffer greater than usual stress on the job is of limited value in determining that the employee's stress was not job related. An employer cannot dismiss one employee's response to job stress because other employees in the field do not become disabled in response to identical stress. The employer must take the employee "as he finds him." *Fox*, 718 P.2d at 982; *S.L.W. v. Alaska Workers' Compensation Board*, 490 P.2d 42, 44 (Alaska 1971); *Wilson v. Erickson*, 477 P.2d 998, 1000 (Alaska 1970). We will not preclude "eggshell" claimants, like Wade, from recovery in workers' compensation solely because they succumb to stressful job conditions to which others in the profession do not succumb. *See Fox*, 718 P.2d at 982. We would not preclude a worker from recovery in workers' compensation for an injury received in a fall although other more hardy workers would not have suffered from the same fall. To the extent that *Delaney* suggests otherwise, it is disapproved. We conclude that the board erred in relying on evidence that Wade did not experience unusual stress not experienced by other school security guards.

2. Evaluating expert testimony on the impact of job-related stress

[2] In determining that Wade failed to prove that his stress disability was job-related, the board rejected Wade's medical experts' testimony that his job stress was a major factor in Wade's disability. This testimony must be "given less weight," the board held, because it was based on Wade's "faulty perceptions" about his job environment. Although Wade disputed it, the board had substantial evidence from which it could conclude that Wade's illness resulted in his misperceiving the reality of various events at school. The testimony of Wade's own experts confirmed that he was psychotic and delusional. Depositions of his co-workers at Wendler contradicted Wade's allegations of a number of incidents. It is also clear that Wade's psychotherapists did not independently verify Wade's stories about the events he claimed to have experienced at work.

The psychotherapists agreed, however, that Wade's mental problem was significantly related to his employment. The ASD did not introduce any contradictory medical testimony, nor did its cross-examination lead Wade's experts to equivocate on this issue.

In *Fox*, we held that a mentally disabled employee's honest perception that her disability resulted from job-related stress was not dispositive on that issue. 718 P.2d at 983. We rejected the holding of *Deziel v. Difco Laboratories, Inc.*, 403 Mich. 1, 268 N.W.2d 1, 12–13 (1978), in which the Michigan court adopted this "honest perception test" because psychoneuroses were by definition subjective injuries existing only in the minds of the victims. *Fox* did not hold, however, that honest perceptions were entirely immaterial to the issue. We noted that "[a] test that focuses *exclusively* upon the employee's honest perception ignores the statutory directive [that the injury arise out of employment] because it does not ask whether the mental injury arose from an employment related risk *nor does it even look to whether an employee's subjective reaction to work stresses actually contributed to the injury.*" 718 P.2d at 983 (emphasis added).

If the board were to reject expert psychotherapist testimony on the relationship between an employee's mental injury and his job-related stress solely because the psychotherapist based his opinion on this issue *in part* on the unverified and incorrect statements of the employee, a psychotic individual might never be able to prove that his employment contributed to his psychosis. A psychotic, by definition, misperceives objective reality.[6] Wade's psychotherapists did not accept all his assertions about his job as true, but nevertheless attributed a significant amount of his debilitating stress to his job.

6. *See*, T. Stedman, *Stedman's Medical Dictionary* 1166 (5th ed. 1982) (defining psychosis). This paradox was implicit in ASD's counsel's question to Dr. Ohlson, "Well, if people are really out to get him then Mr. Wade is quite accurate in his perception, he's not ill."

BURGESS CONSTRUCTION CO. and Employers Commercial Union Companies, Appellants,

v.

Jeanne L. LINDLEY, as the Beneficiary of Ronald Lindley, Deceased, and the Alaska Workmen's Compensation Board, Appellees.

No. 1705.

Supreme Court of Alaska.

Dec. 22, 1972.

Workmen's compensation proceeding seeking death benefits. The Compensation Board found that claimant was the surviving wife, and employer and insurance carrier sought judicial review. The Superior Court, First Judicial District, Ketchikan, Hubert A. Gilbert, J., affirmed and employer and carrier appealed. The Supreme Court, Boochever, J., held that where first wife had obtained divorce from workman and had been awarded alimony, first wife had not remarried but had resumed living together with workman following his subsequent marriages and divorces and was living with him at time of industrial accident causing his death, although they had never gone through another formal marriage ceremony, first wife was entitled to death benefits under workmen's compensation statute as the surviving wife; first wife qualified as both the surviving wife and the widow.

Affirmed.

Erwin, J., concurred and filed opinion.

1. Workmen's Compensation ⇐433

Where first wife had obtained divorce from workman and had been awarded alimony, first wife had not remarried but had resumed living together with workman following his subsequent marriages and divorces and was living with him at time of industrial accident causing his death, although they had never gone through another formal marriage ceremony, first wife was entitled to death benefits under workmen's compensation statute as the surviving wife; first wife qualified as both the surviving wife and the widow. AS 23.30.005 et seq., 23.30.215(a), 23.30.265(15, 21), 25.05.011, 25.05.011(b).

2. Workmen's Compensation ⇐11

Purpose of the Workmen's Compensation Act is one of liberal humanitarianism.

Peter R. Ellis, Ketchikan, for appellants.

John E. Havelock, Atty. Gen., Michael R. Peterson, Asst. Atty. Gen., Juneau, for appellees.

Before RABINOWITZ, C. J., and CONNOR, ERWIN and BOOCHEVER, JJ.

OPINION

BOOCHEVER, Justice.

This is an appeal by Burgess Construction Company and Employers Commercial Union Companies, the employer and insurance carrier for the deceased workman, from the judgment of the superior court affirming the decision of the Alaska Workmen's Compensation Board that appellee was a surviving wife entitled to compensation benefits for the death of her husband in a job-related accident.

Appellee, Jeanne L. Lindley, was legally married to deceased in 1951 and had four children. In 1967, appellee obtained a divorce from Ronald Lindley and was awarded $75 per month in alimony. Appellee never remarried between her divorce and the death of Ronald Lindley. Ronald Lindley, subsequent to his divorce from appellee, remarried twice, and was divorced from each of these subsequent wives. In 1968, Jeanne and Ronald resumed living together but never went through another formal marriage ceremony. Appellee testified at the hearing that the only reason they did not marry again was because of financial inability to go outside of Ketchikan for a ceremony and the embarrassment that a ceremony in Ketchikan would cause their children and friends who were under the impression that they had in fact remar-

ried. The couple lived together until the death of Ronald Lindley on December 10, 1970.

Appellants do not contest the fact of the accident or its job connection. They further concede the payment of benefits to the minor children. Their sole argument on appeal is that under AS 25.05.011 [1] appellee was not legally married to deceased at the time of his death; and that therefore, appellee was not entitled to benfits under the workmen's compensation statutes as a "surviving wife".

The workmen's compensation statute in question specifically provided: [2]

> *Compensation for Death.* (a) If the injury causes death, the compensation is known as a death benefit and is payable in the following amounts to or for the benefit of the following persons:
>
> . . . . . .
>
> (2) if there is a surviving wife or dependent husband, to the surviving wife or dependent husband 35 per cent of the average weekly wages of the deceased, during widowhood, or widowerhood with $10,000 in one sum upon remarriage, but total compensation not to exceed $20,000 in the aggregate; if there is a surviving child or children of the deceased, the additional amount of 15 per cent of the average weekly wages for each child not to exceed 30 per cent of the average weekly wages, but the total amount payable to a widow or widower and children may in no case exceed 65 per cent of the average weekly wages, except as provided in (b) of this section; . . .

No definition of the term "surviving wife" is provided by the workmen's compensation statute but the terms "married" and "widow" are defined by the Act. AS 23.30.265(15) provides

> "married" includes a person who is divorced but is required by the decree of divorce to contribute to the support of his former wife; . . . AS 23.30.265(21) provides
>
> "widow" includes only the decedent's wife living with or dependent for support upon him at the time of his death, or living apart for justifiable cause or by reason of his desertion at such a time; . . .

[1,2] It is clear under the statutory definition of "married" that the decedent, though divorced, was "married" for the purpose of the Workmen's Compensation Act, for the divorce decree required him to contribute to appellee's support. It follows that under the Act appellee would be regarded as his "surviving wife". She qualifies as a "widow" for she was living with decedent at the time of his death and was dependent upon him for support.[3]

Under the marital and domestic relations laws of the State of Alaska "[n]o person may be joined in marriage in this state until a license has been obtained for that purpose as provided in this chapter. No marriage performed in this state is valid without solemnization as provided in this chapter." [4] We have held that common law marriages are thus not valid in Alaska.[5] The subject case involves similar contentions to those ruled upon by the

1. AS 25.05.011 provides:
   Civil Contract. (a) Marriage is a civil contract requiring both a license and solemnization which may be entered into by
   (1) a male who is 19 years of age or older with a female who is 18 years of age or older, who are otherwise capable, or
   (2) those who qualify for a license under § 171 of this chapter.
   (b) No person may be joined in marriage in this state until a license has been obtained for that purpose as provided in this chapter. No marriage performed in this state is valid without solemnization as provided in this chapter.
2. AS 23.30.215(a).
3. The appellee, the appellants and the State of Alaska urged us to consider the equal protection argument which would result from the denial of benefits to a common law wife in such circumstances but we decline to consider this question at this time.
4. AS 25.05.011(b).
5. Edwards v. Franke, 364 P.2d 60, 63 (Alaska 1961).

United States Court of Appeals for the Ninth Circuit in Albina Engine & Machine Works v. O'Leary [6] wherein the court stated:

> Neither the Oregon Workmen's Compensation Act nor the Longshoremen's and Harbor Workers' Act relate to or affect the marriage relationship as such. And the laws of the state regarding marriage are only tangentially relevant as they may bear upon the existence of the status of "wife" or "widow" for the purpose of identifying recipients of benefits under these remedial statutes.
>
> The application of state domestic relations law, developed in other contexts, to the solution of problems under workmen's compensation statutes, produces results which at best have only a fortuitous relation to the remedial purposes of the compensation acts, and often are in direct conflict with them. When the state law does provide a definition of marital status deliberately shaped to compensation act purposes alone, there is no reason why that definition should not be applied under the federal statute in preference to one drawn from the state's general domestic relations law.

The *Albina* case is discussed in Holland America Insurance Company v. Rogers, 313 F.Supp. 314, 320 (N.D.Cal.1970) as follows:

> The *Albina* case reiterates the accepted approach to dealing with problems of marital relations: that marriage is not a monolithic institution, but consists instead of separate and severable incidents. Thus where the policy of a state may preclude its courts from "recognizing", say, a marriage of one man to two women, it may be permissible for both women to recover property from his estate on his death as his "wives", for recognizing a marriage for the purposes of the one incident would not violate the state's public policy as might recognition of it for other purposes. Similarly, in the instant case, this Court need not "recognize" the marriage of Angela Spies to Julian Spies in order to find that she is nonetheless entitled to at least some of the incidents of marriage, including the right to collect death benefits under a federal workmen's compensation law upon his death.

While, for some purposes, appellee would not have been recognized by the Alaska courts as married to the decedent, appellee qualifies for benefits as a "surviving wife" under terms of the Alaska Workmen's Compensation Act discussed above. The grant of benefits by the workmen's Compensation Board under the facts of this case is within the liberal humanitarian purposes of the Act [7] while a different reading of the statute would clearly frustrate this purpose.

The decision of the superior court is affirmed.

ERWIN, Justice (concurring).

While I readily concur in the result in this case, I cannot accept the supporting reasoning used by the majority. It is clear to me that the plain reading of the definitions found in AS 23.30.265(15) and (21) must exclude benefits for appellee, who can only be characterized as a common law wife after her divorce from the deceased and his remarriage. The workmen's compensation statute granting benefits to a "surviving wife" obviously refers to a legal wife as defined in Alaska statutes (AS 25.05.011(b)).[1] While the rather strained in-

6. 328 F.2d 877, 879 (1964).

7. Gordon v. Burgess Constr. Co., 425 P.2d 602, 605 (Alaska 1967); Holland America Ins. Co. v. Rogers, 313 F.Supp. 314, 320 (N.D.Cal. 1970).

1. AS 25.05.011(b) provides:
> (b) No person may be joined in marriage in this state until a license has been obtained for that purpose as provided in this chapter. No marriage performed in this state is valid without solemnization as provided in this chapter.

terpretation of the majority avoids ruling on the constitutional problem, it will create problems of statutory interpretation at a later date. Therefore, I feel it is incumbent on this court to decide the central issue in this case.

I find the statutory grant of workmen's compensation benefits to a legal wife and not a common law wife is a violation of Article I, § 1 of the Alaska Constitution, which guarantees all persons equal protection under the law. Such a classification constitutes impermissible discrimination for it would deny benefits under AS 23.30.-215(a)(2) solely because a "spouse" did not go through a formal marriage ceremony.[2]

In a recent decision, the United States Supreme Court stated, in voiding a Louisiana Workmen's Compensation statutory scheme providing for different benefits for legitimate and illegitimate children, that:

> The tests to determine the validity of state statutes under the Equal Protection Clause have been variously expressed, but this Court requires, at a minimum, that a statutory classification bear some rational relationship to a legitimate state purpose.[3]

The Supreme Court then reached the conclusion that the denial of Workmen's Compensation Benefits to an illegitimate child did not protect legitimate family relationships, but served to unjustly penalize those not guilty of wrongdoing. An analogous situation is presented in the case at bar. I can find no reasonable relationship between the legal formality of a marriage ceremony and the purpose of the Alaska Workmen's Compensation Act which compensates a dependent "spouse" for the death of a provider.[4]

Further, Alaska's prohibition against common law marriage is phrased solely in terms of marriages contracted within the state.[5] Presumably, this Court would adhere to the conflicts of law principle that the validity of a marriage is determined by the law of the place where contracted.[6] This would mean that common law marriages contracted in Alaska would not be recognized, but such marriages contracted outside the state and maintained within Alaska would be recognized and compensation benefits granted to a common law spouse. This would, in effect, permit a certain category of common law wives to recover benefits, but deny benefits to another category, thus constituting impermissible discrimination.

I would affirm the decision of the superior court on the basis that common law wives are entitled to benefits as a "surviving wife" under the Alaska Workmen's Compensation act.[7]

2. In this case approximately four years elapsed since the time the parties were divorced and resumed living together with their children. Problems of duration of common law marriage are obviously not present herein.

3. Weber v. Aetna Casualty and Surety Co., 406 U.S. 164, 92 S.Ct. 1400, 31 L.Ed.2d 768 (1972); *See also* Levy v. Louisiana, 391 U.S. 68, 88 S.Ct. 1509, 20 L.Ed.2d 436 (1968); Glona v. American Guarantee and Liability Insurance Company, 391 U.S. 73, 88 S.Ct. 1515, 20 L.Ed.2d 441 (1963).

4. Appellee concedes that appellant was dependent on the deceased for support at the time of his death.

5. AS 25.05.011(b).

6. *E. g.*, Loughran v. Loughran, 292 U.S. 216, 54 S.Ct. 684, 78 L.Ed. 1219 (1934).

7. The proposition that the wording of AS 23.30.265(15) and (21) as written denied appellee equal protection renders unconstitutional only those sections. It is settled federal law that while a statute may be unconstitutional in part, the portion which is constitutional may stand. E. g., Chapinsky v. New Hampshire, 315 U.S. 568, 62 S.Ct. 766, 86 L.Ed. 1031 (1942). Alaska Statute 01.10.030 provides that "Any law . . . which lacks a severability clause shall be construed as though it contained the clause . . . ."

Joyce Gail GORDON, Administratrix of the Estate of Timothy Taylor Gordon, Deceased, Appellant,

v.

BURGESS CONSTRUCTION COMPANY, an Alaska corporation et al., Appellee.

No. 716.

Supreme Court of Alaska.

April 3, 1967.

Action by employee's administratrix against employer under Defective Machinery Act for death of employee. The Superior Court, Fourth Judicial District, Everett W. Hepp, J., dismissed the complaint. The administratrix of the estate appealed. The Supreme Court, Nesbett, C. J., held that remedies intended by Workmen's Compensation Act were to be in lieu of all rights and remedies as to particular injury whether at common law or otherwise and administratrix of employee who was killed while allegedly working with defective machinery provided by his employer covered by the Workmen's Compensation Act could not maintain an action against employer under Defective Machinery Act.

Order affirmed.

1. Statutes ⇐223.1

Where reasonable construction of statute can be adopted which realizes legislative intent and avoids conflict or inconsistency with another statute this should be done.

2. Workmen's Compensation ⇐2089

Although coverage provided by Defective Machinery Act has been reduced by Workmen's Compensation Act, Defective Machinery Act is still applicable to all classes of employees not covered by the Workmen's Compensation Act. AS 23.25.010–23.25.040, 23.30.230.

3. Workmen's Compensation ⇐2084, 2092

Remedies of Workmen's Compensation Act were intended to be in lieu of all rights and remedies as to particular injury whether at common law or otherwise, and administratrix of employee who was killed while allegedly working with defective machinery provided by his employer covered by the Workmen's Compensation Act, which provides exclusive remedy, could not maintain action against employer under Defective Machinery Act. AS 23.25.010–23.25.040, 23.30.055, 23.30.230.

4. Statutes ⇐147
Workmen's Compensation ⇐2092

Compiling, codifying or revising are not the same as repealing and re-enacting, and fact that Defective Machinery Act continued to be compiled and codified after Workmen's Compensation Act was enacted did not support view that Legislature intended to exclude defective and dangerous machinery from Workmen's Compensation Act, provision of exclusive remedy. AS 23.25.010–23.25.040, 23.30.230.

Robert A. Parrish, Fairbanks, for appellant.

George M. Yeager and David H. Call, Fairbanks, for appellee, Howard Staley, of Merdes, Schaible, Staley & DeLisio, Fairbanks, filed a brief in support of appellee's legal position.

OPINION

Before NESBETT, C. J., RABINOWITZ, J., and SANDERS, Superior Court Judge.

NESBETT, Chief Justice.

The question presented is whether the scope of employer coverage originally provided by the Defective Machinery Act has been retained, separate from and undiminished by the coverage provided by the later enacted Workmen's Compensation Act, or whether its coverage has been correspondingly reduced by each extension of coverage given to the Compensation Act, during the fifty years of their coexistence.

In 1913, the Alaska Territorial Legislature enacted the Defective Machinery Act which made any person engaged in manu-

facturing, mining, constructing, building, or other business or occupation carried on by means of machinery or mechanical appliances liable to an employee for all damages resulting from the negligence of any of the employer's officers, agents, or employees, or by reason of defect or insufficiency "due to the employer's negligence in the machinery, appliances and works." [1] The act also provided that the contributory negligence of the employee was no bar to recovery where his contributory negligence was slight and the negligence of the employer was gross in comparison, but that the damages awarded should be reduced in proportion to the amount of negligence attributable to the employee.[2]

This act has not been amended in any significant manner during the fifty-three years of its existence and is presently codified in the Alaska Statutes as above noted.

In 1915, two years after enactment of the Defective Machinery Act, the Alaska Territorial Legislature enacted Alaska's first Workmen's Compensation Act.[3] This act covered only employers in the mining industry who employed five or more persons and who had not elected to reject the provisions of the act. It also provided that the remedy granted therein was exclusive.

The Workmen's Compensation Act has been amended approximately twenty-nine times in the fifty years preceding the commencement of this suit. Its coverage of employers and occupations has been gradually extended. Since its enactment it has always provided that the remedies provided therein were exclusive. Those amendments considered to be most pertinent to the issues of this case are mentioned in the following paragraphs.

SLA 1923, chapter 98 extended the coverage to include all employers of five or more employees in connection with any business, occupation, work, employment or industry *except* domestic service, agriculture, dairying, or the operation of railroads as common carriers.

SLA 1946, chapter 9 extended the employers included to those employing three or more employees, but retained the group of "excepted" employers mentioned in the 1923 amendment above. This amendment also provided that failure of the employer to secure his liability under the act permitted the injured employee to elect to claim compensation under the act, or to maintain an action for damages. Furthermore, where the employee elected to sue for damages, the employer could not assert the common law defenses of the fellow-servant rule, assumption of risk, or contributory negligence.

SLA 1953, chapter 60 extended coverage to all employers of one or more employees, excepting employers in domestic service, agriculture, dairying, or in the operation of railroads as common carriers.

SLA 1959, chapter 193 repealed the Workmen's Compensation Act in its en-

1. This act is now AS 23.25.010–040. AS 23.25.010 states:

   A person engaged in manufacturing, mining, constructing, building, or other business or occupation carried on by means of machinery or mechanical appliances is liable to an employee or, in the event of his death, to his personal representative for the benefit of his widow and children, if any, or if none, then for his parents, or, if neither widow, nor children nor parents, then for his next of kin dependent upon him, for all damages which may result from the negligence of any of the employer's officers, agents, or employees, or by reason of defect or insufficiency due to the employer's negligence in the machinery, appliances and works.

2. AS 23.25.020 states:

   In an action against a master or employer under § 10 of this chapter the fact that the employee may have been guilty of contributory negligence does not bar a recovery where his contributory negligence was slight and the negligence of the employer was gross in comparison, but the damages shall be diminished by the jury in proportion to the amount of negligence attributable to the employee. All questions of negligence and contributory negligence are for the jury.

3. SLA 1915, ch. 71.

tirety and enacted a new Workmen's Compensation Act patterned after the Federal Longshoremen's and Harbor Workers' Compensation Act. The new act excluded from coverage "Part time baby sitters, cleaning persons, harvest help and similar part time or transient help."[4] These same exclusions are contained in the present act.[5] Also excluded by the present act are executive officers of municipal, charitable, religious, educational, or any other non-profit corporations, who have not been brought within the coverage by the election of their employer corporations and executive officers of private business corporations who have waived coverage under the act.[6]

Since its reenactment in 1959 the Workmen's Compensation Act has provided that the liability of an employer under the act "shall be exclusive and in place of all other liability of such employer."[7] Previously the act had always provided that the remedy was "in lieu of all rights and remedies as to such injury now existing either at common law or otherwise."

The complaint filed by appellant alleged that decedent met his death while working with defective machinery provided by his employer, the appellee, whose liability for damages was charged under the Defective Machinery Act. The trial court granted appellee's motion to quash service of summons and dismiss the complaint on the ground that the court did not have jurisdiction since appellant's exclusive remedy was under the Workmen's Compensation Act.

Appellant's theory on appeal is that the Defective Machinery Act provides a cause of action, where defective machinery has been employed, which is separate and apart from the coverage provided by the Workmen's Compensation Act and that the employer may not claim the benefit and protection of the limited liability of the Workmen's Compensation Act.

Appellee argues that employers covered by the Workmen's Compensation Act are exempt from any other liability; that the numerous amendments to the act over the years have extended its coverage and correspondingly narrowed that of the Defective Machinery Act, and that the two acts can and should be construed to be harmonious rather than in conflict.

[1] We are of the opinion that appellee's anaylsis of the proper relationship of the two acts is correct. Where a reasonable construction of a statute can be adopted which realizes the legislative intent and avoids conflict or inconsistency with another statute this should be done.[8]

When the Defective Machinery Act was enacted its coverage was comprehensive. There was no other similar coverage provided by Alaska law. Upon the enactment of the first Workmen's Compensation Act two years later, the coverage provided by the Defective Machinery Act was reduced to the extent that it no longer applied to employers in the mining industry employing five or more persons who had not rejected the provisions of the act. This reduction in coverage resulted from the particular wording of the compensation act, that the liability provided therein was exclusive and "in lieu of all rights and remedies as to such injury now existing either at common law or otherwise."[9] The Defective Machinery Act's application to all other classes of employers was not disturbed.

As each subsequent amendment of the Workmen's Compensation Act extended its coverage, the coverage of the Defective Machinery Act was correspondingly reduced by reason of the provision in the

4. SLA 1959, ch. 193, § 33(3).
5. AS 23.30.230.
6. AS 23.30.240.
7. SLA 1959, ch. 193, § 4. This provision, as amended by SLA 1962, chapter 42, is now the subject matter of AS 23.30.055.
8. See Ziegler v. Witherspoon, 331 Mich. 337, 49 N.W.2d 318 (1951); Brunette v. Bierke, 271 Wis. 190, 72 N.W.2d 702 (1955).
9. SLA 1915, ch. 71, § 7.

Workmen's Compensation Act that the remedies provided therein were exclusive.

[2] After the repeal and reenactment of the Compensation Act in 1959 its coverage was quite broad, yet it excepted and still excepts part time baby sitters, cleaning persons, harvest help, and similar part time or transient help as well as certain classes of corporate executive officers. Although the coverage provided by the Defective Machinery Act has been drastically reduced, it still cannot be said that its application to all classes of employers has been eliminated.[10]

We do not adopt appellant's argument that the Alaska Legislature, by continuing the Defective Machinery Act in existence after enactment of the Workmen's Compensation Act, evidenced its intent to exclude defective, dangerous machinery from the coverage of the Compensation Act in order to coerce employers to furnish safe machinery.

[3] A more logical interpretation of legislative intent, and that subscribed to by most courts, is that the remedies provided by a workmen's compensation act are intended to be in lieu of all rights and remedies as to a particular injury whether at common law or otherwise. The social philosophy responsible for workmen's compensation legislation has been well expressed by Professor Larson as follows:

> The ultimate social philosophy behind compensation liability is belief in the wisdom of providing, in the most efficient, most dignified, and most certain form, financial and medical benefits for the victims of work-connected injuries which an enlightened community would feel obliged to provide in any case in some less satisfactory form * * *.[11]

The court's observation in Frick v. Horton [12] is particularly applicable to the issue before us:

> In substituting certainty of compensation for the hazards of litigation of work-connected injuries, it is too clear to require discussion that the act was intended to comprehend and govern all the interacting relations of employee, fellow employee and employer.

Appellant points out that the Defective Machinery Act was codified into the Compiled Laws of Alaska 1933, the Alaska Compiled Laws Annotated in 1949, and finally into the Alaska Statutes in 1962 where it is presently found. Appellant seems to equate the codification and recodification of the act with repeal and reenactment and appears to imply that somehow this is evidence that the legislature intended that the Defective Machinery Act supply a remedy in this case.

[4] The answer is that the statute compilers and revisors had no authority to add to or eliminate any of the statutes they were required to work with. Compiling, codifying, or revising are not the same as repealing and reenacting. The fact that the Defective Machinery Act survived both codifications and a revision does not lend

10. We attach no controlling significance to the fact that, in reenacting the Workmen's Compensation Act in 1959, the Alaska Legislature substituted the wording of the Longshoremen's and Harbor Workers' Compensation Act with respect to the exclusiveness of the remedy, eliminating the wording "at common law or otherwise" which had theretofore been employed. Both provisions are quoted on page 5 of this opinion. Both provisions had consistently been construed by the courts to mean that the remedies provided were exclusive in fact. E. g., Mellen v. H. B. Hirsh & Sons, 82 U.S.App.D.C. 1, 159 F.2d 461, cert. denied, 331 U.S. 845, 67 S.Ct. 1534, 91 L.Ed. 1855 (1947); Richard v. Fireman's Fund Ins. Co., 384 P.2d 445 (Alaska 1963); Aho v. Chichagoff Mining Co., 6 Alaska 528 (D. Alaska 1922); Johnson v. Kennecott Copper Corp., 5 Alaska 571 (D.Alaska 1916), aff'd, 4 Alaska Fed. 666, 248 F. 407 (9th Cir. 1918); Huff v. Alaskan Lumber & Pulp Co., Civil No. 63-93, Super.Ct. 1st Judicial Dist. Alaska, 1963.

11. 1 Larson, Workmen's Compensation Law § 2.20 at 5 (1960).

12. 21 A.D.2d 212, 250 N.Y.S.2d 83, 85 (1964), aff'd, 15 N.Y.2d 1018, 260 N.Y.S. 2d 26, 207 N.E.2d 618 (1965).

support to the general position appellant has taken.

The order of the trial court dismissing appellant's complaint is affirmed.[13]

Paul Lawrence BATTESE, Appellant,
v.
STATE of Alaska, Appellee.
No. 715.

Supreme Court of Alaska.
April 3, 1967.

Defendant was convicted, in the Superior Court of the State of Alaska, Third Judicial District, James M. Fitzgerald, J., of burglary and attempted larceny, and he appealed. The Supreme Court, Dimond, J., held that even though sentence imposed on 18-year-old defendant was in excess of minimum for burglary not in dwelling, there was no abuse of discretion, since court required him to serve only 60 days in jail and he was placed on probation for balance of three-year sentence.

Affirmed.

1. Criminal Law ⇐599, 629, 1148, 1151

No rule or statute requires state to furnish defendant with names of witnesses to be called at trial but not examined before grand jury; matter of excluding witnesses not known to defendant until time of trial or granting time to defendant for investigation and preparation as to such witnesses is within discretion of trial judge; and his exercise of such discretion will not be interfered with in absence of abuse. Rules of Criminal Procedure, rule 7(c).

2. Criminal Law
⇐599, 629, 867, 1166(8, 11)

Trial judge would not be put in error for failing to grant mistrial or continuance or for not excluding witnesses from testifying where (1) defendant made no request for continuance when prosecuting attorney indicated intention to call witnesses whose names were not endorsed on indictment but who had not been examined before grand jury, (2) no showing of prejudice was made in support of motion for mistrial or for exclusion of witnesses and (3) record on appeal indicated that defendant had not been placed at any serious disadvantage in cross-examination of such witnesses. Rules of Criminal Procedure, rule 7(c).

3. Criminal Law ⇐651(1), 1152(1)

Question of at what stage of trial jury should be permitted to view premises is matter within discretion of trial court and will be reviewed only for abuse of discretion. Rules of Criminal Procedure, rule 27(b).

4. Criminal Law ⇐651(1)

Jury view of premises may be allowed even if conditions have changed, if character of change is properly brought out in evidence. Rules of Criminal Procedure, rule 27(b).

5. Criminal Law ⇐651(1)

It was not error to allow jury to view burglarized premises even though (1) view was made before state established corpus delicti and (2) there had been material changes since burglary took place, where photographs taken before repairs were made and clearly showing hole in ceiling were introduced into evidence. Rules of Criminal Procedure, rule 27(b).

13. Other courts have been confronted with factual situations similar to that of this case. See Gannon v. Chicago, M., St. P. & Pac. Ry., 22 Ill.2d 305, 175 N.E.2d 785 (1961) where the court harmonized the provisions of the Scaffold Act with the later enacted Workmen's Compensation Act and Selby v. Sykes, 189 F.2d 770, 774 (7th Cir. 1951) where the court held that plaintiff's allegations of violation of Indiana's Dangerous Occupation Act did not remove his case from the jurisdiction of Indiana's Workmen's Compensation Act.

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I AM AN ATTORNEY WHO REPRESENTS EMPLOYERS IN WORKERS COMPENSION CLAIMS. RUMOR HAS IT THAT THE HOUSE IS CONSIDERING LEGISLATION WHICH WOULD PROHIBIT MY BEING PAID BY MY CLIENTS WITHOUT THE APPROVAL OF THE WORKERS COMPENSATION BOARD. I STRENOUSLY OBJECT TO THIS PROPOSAL. THE REASON THAT BOARD APPROVAL IS NECESSARY FOR THE ATTORNEYS FEES OF THE EMPLOYEE IS BECAUSE THE FEES ARE BEING PAID BY A THIRD PARTY. MY FEES, ON THE OTHER HAND, ARE PAID DIRECTLY BY THE CLIENT WHO HAS HIRED ME. I CAN ASSURE YOU THAT MY INSURANCE CLIENTS ARE CAPABLE OF BEING QUITE SEVERE IN SCRUTINIZING MY BILLS. MOREOVER, EMPLOYEE AND EMPLOYER ATTORNEY FEES CAN NOT BE FAIRLY COMPARED BECAUSE THE EMPLOYEE HAS THE PRESUMPTION OF COMPENSABILITY. THIS MEANS THAT DOUBLE OR TRIPLE THE WORK IS ROUTINELY REQUIRED BY THE INSURANCE ATTORNEY TO HAVE AN EVEN CHANCE OF HAVING A BALANCED HEARING. I CAN THINK OF NO LEGITIMATE INTERESTS IN SADDLING THE WORKERS COMPENSATION BOARD WITH YET ANOTHER ADMINISTATIVE BURDEN SUCH AS THIS.
BY THE WAY, HAS ANYONE POINTED OUT TO THE HOUSE THE FACT THAT INSURANCE ATTORNEYS ARE LIMITED IN THEIR FEES BY THE NUMBER OF HOURS IN A DAY. CLAIMANTS ATTORNEYS, ON THE OTHER HAND, MAY APPLY FOR ACTUAL ATTORNEYS FEES WHEN CONVENIENT OR THE STATUTORY MINIMUM 10% WHEN CONVENIENT. I HAVE SEEN CLAIMENTS ATTORNEYS MAKE A FIVE THOUSAND DOLLAR FEE ON A FIFTY THOUSAND DOLLAR SETTLEMENT WITH JUST A FEW PHONE CALLS.
JAMES BENDELL, ATTORNEY AT LAW

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State Workers' Compensation Laws

U.S. Department of Labor
Employment Standards Administration
Office of State Liaison and Legislative Analysis
Division of State Workers' Compensation Programs

January 1988

TABLE 8. BENEFITS FOR PERMANENT PARTIAL DISABILITY PROVIDED BY WORKERS' COMPENSATION STATUTES IN THE U.S.

SAWW - State's Average Weekly Wage

Jurisdiction	Percentage of Worker's Wage	Payments Per Week			Maximum Period For Unscheduled Injury	Notes
		Minimum	Maximum	Percentage of SAWW		
Alabama.....	66 2/3	$91 - 27½% of SAWW, or worker's average wage if less, for scheduled injuries.	$220.00*	100	300 weeks	*(By legislation, maximum weekly compensation is capped at $220.) Also see 1/.
Alaska.....	80% of spendable earnings	$110 or worker's spendable weekly wages if less.	$1,094.00	200	Duration of disability	Total maximum amount payable for non-scheduled injury is $60,000. WC benefits are subject to Social Security benefit offsets; and are in addition to compensation for TTD.
Arizona.....	55	Payable, but not statutorily prescribed.	$209.44	N/A	Duration of disability	
Arkansas.....	66 2/3	$20	$154.00	N/A	450 weeks	If the claimant's TTD rate for injury is $25.35 or greater, maximum PPD rate will be 75% of claimant's total disability rate.

1/ Alabama: Section 25-5-57--In case a scheduled permanent partial disability follows or accompanies a period of temporary total disability resulting from the same injury, the period of TTD shall not be deducted from the maximum number of weeks set for such partial disability; in case of non-scheduled PPD, such periods shall be deducted.

TABLE 8. BENEFITS FOR PERMANENT PARTIAL DISABILITY PROVIDED BY WORKERS' COMPENSATION STATUTES IN THE U.S.

SAWW - State's Average Weekly Wage

Jurisdiction	Percentage of Worker's Wage	Payments Per Week			Maximum Period For Unscheduled Injury	Notes
		Minimum	Maximum	Percentage of SAWW		
Alabama.....	66 2/3	$91 - 27½% of SAWW, or worker's average wage if less, for scheduled injuries.	$220.00*	100	300 weeks	*(By legislation, maximum weekly compensation is capped at $220.) Also see 1/.
Alaska.....	80% of spendable earnings	$110 or worker's spendable weekly wages if less.	$1,094.00	200	Duration of disability	Total maximum amount payable for non-scheduled injury is $60,000. WC benefits are subject to Social Security benefit offsets; and are in addition to compensation for TTD.
Arizona.....	55	Payable, but not statutorily prescribed.	$209.44	N/A	Duration of disability	
Arkansas.....	66 2/3	$20	$154.00	N/A	450 weeks	If the claimant's TTD rate for injury is $25.35 or greater, maximum PPD rate will be 75% of claimant's total disability rate.

1/ Alabama: Section 25-5-57--In case a scheduled permanent partial disability follows or accompanies a period of temporary total disability resulting from the same injury, the period of TTD shall not be deducted from the maximum number of weeks set for such partial disability; in case of non-scheduled PPD, such periods shall be deducted.

TABLE 8. BENEFITS FOR PERMANENT PARTIAL DISABILITY PROVIDED BY WORKERS' COMPENSATION STATUTES IN THE U.S. (cont.)

SAWW - State's Average Weekly Wage

Jurisdiction	Percentage of Worker's Wage	Payments Per Week			Maximum Period For Unscheduled Injury	Notes
		Minimum	Maximum	Percentage of SAWW		
California..	66 2/3	$70	$140.00	N/A	619.25 weeks (applicable to a worker with a 99.5% disability.)	3 to 8 weeks of WC payable for each 1% of permanent disability, depending on severity. Thereafter, if disability is at least 70%, but not more than 99.75%, a life pension of 1.5% of the employee's weekly earnings will be paid for each 1% of disability over 60% subject to a maximum weekly rate of $116.27.
Colorado....	———	———	$150.00 - scheduled injury $120.00 - non-scheduled injury	N/A	Duration of disability	Benefits are in addition to compensation for TTD. Total maximum amount payable for non-scheduled injury is $37,560. WC benefits subject to Social Security benefit offsets.

TABLE 8. BENEFITS FOR PERMANENT PARTIAL DISABILITY PROVIDED BY WORKERS' COMPENSATION STATUTES IN THE U.S. (cont.)

SAWW - State's Average Weekly Wage

Jurisdiction	Percentage of Worker's Wage	Payments Per Week			Maximum Period For Unscheduled Injury	Notes
		Minimum	Maximum	Percentage of SAWW		
Connecticut..	66 2/3	$128.60 - 20% of SAWW, or an amount not to exceed 80% of worker's average wage if less.	$643.00	150	780 weeks	Benefits are in addition to compensation for TTD.
Delaware....	66 2/3	$83.51 - 22 2/9% of SAWW, or actual wage if less. for scheduled injury.	$250.53	66 2/3	300 weeks	Benefits are in addition to compensation for TTD.
District of Columbia...	66 2/3	----------	$481.92	100	Duration of disability	Benefits are in addition to compensation for TTD.
Florida.....	2/	See 2/	$344.00	100	525 weeks	WC benefits subject to Social Security benefit offsets.

2/ Florida: Section 440.15(3)(b)--Wage loss benefits are based on actual wages lost and are not subject to a minimum. Wage loss is equal to 95% of the difference between 85% of the employee's average monthly wage and the wage employee is able to earn after reaching maximum medical improvement, provided the monthly wage loss benefits shall not exceed 66 2/3% of the employee's average monthly wage at the time of injury.

TABLE 8. BENEFITS FOR PERMANENT PARTIAL DISABILITY PROVIDED BY WORKERS' COMPENSATION STATUTES IN THE U.S. (cont.)

SAWW - State's Average Weekly Wage

Jurisdiction	Percentage of Worker's Wage	Payments Per Week - Minimum	Payments Per Week - Maximum	Payments Per Week - Percentage of SAWW	Maximum Period For Unscheduled Injury	Notes
Georgia.....	66 2/3	$25 or average wage if less.	$175.00	N/A	Based on statutory schedule.	
Hawai'i.....	66 2/3	$83.50 - 25% of SAWW, or worker's average wage if less, but not lower than $38.	$334.00	100	In proportion to scheduled injuries; or a % of loss of the whole man.	Maximum WC for % of disability based on the whole man is the product of 312 times the effective maximum weekly benefit rate.
Idaho.....	-------	----------	$172.70	55	In proportion to losses of the whole man based on a maximum of 500 weeks.	Benefits are in addition to compensation for TTD.

TABLE 8. BENEFITS FOR PERMANENT PARTIAL DISABILITY PROVIDED BY WORKERS' COMPENSATION STATUTES IN THE U.S. (cont.)

SAWW - State's Average Weekly Wage

Jurisdiction	Percentage of Worker's Wage	Payments Per Week			Maximum Period For Unscheduled Injury	Notes
		Minimum	Maximum	Percentage of SAWW		
Illinois.....	60	$80.90 - $96.90 or worker's average wage if less, according to number of dependents.	$299.15		500 weeks (worker able to pursue usual work duties). Duration of disability (worker unable to pursue usual work duties.)	Maximum WC for amputation of a member or enucleation of an eye is 13? 1/3% of SAWW. ($554.27). Benefits are in addition to compensation for TTD. *On July 1, annually, the amount will increase based on the percentage increase of the SAWW.
Indiana.....	60	Payable, but not statutorily prescribed.	$75.00	N/A	500 weeks	
Iowa.....	80% of worker's spendable earnings.	$111.00 - 35% of SAWW, or actual wage if less.	$582.00	184	In proportion to scheduled injuries or in proportion to losses of the whole man based on a maximum of 500 weeks.	

TABLE 8. BENEFITS FOR PERMANENT PARTIAL DISABILITY PROVIDED BY WORKERS' COMPENSATION STATUTES IN THE U.S. (cont.)

SAWW - State's Average Weekly Wage

Jurisdiction	Percentage of Worker's Wage	Payments Per Week			Maximum Period For Unscheduled Injury	Notes
		Minimum	Maximum	Percentage of SAWW		
Kansas.....	66 2/3	----------	$256.00	75	415 weeks	Total amount payable is $100,000.
Kentucky.....	66 2/3	Payable, but not statutorily prescribed.	$247.90	75	425 weeks	(Benefits represent unscheduled injuries only).
Louisiana.....	66 2/3	----------	$262.00	75	520 weeks	
Maine.....	66 2/3	Payable, but not statutorily prescribed.	$447.92*	166 2/3	Duration of disability	(*Maximum weekly benefit is frozen at $447.92 for injuries occurring on or after 7/1/85 until 8/1/88.) WC benefits, except for scheduled PPD, are subject to UI benefit offsets.
Maryland.....	66 2/3	$50 or actual wage if less.	$287.00 (serious cases-250 weeks or more)	75	Duration of disability	Benefits are in addition to compensation for TTD.
	*33 1/3		$128.00 (nonserious cases-75 to 249 weeks)	33 1/3		
			*$80 (minor nonserious cases-1 to 74 weeks)			

TABLE 8. BENEFITS FOR PERMANENT PARTIAL DISABILITY PROVIDED BY WORKERS' COMPENSATION STATUTES IN THE U.S. (cont.)

SAWW - State's Average Weekly Wage

Jurisdiction	Percentage of Worker's Wage	Payments Per Week			Maximum Period For Unscheduled Injury	Notes
		Minimum	Maximum	Percentage of SAWW		
Massachusetts	(66 2/3% of the difference between employee's AWW before injury and AWW after injury.)	Payable, but not statutorily prescribed.	$411.00	100	600 weeks	Bulk sums allowed for scheduled losses depending on extent of loss. Additional $6 will be added per dependent, if weekly benefits are below $150. Total maximum payable not to exceed employee's AWW or 250 times the SAWW in effect at time of injury. WC benefits subject to reduction by UI and Social Security benefits.
Michigan....	80% of worker's spendable earnings.	$110.19 - 25% of SAWW for scheduled injury only.	$397.00	90	Duration of disability	WC benefits subject to reduction by UI.
Minnesota...	66 2/3	Payable, but not statutorily prescribed.	$376.00	100	350 weeks	

TABLE 8. BENEFITS FOR PERMANENT PARTIAL DISABILITY PROVIDED BY WORKERS' COMPENSATION STATUTES IN THE U.S. (cont.)

SAWW - State's Average Weekly Wage

Jurisdiction	Percentage of Worker's Wage	Payments Per Week			Maximum Period For Unscheduled Injury	Notes
		Minimum	Maximum	Percentage of SAWW		
Mississippi..	66 2/3	$25 for scheduled injuries.	$140.00	N/A	450 weeks	Benefits are in addition to compensation for TTD. Total amount payable is $63,000.
Missouri....	66 2/3	$40	$161.89	45	400 weeks	Benefits are in addition to compensation for TTD.
Montana.....	66 2/3	Payable, but not statutorily prescribed.	$149.50*	50	500 weeks	(*Maximum weekly benefit is frozen at $149.50 for injuries occurring on or after 7/1/87 until 7/1/89.) Benefits are in addition to compensation for TTD. WC benefits are subject to Social Security benefit offsets.
Nebraska...	66 2/3	$49 or actual wage if less for scheduled injuries.	$235.00	N/A	300 weeks	If partial disability begins after a period of total disability, the period of total disability will be deducted from the 300 week limit for PPD.

TABLE 8. BENEFITS FOR PERMANENT PARTIAL DISABILITY PROVIDED BY WORKERS' COMPENSATION STATUTES IN THE U.S. (cont.)

SAWW - State's Average Weekly Wage

Jurisdiction	Percentage of Worker's Wage	Payments Per Week			Maximum Period For Unscheduled Injury	Notes
		Minimum	Maximum	Percentage of SAWW		
Nevada.....	----------	Payable, but not statutorily prescribed.	--------	N/A	Duration of disability	The % of disability is determined by the Commission using AMA guides. Each 1% of impairment of the whole man is compensated by a monthly payment of 0.6% of the claimant's average monthly wage for 5 years or until the 70th birthday of the claimant, whichever is later.
New Hampshire	66 2/3	$140 - 40% of SAWW or actual wage if less.	$525.00	150	Duration of disability	If the employee's AWW exceeds 40% of SAWW, compensation will increase to 66 2/3% of employee's AWW not to exceed 150% of SAWW.

TABLE 8. BENEFITS FOR PERMANENT PARTIAL DISABILITY PROVIDED BY WORKERS' COMPENSATION STATUTES IN THE U.S. (cont.)

SAWW - State's Average Weekly Wage

Jurisdiction	Percentage of Worker's Wage	Payments Per Week			Maximum Period For Unscheduled Injury	Notes
		Minimum	Maximum	Percentage of SAWW		
New Jersey.....	70	$85 - 20% of SAWW.	$320.00	75	600 weeks	Benefits set in accordance with a "wage and compensation schedule" and are paid in addition to those for TTD.
New Mexico....	66 2/3	$36 or actual wage if less for scheduled injuries.	$270.97	85	500 weeks; 700 weeks for scheduled injuries; 100 weeks (primary and secondary mental impairment.)	Total maximum equals 500 multiplied by the sum of the maximum weekly benefit at time of injury. If partial disability begins after a period of total disability, the period of total disability shall be deducted from the maximum period.
New York.....	66 2/3	$30 or actual wage if less.	$150.00	N/A	Duration of disability	
North Carolina	66 2/3	$30 for scheduled injuries.	$356.00	110	300 weeks	

TABLE 8. BENEFITS FOR PERMANENT PARTIAL DISABILITY PROVIDED BY WORKERS' COMPENSATION STATUTES IN THE U.S. (cont.)

SAWW - State's Average Weekly Wage

Jurisdiction	Percentage of Worker's Wage	Payments Per Week			Maximum Period For Unscheduled Injury	Notes
		Minimum	Maximum	Percentage of SAWW		
North Dakota..	----------	$60	$60.00	N/A	500 weeks	Compensation for TTD and PPD may be paid concurrently.
Ohio.....	66 2/3	$154.00 - 40% of SAWW for scheduled injuries.	$385.00	100	----------	See 3/ Benefits are in addition to compensation for TTD.
Oklahoma.....	66 2/3	$30 or actual wage if less.	$173.00	50	500 weeks	*(Benefits are frozen at $173 from 11/1/87 until 11/1/90.)
Oregon.....	66 2/3	$50	$355.04	100	In proportion to scheduled injuries.	Scheduled PPD's are compensated at $145 for each degree of disability; and non-scheduled PPD's are compensated at $100 for each degree of disability, subject to the maximum of 320 degrees.

3/ Ohio: Unscheduled injuries are paid for as a percentage of 200 weeks at a maximum of 33 1/3% of the SAWW, and are set at 66 2/3% of the employee's average wage.

TABLE 8. BENEFITS FOR PERMANENT PARTIAL DISABILITY PROVIDED BY WORKERS' COMPENSATION STATUTES IN THE U.S. (cont.)

SAWW - State's Average Weekly Wage

Jurisdiction	Percentage of Worker's Wage	Payments Per Week			Maximum Period For Unscheduled Injury	Notes
		Minimum	Maximum	Percentage of SAWW		
Pennsylvania..	66 2/3	----------	$377.00	100	500 weeks	WC for non-scheduled awards is determined at 66 2/3% of the difference between the wages of the injured employee and the earning power of the employee thereafter up to the SAWW.
Puerto Rico..	66 2/3	$10	$45.00	N/A	In proportion to scheduled injuries.	Benefits are in addition to compensation for TTD. Total maximum payable is $10,000.
Rhode Island..	(Up to 66 2/3 of the difference between the worker's earnings before and after injury.)	$45 for scheduled injuries.	$337.00 - nonscheduled injury $90 - scheduled injury	100	Duration of disability	If employee cannot obtain suitable work and employer cannot provide such work or show it is available elsewhere, benefits are paid as for total incapacity.

TABLE 8. BENEFITS FOR PERMANENT PARTIAL DISABILITY PROVIDED BY WORKERS' COMPENSATION STATUTES IN THE U.S. (cont.)

SAWW - State's Average Weekly Wage

Jurisdiction	Percentage of Worker's Wage	Payments Per Week			Maximum Period For Unscheduled Injury	Notes
		Minimum	Maximum	Percentage of SAWW		
South Carolina..	66 2/3	$25 for scheduled injuries.	$319.20	100	340 weeks	Benefits are in addition to compensation for TTD.
South Dakota....	66 2/3 (scheduled) 50 (non-scheduled)	$136 or worker's average wage if less.	$272.00	100	Duration of disability	
Tennessee.....	66 2/3	$30	$210.00	N/A	400 weeks	Eff. 7/1/88, maximum weekly benefit will increase to $231; and to $252, 7/1/89. Total amount payable is $75,600.
Texas.....	66 2/3	$39 for scheduled injuries.	$231.00	N/A	300 weeks	Each cumulative $10 increase in the AWW for manufacturing production workers will increase the maximum weekly benefit by $7 per week and the minimum by $1 per week.

TABLE 8. BENEFITS FOR PERMANENT PARTIAL DISABILITY PROVIDED BY WORKERS' COMPENSATION STATUTES IN THE U.S. (cont.)

SAWW - State's Average Weekly Wage

Jurisdiction	Percentage of Worker's Wage	Payments Per Week			Maximum Period For Unscheduled Injury	Notes
		Minimum	Maximum	Percentage of SAWW		
Utah.....	66 2/3	$45 to $70 according to number of dependents but not more than the employee's AWW.	$224.00	66 2/3	312 weeks	In case partial disability begins after a period of total disability, the period of total disability shall be deducted from the maximum.
Vermont.....	66 2/3	$162 - 50% of SAWW, or worker's average wage if less.	$486.00	150	330 weeks	
Virgin Islands	66 2/3	$60 or actual wages if less.	$193.00	66 2/3	200 weeks	
Virginia.....	66 2/3	$86.00 - 25% of SAWW, or actual wage if less for scheduled injuries.	$344.00	100	500 weeks	Period of payment may be extended if employee is still disabled within 1 year of final payment.

TABLE 8. BENEFITS FOR PERMANENT PARTIAL DISABILITY PROVIDED BY WORKERS' COMPENSATION STATUTES IN THE U.S. (cont.)

SAWW - State's Average Weekly Wage

Jurisdiction	Percentage of Worker's Wage	Payments Per Week			Maximum Period For Unscheduled Injury	Notes
		Minimum	Maximum	Percentage of SAWW		
Washington.....	----------	Payable, but not statutorily prescribed.	-------	N/A	----------	Total maximum amount payable for non-scheduled injury is $90,000. 4/
West Virginia..	70	$116.94 - 33 1/3% of SAWW.	$233.99	66 2/3	336 weeks	If disability is 85 to 100%, benefits are payable for life.
Wisconsin.....	66 2/3	$20	$117.00	N/A	1000 weeks	WC benefits are subject to Social Security benefit offsets.
Wyoming.....	66 2/3	---------- -	$235.14	66 2/3% of monthly wage.	In proportion to scheduled injuries	

4/ Washington: Payments based on permanent physical impairment; in event award exceeds three times the State's average monthly wage, employee receives first payment equal to three times the State's average monthly wage with balance in monthly payments per temporary disability schedule plus eight percent interest per annum on unpaid balance.

TABLE 8. BENEFITS FOR PERMANENT PARTIAL DISABILITY PROVIDED BY WORKERS' COMPENSATION STATUTES IN THE U.S. (cont.)

SAWW - State's Average Weekly Wage

Jurisdiction	Percentage of Worker's Wage	Payments Per Week			Maximum Period For Unscheduled Injury	Notes
		Minimum	Maximum	Percentage of SAWW		
United States*:						
FECA.....	66 2/3 - 75	Payable, but not statutorily prescribed.	$1,029.48	N/A	Duration of disability	Maximum weekly benefit is based on 75% of the pay of a specific grade level in the Federal Civil Service.
LHWCA.....	66 2/3	$154.24 - 50% of NAWW, or actual wage if less.	$616.96	200% of NAWW	Duration of disability	(NAWW is $308.48).

*Federal Employee's Compensation Act.
Longshore and Harbor Workers' Compensation Act.

TABLE 9a. MAXIMUM BENEFIT PAYMENTS AND NUMBER OF WEEKS FOR SELECTED PERMANENT PARTIAL DISABILITIES

Jurisdiction	Scheduled Injuries							Non-Scheduled Injuries Total Amount
	Arm at Shoulder	Hand	Leg at Hip	Foot	Eye	Hearing Both Ears	Hearing One Ear	
Alabama	$48,840/222	$37,400/170	$44,000/200	$30,580/139	$27,280/124	$35,860/163	$11,660/53	$66,000
Alaska	59,000/280	45,400,212	54,400/248	39,700/173	30,200/140	37,800/200	9,800/52	60,000
Arizona	54,454/260	45,448/217	45,448/217	36,233/173	27,227/130	54,454/260	18,221/87	No maximum
Arkansas	32,340/210	24,332/158	28,336/184	20,174/131	16,170/105	24,332/158	6,468/42	69,300
California 1/	----------	----------	----------	----------	----------	----------	----------	No maximum
Colorado	31,200/208	15,600/104	31,200/208	15,600/104	20,850/139	20,850/139	5,250/35	37,560
Connecticut	197,808/312	159,768/252	150,892/238	119,192/188	148,900/235	98,904/156	32,968/52	494,520
Delaware	62,633/250	55,117/220	62,633/250	40,085/160	50,106/200	43,843/175	18,790/75	75,159
Dist. of Col.	180,359/312	117,588/244	138,793/288	98,794/205	77,107/160	96,384/200	25,060/52	No maximum
Florida 3/	----------	----------	----------	----------	----------	----------	----------	165,375
Georgia	39,375/225	28,000/160	39,375/225	23,625/135	26,250/150	26,250/150	13,125/75	61,250
Hawaii	104,208/312	81,496/244	96,192/288	68,470/205	53,440/160	66,800/200	17,368/52	104,208
Idaho	51,810/300	46,629/270	34,540/200	24,178/140	30,223/175	30,223/175	1/	86,350
Illinois	166,281/300	105,311/190	152,424/275	85,912/155	88,683/160	59,830/200	14,958/50	No maximum
Indiana	18,750/250	15,000/200	16,875/225	13,125/175	13,125/175	15,000/200	5,625/75	37,500
Iowa	145,500/250	110,580/190	128,040/220	87,300/150	81,480/140	101,850/175	29,100/50	291,000
Kansas	53,760/210	38,400/150	51,200/200	32,000/125	30,720/120	28,160/110	7,680/30	100,000
Kentucky 1/	----------	----------	----------	----------	----------	----------	----------	102,697
Louisiana	52,400/200	39,300/150	45,850/175	32,750/125	26,200/100	No provision	No provision	136,240
Maine 1/	----------	----------	----------	----------	----------	----------	----------	No maximum
Maryland 4/	152,971/400	127,428/333	152,971/400	127,428/333	127,428/333	127,428/333	16,000/125	No maximum
Massachusetts 5/	17,673	13,974	16,029	11,919	16,029	31,647	11,919	246,600
Michigan	106,793/269	85,355/215	85,355/215	64,314/162	64,314/162	No provision	No provision	No maximum
Minnesota 1/	----------	----------	----------	----------	----------	----------	----------	----------
Mississippi	28,000/200	21,000/150	24,500/175	17,500/125	14,000/100	21,000/150	5,600/40	63,000
Missouri 6/	41,314/232	31,164/175	36,862/207	26,712/150	22,665/140	27,198/168	7,123/44	64,756
Montana 1/	----------	----------	----------	----------	----------	----------	----------	74,750

TABLE 9a. MAXIMUM BENEFIT PAYMENTS AND NUMBER OF WEEKS FOR SELECTED PERMANENT PARTIAL DISABILITIES (cont.)

Jurisdiction	Scheduled Injuries					Hearing		Non-Scheduled Injuries Total Amount
	Arm at Shoulder	Hand	Leg at Hip	Foot	Eye	Both Ears	One Ear	
Nebraska	50,625/225	39,375/175	48,375/215	33,750/150	28,125/125	6/	11,250/50	67,500
Nevada 1/	----------	----------	----------	----------	----------	----------	----------	----------
New Hampshire	110,250/210	99,225/189	73,500/140	51,450/98	44,100/84	64,575/123	15,750/30	No maximum
New Jersey 8/	100,736/330	61,191/245	96,158/315	51,062/230	38,425/225	29,886/200	5,100/60	192,000
New Mexico	54,194/200	33,871/125	54,194/200	31,162/115	35,226/130	40,646/150	10,839/40	135,485
New York	46,800/312	36,600/244	43,200/288	30,750/205	24,000/160	22,500/150	9,000/60	No maximum
North Carolina	85,440/240	71,200/200	71,200/200	51,264/144	42,720/120	53,400/150	24,920/70	106,800
North Dakota 9/	18,750/250	15,000/200	14,040/234	9,000/150	9,000/150	12,000/200	3,000/50	30,000
Ohio	86,625/225	67,375/175	77,000/200	57,750/150	48,125/125	48,125/125	9,625/25	10/
Oklahoma	43,250/250	34,600/200	43,250/250	34,600/200	34,600/200	51,900/300	17,300/100	86,500
Oregon 11/	27,840	21,750	21,750	19,575	14,500	27,840	8,700	32,000
Pennsylvania	154,570/410	126,295/355	154,570/410	94,250/250	103,675/275	98,020/260	22,620/60	188,500
Puerto Rico	10,000/300	9,000/200	10,000/300	7,875/175	12/	9,000/200	2,250/50	10,000
Rhode Island	28,080/312	21,360/244	28,080/312	18,450/205	14,400/160	18,000/200	5,400/60	No maximum
South Carolina	70,224/220	59,052/185	62,244/195	44,688/140	35,112/110	52,668/165	25,536/80	108,528
South Dakota	54,400/200	40,800/150	43,520/160	34,000/125	40,800/150	40,800/150	2/	No maximum
Tennessee	42,000/200	31,500/150	42,000/200	26,250/125	21,000/100	31,500/150	2/	84,000
Texas	46,200/200	34,650/150	46,200/200	28,875/125	23,100/100	34,650/150	2/	69,300
Utah	41,888/187	37,632/168	28,000/125	19,712/88	26,880/120	22,400/100	2/	69,888
Vermont	104,490/215	85,050/175	104,490/215	85,050/175	60,750/125	104,490/215	25,272/52	160,380
Virgin Islands	42,460/220	34,740/180	34,740/180	23,160/120	37,635/195	34,740/180	23,160/120	38,600
Virginia	68,800/200	51,600/150	60,200/175	43,000/125	34,400/100	34,400/100	17,200/50	172,000
Washington 13/	54,000	48,600	54,000	37,800	21,600	43,200	7,200	90,000
West Virginia 1/	----------	----------	----------	----------	----------	----------	----------	78,621
Wisconsin	58,500/500	46,800/400	58,500/500	29,250/250	32,175/275	25,272/216	4,212/36	117,000
Wyoming	35,271/150	28,687/122	31,744/135	23,514/100	22,103/94	18,811/80	9,406/40	No maximum
United States*:								
FECA.....	321,198/312	251,193/244	296,490/288	211,043/205	164,717/160	205,896/200	53,533/52	No maximum
LHWCA.....	192,492/312	150,538/244	177,684/288	126,477/205	98,714/160	123,392/200	32,082/52	No maximum

TABLE 9a. MAXIMUM BENEFIT PAYMENTS AND NUMBER OF WEEKS FOR SELECTED PERMANENT PARTIAL DISABILITIES (cont.)

1/ Ratings for compensation purposes are determined as a percentage of permanent total disability (California, Idaho, Kentucky, Maine, Minnesota, Montana, Nevada, and West Virginia).

2/ Monaural loss is determined as a percentage of binaural loss (South Dakota, Tennessee, Texas, and Utah).

3/ Florida: Benefits are paid based on a wage loss formula rather than on a statutory schedule.

4/ Maryland: The number of weeks of benefits is increased by 33 1/3 percent, if the number is at least 250.

5/ Massachusetts: Determined by multiplying the State average weekly wage by a certain number.

6/ Missouri: If the scheduled injury is total by reason of severance or complete loss of use thereof, the number of weeks of compensation allowed in the schedule for such disability shall be increased by ten percent.

7/ Nebraska: Loss of hearing in both ears constitutes permanent total disability.

8/ New Jersey: Where members are amputated, an additional 30 percent is added to the award.

9/ North Dakota: Benefits are increased by 25 percent if loss is to master arm or hand.

10/ Ohio: For non-scheduled injuries, weekly benefits are limited to 1/3 of the state average weekly wage for not more than 200 weeks.

11/ Oregon: Law provides for a payment of $145 for each degree of scheduled injury and $100 for each degree of unscheduled injury, in monthly payments.

12/ Puerto Rico: The manager of the State Insurance Fund determines the extent of an eye disability, based upon an expert report of an oculist.

13/ Washington: Law provides for payment of fixed sums for specified injuries in weekly, monthly, or lump sum payments, under certain circumstances.

* Federal Employees' Compensation Act. Longshore and Harbor Workers' Compensation Act.

BENEFIT FORMULAS

SCHEDULED PERMANENT PARTIAL DISABILITY

CESAR: % OF BODY PART IMPAIRMENT X MAXIMUM SCHEDULED AMOUNT =

GRANT: % OF BODY PART IMPAIRMENT X NUMBER OF MAXIMUM WEEKS X WORKER'S COMPENSATION RATE (UP TO MAXIMUM SCHEDULED AMOUNT) =

Body Part	Weeks of Compensation	Maximum Amount
Arm[1]	280	$59,000
Hand[2]	212	45,400
Thumb[3]	51	14,000
First Finger[3]	28	8,700
Second Finger[3]	18	5,700
Third Finger[3]	18	4,700
Fourth Finger[3]	7	2,800
Leg[1]	248	54,400
Foot[2]	173	39,700
Great Toe[3]	26	7,200
Other Toe[3]	8	3,000
Eye[4]	140	30,200
Hearing of One Ear	52	9,800
Hearing of Both Ears	200	37,800

HCS CSSB 322 (L&C): % OF BODY PART IMPAIRMENT CONVERTED TO % OF WHOLEMAN IMPAIRMENT X ADJUSTMENT FACTOR X $240,000 =

% OF IMPAIRMENT	ADJUSTMENT FACTOR	% OF IMPAIRMENT	ADJUSTMENT FACTOR
0 - 5	0	20	0.675
6	0.060	21	0.680
7	0.120	22	0.688
8	0.180	23	0.696
9	0.240	24	0.704
10	0.300	25	0.712
11	0.333	26	0.740
12	0.366	27	0.765
13	0.399	28	0.790
14	0.432	29	0.815
15	0.465	30	0.840
16	0.495	31	0.880
17	0.540	32	0.910
18	0.585	33	0.940
19	0.630	34	0.970
		35-100	1.000

HCS CSSB 327 (ICC)

WHOLEMAN

10%	x	.300	x	$240,000	= $ 7,200.00
20	x	.675	x	"	= 32,400.00
30	x	.840	x	"	= 60,480.00
40	x	1.000	x	"	= 96,000.00
50	x	1.000	x	"	= 120,000.00
60	x	1.000	x	"	= 144,000.00
70	x	1.000	x	"	= 168,000.00
80	x	1.000	x	"	= 192,000.00
90	x	1.000	x	"	= 216,000.00
100	x	1.000	x	"	= 240,000.00

ARM

Rating		WHOLEMAN %		FACTOR				
10%	=	6%	x	.060	x	$240,000	= $	864.
20	=	12	x	.366	x	"	=	10,541.
30	=	18	x	.585	x	"	=	25,272.
40	=	24	x	.704	x	"	=	40,550.
50	=	30	x	.840	x	"	=	60,480.
60	=	36	x	1.000	x	"	=	86,400.
70	=	42	x	1.000	x	"	=	100,800.
80	=	48	x	1.000	x	"	=	115,200.
90	=	54	x	1.000	x	"	=	129,600.
100	=	60	x	1.000	x	"	=	144,000.

LEG

10%	=	4%	x	0			= $	250.
20	=	8	x	.180	x	240,000	=	3,451
30	=	12	x	.366	x	"	=	10,541.
40	=	16	x	.495	x	"	=	19,008.
50	=	20	x	.675	x	"	=	32,400.
60	=	24	x	.704	x	"	=	40,550.
70	=	28	x	.790	x	"	=	53,088.
80	=	32	x	.910	x	"	=	69,888.
90	=	36	x	1.000	x	"	=	86,400.
100	=	40	x	1.000	x	"	=	96,000.

HAND

RATING	WholeHand %	FACTOR			
10%	5 %	0			$ 250
20	11	.333	x	$240,000 =	8,791
30	16	.495	x	"	19,008
40	22	.688	x	"	36,326
50	27	.765	x	"	49,572
60	32	.910	x	"	69,888
70	38	1.000	x	"	91,200
80	43	1.000	x	"	103,200
90	49	1.000	x	"	117,600
100	54	1.000	x	"	117,600

FOOT

10%	3 %	0			$ 250.
20	6	.060	x	$240,000	864
30	8	.180	x	"	3,456
40	11	.333	x	"	8,791
50	14	.432	x	"	14,515
60	17	.540	x	"	22,032
70	20	.675	x	"	32,400
80	22	.688	x	"	36,326
90	25	.712	x	"	42,720
100	28	.790	x	"	53,088

MAXIMUMS: CURRENT LAW: $60,000.
HCS CSSB 322 - $240,000.

RATING	Wholeman Wkly Comp Rate	$200	$300	$400	$500	$600	$700	
10%	Prior to Hewing	6,000	6,000	6,000	6,000	6,000	6,000	(Percentage x $60,000 Maximum)
	Hewing	Varies By Claimant						(Based on individual's future earning capacity up to $60,000 max)
	HCS CSSB 322 (L+C)	7,200	7,200	7,200	7,200	7,200	7,200	(Percentage x $240,000 Maximum)
20%	Prior to Hewing	12,000	12,000	12,000	12,000	12,000	12,000	
	Hewing							
	HCS CSSB 322 (L+C)	32,400	32,400	32,400	32,400	32,400	32,400	
30%	Prior to Hewing	18,000	18,000	18,000	18,000	18,000	18,000	
	Hewing							
	HCS CSSB 322 (L+C)	60,480	60,480	60,480	60,480	60,480	60,480	
40%	Prior to Hewing	24,000	24,000	24,000	24,000	24,000	24,000	
	Hewing							
	HCS CSSB 322 (L+C)	96,000	96,000	96,000	96,000	96,000	96,000	
50%	Prior to Hewing	30,000	30,000	30,000	30,000	30,000	30,000	
	Hewing							
	CSSB 322 (L+C)	120,000	120,000	120,000	120,000	120,000	120,000	
60%	Prior to Hewing	36,000	36,000	36,000	36,000	36,000	36,000	
	Hewing							
	CSSB 322 (L+C)	144,000	144,000	144,000	144,000	144,000	144,000	

	WKly Comp Rate	$ 200	$ 300	$ 400	$ 500	$ 600	$ 700
70%	Prior to Hewing	42,000	42,000	42,000	42,000	42,000	42,000
	Hewing						
	HCS CSSB 322 (Lvd)	168,000	168,000	168,000	168,000	168,000	168,000
80%	Prior to Hewing	48,000	48,000	48,000	48,000	48,000	48,000
	Hewing						
	HCS CSSB 322 (Lvd)	192,000	192,000	192,000	192,000	192,000	192,000
90%	Prior to Hewing	54,000	54,000	54,000	54,000	54,000	54,000
	Hewing						
	HCS CSSB 322 (Lvd)	216,000	216,000	216,000	216,000	216,000	216,000
100%	Prior to Hewing	60,000	60,000	60,000	60,000	60,000	60,000
	Hewing						
	HCS CSSB 322 (Lvd)	240,000	240,000	240,000	240,000	240,000	240,000
—							
—							

MINIMUMS: CURRENT LAW: 212 WEEKS - $43,400
HCSCSSB 322: 54 % - $124,600

HAND

RATING	WKly Comp Rate	$200	$300	$400	$500	$600	$700	% OF WHOLESALE
10%	CESAR	4,540	4,540	4,540	4,540	4,540	4,540	—
	GRANT	4,240	6,360	8,480	10,600	12,720	14,840	—
	HCS CSSB 322 (LVC)	250	250	250	250	250	250	5%
20%	CESAR	9,080	9,080	9,080	9,080	9,080	9,080	—
	GRANT	8,480	12,720	16,960	21,200	25,440	29,680	—
	HCS CSSB 322 (LVC)	8,791	8,791	8,791	8,791	8,791	8,791	11%
30%	CESAR	13,620	13,620	13,620	13,620	13,620	13,620	—
	GRANT	12,720	19,080	25440	31,800	38,160	44,520	—
	HCS CSSB 322 (LVC)	19,008	19,008	19,008	19,008	19,008	19,008	16%
40%	CESAR	18,160	18,160	18,160	18,160	18,160	18,160	—
	GRANT	16,960	25,440	33,920	42,400	45,400	45,400	—
	HCS CSSB 322 (LVC)	36,326	36,326	36,326	36,326	36,326	36,326	22%
50%	CESAR	22,700	22,700	22,700	22,700	22,700	22,700	—
	GRANT	21,200	31,800	42,400	45,400	45,400	45,400	—
	CSSB 322 (LVC)	49,572	49,572	49,572	49,572	49,572	49,572	27%
60%	CESAR	27,240	27,240	27,240	27,240	27,240	27,240	—
	GRANT	25,440	38,160	45,400	45,400	45,400	45,400	—
	HCS CSSB 322 (LVC)	69,888	69,888	69,888	69,888	69,888	69,888	32%

FOOT: CURRENT LAW: 173 WEEKS - $39,700
HCSCSSB 322: 28 % - $53,088

		$200	$300	$400	$500	$600	$700	% OF WHOLESALE
	CESAR	3970	3970	3,970	3970	3,970	3,970	—
	GRANT	3460	5,190	6,920	8650	10,380	12,110	—
	HCS CSSB 322 (LVC)	250	250	250	250	250	250	3%
	CESAR	7,940	7940	7,940	7,940	7,940	7,940	—
	GRANT	6,920	10,380	13,840	17,300	20,760	24,220	—
	HCS CSSB 322	864	864	864	864	864	864	6%
	CESAR	11,910	11,910	11,910	11,910	11,910	11,910	—
	GRANT	10,380	15,570	20,760	25,950	31,140	36,330	—
	HCS CSSB 322	3456	3,456	3,456	3,456	3,456	3,456	8%
	CESAR	15,880	15,880	15,880	15,880	15,880	15,880	—
	GRANT	13,840	20,760	27,680	34,600	39,700	39,700	—
	HCS CSSB 322	8,791	8791	8,791	8791	8,791	8,791	11%
	CESAR	19,850	19,850	19,850	19,850	19,850	19,850	—
	GRANT	17,300	25,950	34,600	39,700	39,700	39,700	—
	HCS CSSB 322	14,515	14,515	14,515	14,515	14,515	14,515	14%
	CESAR	23,820	23,820	23,820	23,820	23,820	23,820	—
	GRANT	20,760	31,140	39,700	39,700	39,700	39,700	—
	HCS CSSB 322	22,032	22,032	22,032	22,032	22,032	22,032	17%

1/5/88

RATING

	WKly Comp Rate	$200	$300	$400	$500	$600	$700	% OF WAGES
70	CESAR	31,780	31,780	31,780	31,780	31,780	31,780	—
	GRANT	29,680	44,520	45,400	45,400	45,400	45,400	—
	HCS CSSB377	91,200	91,200	91,200	91,200	91,200	91,200	38%
80	CESAR	36,320	36,320	36,320	36,320	36,320	36,320	—
	GRANT	33,920	45,400	45,400	45,400	45,400	45,400	—
	HCS CSSB377	103,200	103,200	103,200	103,200	103,200	103,200	43%
90	CESAR	40,860	40,860	40,860	40,860	40,860	40,860	—
	GRANT	38,160	45,400	45,400	45,400	45,400	45,400	—
	HCS CSSB377	117,600	117,600	117,600	117,600	117,600	117,600	49%
100	CESAR	45,400	45,400	45,400	45,400	45,400	45,400	—
	GRANT	42,400	45,400	45,400	45,400	45,400	45,400	—
	HCS CSSB377	129,600	129,600	129,600	129,600	129,600	128,600	54%
—								
—								
1/1/88								

	$200	$300	$400	$500	$600	$700	% OF WAGES
CESAR	27,790	27,790	27,790	27,790	27,790	27,790	—
GRANT	24,220	36,330	39,700	39,700	39,700	39,700	—
HCS CSSB377	32,400	32,400	32,400	32,400	32,400	32,400	20%
CESAR	31,760	31,760	31,760	31,760	31,760	31,760	—
GRANT	27,680	39,700	39,700	39,700	39,700	39,700	—
HCS CSSB377	36,326	36,326	36,326	36,326	36,326	36,326	22%
CESAR	35,730	35,730	35,730	35,730	35,730	35,730	—
GRANT	31,140	39,700	39,700	39,700	39,700	39,700	—
HCS CSSB377	42,720	42,720	42,720	42,720	42,720	42,720	25%
CESAR	39,700	39,700	39,700	39,700	39,700	39,700	—
GRANT	34,600	39,700	39,700	39,700	39,700	39,700	—
HCS CSSB377	53,088	53,088	53,088	53,088	53,088	53,088	28%

MAXIMUMS: CURRENT LAW: 280 WEEKS - $59,000

HCS CSSB 322 60% - $144,000

ARM

RATING	Wkly Comp Rate	$200	$300	$400	$500	$600	$700	% of Wholeman
10%	CESAR	5,900	5,900	5,900	5,900	5,900	5,900	
	GRANT	5,600	8,400	11,200	14,000	16,800	19,600	
	HCS CSSB 322 (L+C)	864	864	864	864	864	864	6%
20%	CESAR	11,800	11,800	11,800	11,800	11,800	11,800	
	GRANT	11,200	16,800	22,400	28,000	33,600	39,200	
	HCS CSSB 322 (L+C)	10,541	10,541	10,541	10,541	10,541	10,541	12%
30%	CESAR	17,700	17,700	17,700	17,700	17,700	17,700	
	GRANT	16,800	25,200	33,600	42,000	50,400	58,800	
	HCS CSSB 322 (L+C)	25,272	25,272	25,272	25,272	25,272	25,272	18%
40%	CESAR	23,600	23,600	23,600	23,600	23,600	23,600	
	GRANT	22,400	33,600	44,800	56,000	59,000	59,000	
	HCS CSSB 322 (L+C)	40,550	40,550	40,550	40,550	40,550	40,550	24%
50%	CESAR	29,500	29,500	29,500	29,500	29,500	29,500	
	GRANT	28,000	42,000	56,000	59,000	59,000	59,000	
	HCS CSSB 322 (L+C)	60,480	60,480	60,480	60,480	60,480	60,480	30%
60%	CESAR	35,400	35,400	35,400	35,400	35,400	35,400	
	GRANT	33,600	50,400	59,000	59,000	59,000	59,000	
	HCS CSSB 322 (L+C)	86,400	86,400	86,400	86,400	86,400	86,400	36%

4/6/00

LEG CURRENT LAW: 248 WEEKS - $54,400

HCS CSSB 322: 40% - $96,000

	$200	$300	$400	$500	$600	$700	% of Wholeman
CESAR	5,440	5,440	5,440	5,440	5,440	5,440	
GRANT	4,960	7,440	9,920	12,400	14,880	17,360	
HCS CSSB 322 (L+C)	250	250	250	250	250	250	4%
CESAR	10,880	10,880	10,880	10,880	10,880	10,880	
GRANT	9,920	14,880	19,840	24,800	29,760	34,720	
HCS CSSB 322 (L+C)	3,456	3,456	3,456	3,456	3,456	3,456	8%
CESAR	16,320	16,320	16,320	16,320	16,320	16,320	
GRANT	14,880	22,320	29,760	37,200	44,640	52,080	
HCS CSSB 322 (L+C)	10,541	10,541	10,541	10,541	10,541	10,541	12%
CESAR	21,760	21,760	21,760	21,760	21,760	21,760	
GRANT	19,840	29,760	39,680	49,600	54,400	54,400	
HCS CSSB 322 (L+C)	19,008	19,008	19,008	19,008	19,008	19,008	16%
CESAR	27,200	27,200	27,200	27,200	27,200	27,200	
GRANT	24,800	37,200	49,600	54,400	54,400	54,400	
HCS CSSB 322 (L+C)	32,400	32,400	32,400	32,400	32,400	32,400	20%
CESAR	32,640	32,640	32,640	32,640	32,640	32,640	
GRANT	29,760	44,640	54,400	54,400	54,400	54,400	
HCS CSSB 322 (L+C)	40,550	40,550	40,550	40,550	40,550	40,550	24%

RATING	Wkly Comp Rate	$200	$300	$400	$500	$600	$700	% of Wholesale
70%	CESAR	41,300	41,300	41,300	41,300	41,300	41,300	
	GRANT	39,200	58,800	59,000	59,000	59,000	59,000	
	HCS CSSB 322 (L+C)	100,800	100,800	100,800	100,800	100,800	100,800	42%
80%	CESAR	47,200	47,200	47,200	47,200	47,200	47,200	
	GRANT	44,800	59,000	59,000	59,000	59,000	59,000	
	HCS CSSB 322 (L+C)	115,200	115,200	115,200	115,200	115,200	115,200	48%
90%	CESAR	53,100	53,100	53,100	53,100	53,100	53,100	
	GRANT	50,400	59,000	59,000	59,000	59,000	59,000	
	HCS CSSB 322 (L+C)	129,600	129,600	129,600	129,600	129,600	129,600	54%
100%	CESAR	59,000	59,000	59,000	59,000	59,000	59,000	
	GRANT	56,000	59,000	59,000	59,000	59,000	59,000	
	HCS CSSB 322 (L+C)	144,000	144,000	144,000	144,000	144,000	144,000	60%
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	$200	$300	$400	$500	$600	$700	% of Wholesale
CESAR	38,080	38,080	38,080	38,080	38,080	38,080	
GRANT	34,720	52,080	54,400	54,400	54,400	54,400	
HCS CSSB 322 (L+C)	53,088	53,088	53,088	53,088	53,088	53,088	28%
CESAR	43,520	43,520	43,520	43,520	43,520	43,520	
GRANT	39,680	54,400	54,400	54,400	54,400	54,400	
HCS CSSB 322 (L+C)	69,888	69,888	69,888	69,888	69,888	69,888	32%
CESAR	48,960	48,960	48,960	48,960	48,960	48,960	
GRANT	44,640	54,400	54,400	54,400	54,400	54,400	
HCS CSSB 322 (L+C)	86,400	86,400	86,400	86,400	86,400	86,400	36%
CESAR	54,400	54,400	54,400	54,400	54,400	54,400	
GRANT	49,600	54,400	54,400	54,400	54,400	54,400	
HCS CSSB 322 (L+C)	96,000	96,000	96,000	96,000	96,000	96,000	40%

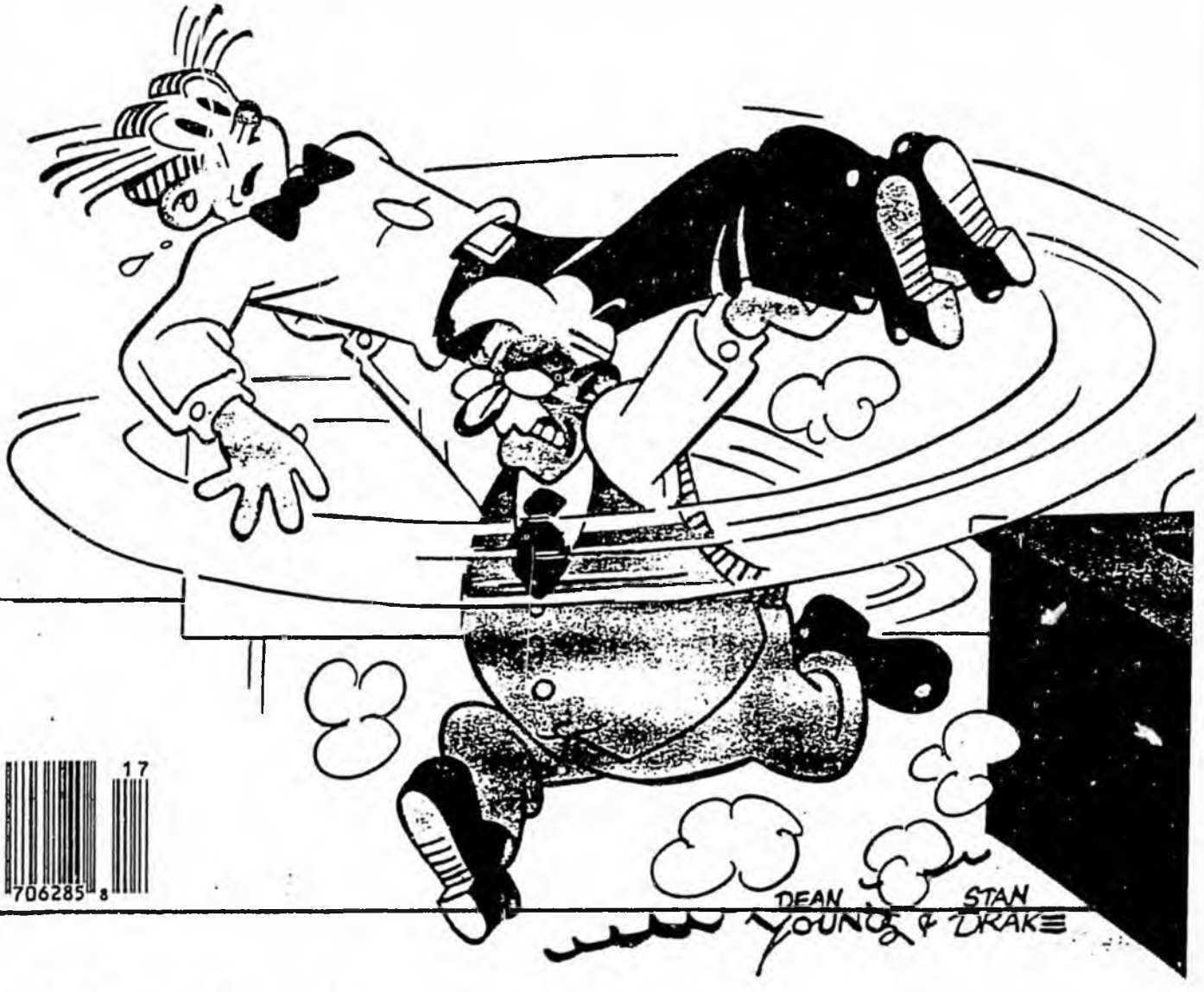
4/15/88

Lives of Slow Suicide

Newsweek

Stress on the Job

What You and the Boss Can Do About It



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Stress on the Job

It's hurting morale and the bottom line. How can workers and bosses cope?

For Robert Hearsch, it was a nightmare that wouldn't end. For four years Hearsch had been a successful supervisor for Hughes Aircraft. Then General Motors took over the company—and his career took a nose dive. As part of the restructuring, he was put in charge of buying pens and pencils. He found orders backlogged and records in disarray. He spent most of his days appeasing angry secretaries. He stayed on gamely, arriving early, leaving late, working through his breaks. But, as Hearsch tells the story, things only got worse. His supervisors hinted that his position might be phased out. They ignored his diligence and recorded small mistakes into his file. They even left him off the guest list for the department office party.

The pressure took its toll. Hearsch lost 20 pounds. His marriage hit the skids. He suffered a minor nervous breakdown. The strain got to his colleagues as well. One day, Hearsch says, a co-worker showed up at the office brandishing a handgun. Hearsch finally filed a workers' compensation claim, blaming his health and emotional problems on Hughes. Last week he accepted a $20,000 settlement from the company, which refuses to comment on the case. The money, he says, is small consolation. "I lost my wife, my house and my career."

If the 1970s were the Me Decade, the 1980s have been the Work Decade. Kids graduate from college yearning not to save the world but to scamper up the corporate ladder. Dress for success is the byword of fashion. Even pop culture celebrates the work ethic. After doing deals all day, where do young careerists go? Home to watch their TV alter egos on shows like "Moonlighting" and "thirtysomething." Yet amid the bustle of power breakfasts and Filofax appointments, there's a dirty little secret in the Age of the Office: stress. *Our jobs are killing us.*

For all its action and glamour, today's business world has generated corrosive ways to wear down bodies and spirits. The buzz around the modern water cooler is full of anxiety and paranoia. *The company is downsizing. The bean counters are out to get us. The boss has programmed the computers to monitor our phone calls.* No one can be sure when the dreaded takeover will strike. *A corporate raider has his eye on the firm. Pretty soon we'll all be working for the Japanese.* As the tension mounts, energies flag, blood pressures rise and that extra drink or two at the end of the day becomes more tempting. Across the office floor, fed-up workers hide behind closed doors, furtively updating their résumés . . .

Recognize the symptoms? You've got a lot of company. According to a survey by the advertising agency D'Arcy Masius Benton & Bowles, three-quarters of Americans now say their jobs cause them stress. In a 1985 study by the National Center for Health Statistics, more than half of the 40,000 workers surveyed reported experiencing "a lot" or "moderate" stress in the past two weeks. But numbers alone hardly tell the story. A Newbury, Mass., gas-station attendant does it better. He recalls a young professional in a three-piece suit who, apparently late for work, came barreling into the station one day recently and screeched to a halt at the pump. "Can you fill it up?" the young man yelled frantically. "Can you fill it up NOW?" Asked to wait for a minute, the Yuppie pounded the steering wheel, yelled that a minute wasn't fast enough and went tearing back onto the street. Moments later he was back at the pump, having realized he couldn't get far on an empty tank. "People are so stressed out," muttered one observer, "they're just crazy."

No 'bounce back' time: It's not just the frequency of stress that's increasing; it's the duration. At a time when mergers and acquisitions are rampant, executives must handle many tasks at once—on shorter deadlines. Atlanta therapist Geneva Rowe believes the pace of modern decision making has become so rapid that managers don't have enough time to decompress or recharge. "Twenty-five years ago, we had more intermittent stress," Rowe says. "We had a chance to bounce back before we encountered another crisis. Today, we have chronic, unremitting stress. Our bodies have eroded."

Stress is also eroding the bottom line. The toll on corporations runs from hobbled productivity to absenteeism and spiraling medical costs. While exact figures are hard to come by, some experts put the overall cost to the economy as high as $150 billion a year—almost the

LESTER SLOAN—NEWSWEEK

Robert Hearsch
Supervisor

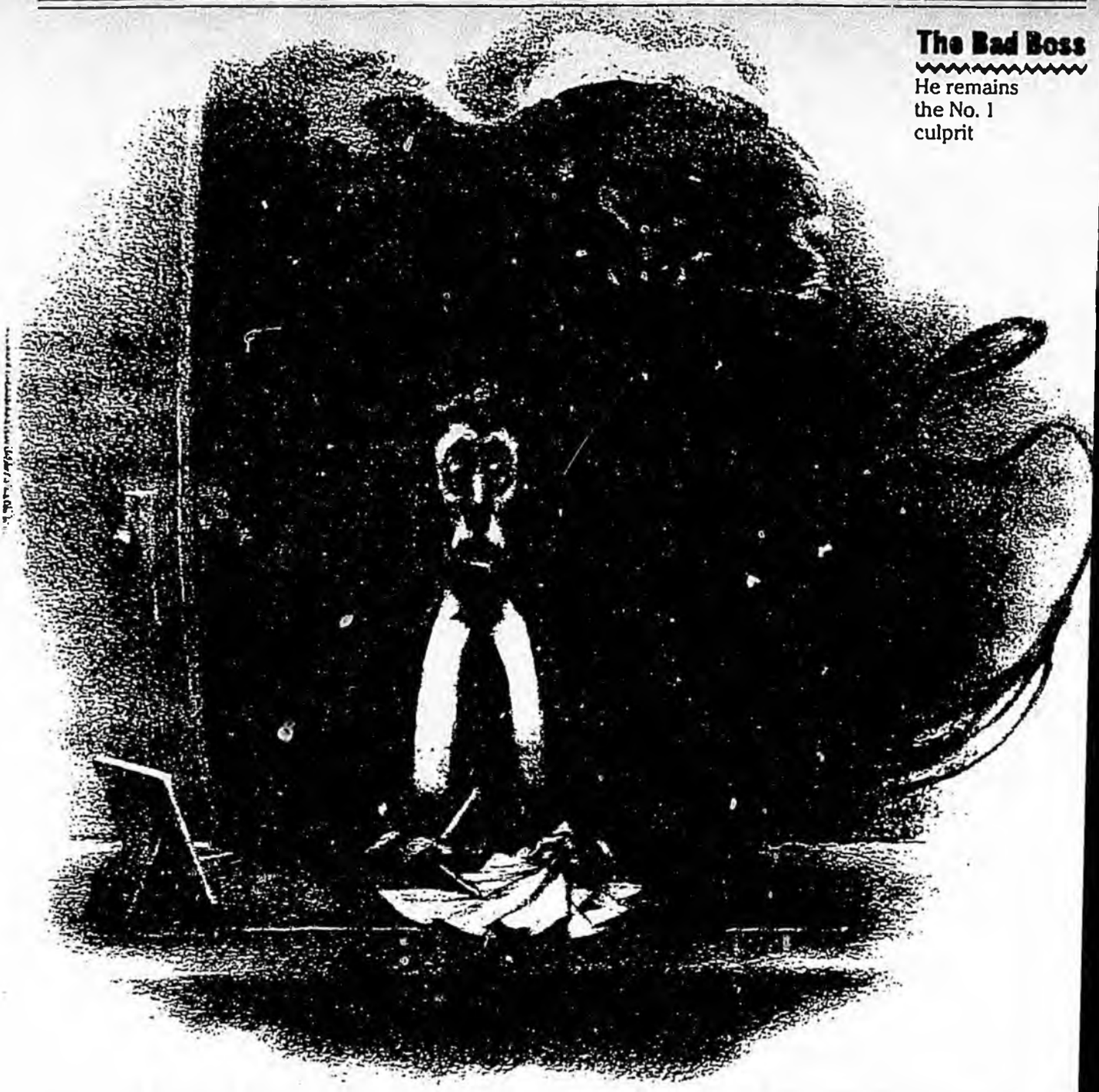
Symptoms: After Hughes Aircraft was taken over, he was demoted. He suffered a mild nervous breakdown, and his marriage split.

Response: He sought therapy, then filed a workers' comp claim and finally settled for $20,000.

ILLUSTRATIONS BY CARTER GOODRICH

The Bad Boss

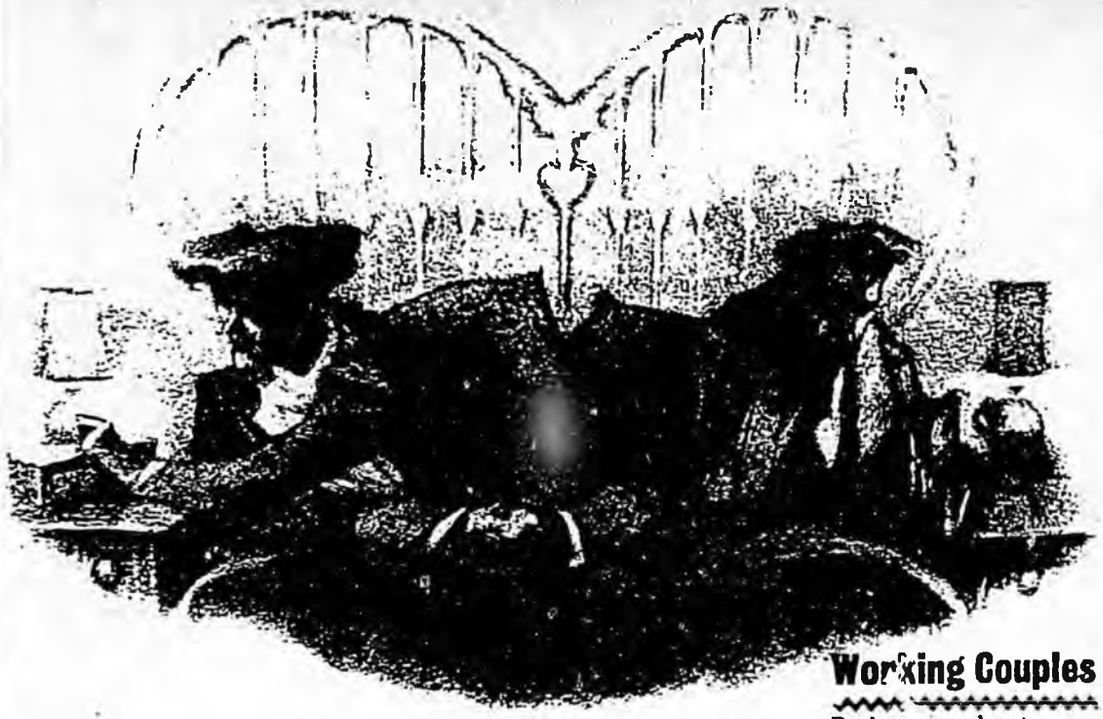
He remains the No. 1 culprit



size of the federal deficit. Dr. Kenneth R. Pelletier, a specialist in executive health at the University of California, San Francisco, notes that many large corporations spend more than $200 million a year on medical benefits for their employees. The surgeon general's most recent report, meanwhile, indicates that two-thirds of all illnesses before the age of 65 are preventable. Compared with treating stress, Pelletier says, attempting to prevent it would be "relatively speaking, low cost."

Medical bills aren't all that's worrying employers. So are legal costs. Americans filed a record number of stress-related workers' compensation claims last year, citing everything from surly supervisors to unsafe offices. In all, they accounted for 14 percent of occupational-disease claims, up from less than 5 percent in 1980. In California, where the number of cases has increased fivefold since 1980, the complaints range from the tragic to the bizarre. A female deputy sheriff in the state recently claimed chronic psychiatric disability on the ground that her personality wasn't suited for police work. An assistant probation officer said he suffered acute tension because he could not adjust to interviewing angry and emotionally disturbed clients. "It used to be that if you were angry at your boss, you went home and kicked the dog," says Mory Framer, a California psychologist who is an expert on workers' comp. "Now if you have a problem at home, you leave it at home and come in and kick your boss."

Many aggrieved employees are kicking the boss where it hurts most—in the wallet. Take the case of Dondi Gonzalez, the manager of a Palm Springs, Calif., furniture-rental store. As Gonzalez describes it, her stress was induced by a hostile supervisor intent on blocking her rise in the company. While auditing the showroom for the first time in several years, the supervisor gave her bad marks for a dead cricket she found on the floor and blamed her for another



Working Couples
Both worry about handling it all

store's long-distance phone bills. After suffering a mild stroke while on the job, Gonzalez filed a workers' compensation claim charging that stress contributed to her illness. More than a year of hearings followed, and Gonzalez settled out of court for roughly $50,000.

Other frazzled workers take the law into their own hands. A Pacific Bell employee in Riverside, Calif., recently became so distressed over the loss of his retirement benefits that he took hostages and destroyed $10 million worth of the company's telephone equipment. An editor for Encyclopaedia Britannica in Chicago sought revenge for his dismissal by sabotaging the company's computer system and trying to rewrite history. Before he was caught, the man had substituted the names of Britannica employees for historical figures, and Allah for Jesus in numerous passages of the encyclopedia.

Cashing in: With billions at stake, companies are starting to take action. Dozens now provide workers with "stress management" programs—help that includes everything from group counseling to hypnosis. A host of entrepreneurs are also angling to cash in on the trend. One is Theodore Barash, founder of Stresscare, a Long Island company that provides customized regimens for frayed employees. Like a corporate speculator talking about plastics 20 years ago, Barash predicts bullishly that "in the next 10 years, stress can be a $15 billion industry."

One reason that both workers and managers are so baffled by stress is that it's not always clear what causes it. At one level, the phenomenon is purely physiological. It's an outgrowth of what scientists call the "fight or flight" response, a primitive reflex that prepares humans for conflict. When confronted with possible danger—or a testy co-worker—the body secretes adrenaline and hydrocortisone. The hormones help the body turn off some functions—including parts of the immune system—and turn on short-term energy reserves. In today's working world, that can be a problem. The same mechanism that helped cavemen ward off their predators interferes when a situation calls for a long, sustained response—like putting up with a demanding boss. "We're still carrying the same physiology our ancestors had in prehistoric times," says Dr. Reed Moskowitz, medical director of New York University Medical Center's new Stress Disorders Medical Services Unit. "The problem is that it's the same response that gets triggered in the office, where you can't reach through the phone and strangle the person who sets it off."

Sometimes the reflex can boost productivity, even creativity. But it can quickly turn counterproductive. In their attempt to motivate, companies tread a fine line between getting employees' adrenaline flowing and making them nervous wrecks. "That's why you see so many people doing a great job at work, performing like crazy, but they're highly stressed," says Randall Dunham, a professor of business at the University of Wisconsin at Madison.

Fight-or-flight response is not the only thing the modern business world has in common with the Cro-Magnon era. A study by Stanford University researcher Robert Sapolsky suggests what many employees have always suspected: in dealing with subordinates, bosses act like baboons. Sapolsky studied the animals, which live in highly structured groups, for clues about the nature of hierarchies. He found that dominant members in a stable hierarchy turn stress responses on and off faster than lower-ranking ones. They also have stronger immune systems and safer cholesterol levels. Sapolsky's conclusion: being on top in the pecking order is less stress-producing than being at the bottom. Only in unstable hierarchies do high-ranking baboons have worse problems than their subordinates—a fact to which any executive caught in a takeover battle could testify.

At least baboons only have to worry about animal attacks and where to find the next banana. The corporate jungle isn't so simple. The trend toward downsizing and restructuring has introduced a host of new workplace tensions. At the top of the list: job insecurity. Witness the case of Wayne Pritchard, a 21-year veteran of Meredith Corp. in Des Moines, Iowa. Ten months ago Pritchard lost his job in a work-force reduction at Meredith's printing plant. Although he sent out 250 résumés and spent eight months searching for work, employers repeatedly rejected him as "overqualified." Then, in February, one day before his 56th birthday, Pritchard shot himself through the heart. In a suicide note, he blamed Meredith's corporate executives for his plight. "He truly loved his job," says Pritchard's wife, Deloris. "He thought something like this could never happen to him."

Slave driver: Even for those whose jobs are spared, the tension can be enormous. The most vehement complaints usually involve tyrannical bosses. In her new book, "Never Work for a Jerk," Patricia King tells the story of Marlene Miranda, a secretary in the treasurer's department of a large packaged-goods company. A relentless slave driver, Miranda's boss often called her at home to dictate reports so she could get to work early to type them, King writes. On a winter night, Miranda was driving her usual route home from work. It was cloudy, and the roads were very dark. Miranda sensed that someone was following her. The car overtook her and forced her off the pavement. She started to panic. Then she reco

How to Tell If You're Stressed—And What to Do About It

Only recently have consultants and psychologists begun to study workplace tension in depth. They've discovered the most trying professions are those involving danger and extreme pressure—or that carry responsibility without control. The symptoms of stress have been found to range from frequent illness to nervous tics and mental lapses. The most common tips for dealing with it focus on relaxation. But sometimes the only answer is to fight back—or walk away.

10 Tough Jobs

- Inner-city high-school teacher
- Police officer
- Miner
- Air-traffic controller
- Medical intern
- Stockbroker
- Journalist
- Customer service/complaint department worker
- Waitress
- Secretary

Warning Signs

- Intestinal distress
- Rapid pulse
- Frequent illness
- Insomnia
- Persistent fatigue
- Irritability
- Nail biting
- Lack of concentration
- Increased use of alcohol and drugs
- Hunger for sweets

Ways to Cope

- Maintain a sense of humor
- Meditate
- Get a massage
- Exercise regularly
- Eat more sensibly
- Limit intake of alcohol and caffeine
- Take refuge in family and friends
- Delegate responsibility
- Stand up to the boss
- Quit

SOURCES FOR THE 10 TOUGHEST JOBS: THE NATIONAL INSTITUTE ON WORKERS COMPENSATION; AMERICAN INSTITUTE OF STRESS

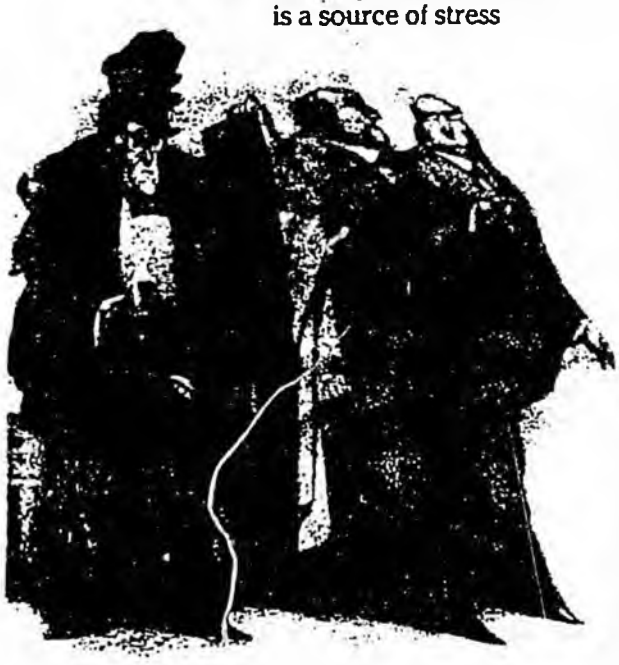
nized her boss. When she rolled down her window, he barked: "Take a letter."

It's not only neurotic bosses who put workers in the pressure cooker. Sometimes it's the office itself. Poorly designed work stations and the trend toward computer monitoring are two growing sources of tension. Last year the U.S. Office of Technology Assessment estimated that computers are being used to keep tabs on 6 million working Americans. The most ominous tactic is to use an employee's own computer to spy on him. Managers measure productivity by recording the number of keystrokes operators make per minute, and count breaks by tracking computer downtime.

Big Brother's presence can have devastating effects. In one case, a United Airlines flight reservationist claimed she suffered a nervous breakdown because of "bathroom-break harassment." She says she was permitted only 12 minutes to go to the bathroom during each seven-and-a-half-hour work period. One day, she claims, she spent 13 minutes over her allotted time, and a supervisor threatened to fire her if she did it again. United officials decline to comment on the case except to say that bathroom-break time is at the discretion of supervisors.

The Corporate Pawn

His very powerlessness is a source of stress



When it comes to stress, not all jobs are created equal. Just ask Eric Proctor. As a Howard County, Md., firefighter, Proctor has a window into some of life's most gruesome scenes. In August 1986 he was dispatched to a head-on auto accident where a mother and her seven-year-old daughter lay critically injured. The two later died. But for Proctor the worst was still to come. He couldn't erase the vivid images of death from his mind. He cried. He could not sleep or eat. Not until he sought counseling at a stress-management program for emergency-services workers did his anguish subside.

Ed Edmondson, a 41-year-old bus driver for the Los Angeles Rapid Transit District (RTD), was also a victim of posttraumatic stress. In his 13-year career, Edmondson has endured fare jumpers, rude customers and testy supervisors. He has seen bus drivers slapped, stabbed and spit upon. But it was an incident three years ago that finally caused him to crack. One day in May 1985, he noticed a man standing on tiptoe on a curb ahead of the bus. An experienced driver, Edmondson slowed down but kept in his lane to avoid sideswiping other vehicles. Just before the bus reached the corner, however, the man suddenly jumped in front of it, flinging himself against the windshield. In the aftermath of the suicide, no driver was sent to relieve him, so he continued on his route. For weeks afterward, he became increasingly weepy and unable to function. Eventually he was admitted to L.A.'s Barrington Psychiatric Center, where he was treated for "posttraumatic stress syndrome." "I felt like somebody put a gun in my hand, pointed it at his head and pulled the trigger," he says.

Control factor: Psychologists say jobs like Edmondson's—ones that carry a lot of responsibility but little power—are among the most trying. The National Institute on Workers Compensation cites secretaries, waitresses, office managers and laborers as being particularly stressed-out. The American Institute of Stress in Yonkers, N.Y., adds police officers, newspaper editors,

medical interns and stock brokers. Rick Gilkey, an associate professor of organizational behavior at Emory University's School of Business Administration, says studies of race-car drivers suggest that control may be an even more important factor than danger when it comes to provoking tension. The studies showed that drivers were most unnerved not when speeding at 200 miles per hour, but during pit stops, when the work crew controlled things. The same holds true of corporate managers whose companies are being acquired, Gilkey says. When a takeover robs them of assurances, it's like sending them to the pits.

JOHN FICARA—NEWSWEEK

Eric Proctor
Firefighter

Symptoms: High-pressure rescue duty and repeated exposure to human trauma caused him to lose his appetite and suffer periodic crying episodes.

Response: He enrolled in a stress-management program for emergency-service personnel.

Two broader types of workers are especially vulnerable to stress. One is the older manager who, after years of expecting his company to look after him, wakes up to find that it suddenly doesn't need him anymore. Atlanta therapist Rowe says the decline in corporate loyalty can be stressful in itself. As the system breaks down, she says, people who have devoted their whole lives to a firm are forced to find entirely new identities. Another high-stress category is the younger, "free agent" manager, or, as Atlanta psychologist Bob Bleke calls it, the "corporate vagabond." Well trained and upwardly mobile, the free agents go from firm to firm, seeking the biggest challenges and the highest salaries. But they run the risk of getting caught in a shakeout and finding themselves with little to fall back on. They haven't had time to lay down roots and have often sacrificed family life to mobility and ambition. Says Bleke: "It's quiet desperation."

The trend toward two-career households and single-parent families has only compounded the strain. After years of scrambling to launch her own firm, single mother Susan Silver of Alameda, Calif., became an anxiety-ridden workaholic. To ease the strain, she bought a lap-top computer to use away from the office and started unwinding with reading and aerobics. Northwestern University professor Jeanne Brett and her colleague Sara Yogev say women like Silver are often more able to cope with such conflicts than their male counterparts. The pair recently completed a study of 86 upper-middle-class working couples with kids. They studied the differences in the stress levels of men and women when faced with the prospect of restructuring their jobs to accommodate children. The women surveyed cut down on hours and travel and made more sacrifices than their husbands but seemed to take the changes in stride. The men, on the other hand, made fewer changes but had difficulty managing the conflict.

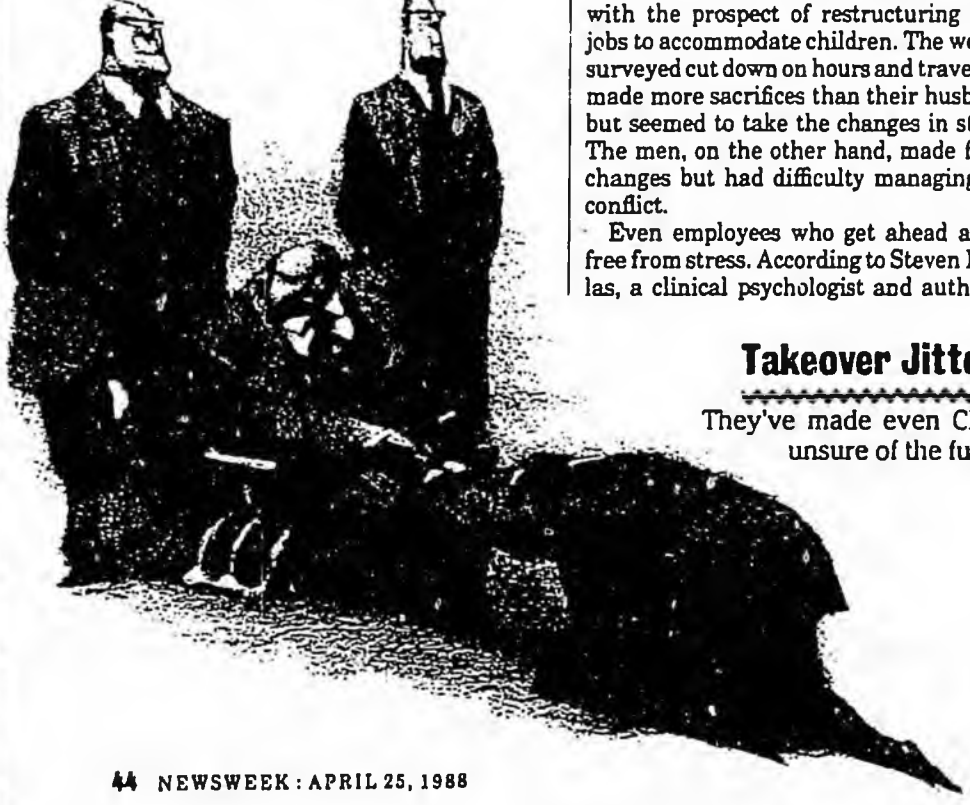
Even employees who get ahead aren't free from stress. According to Steven Berglas, a clinical psychologist and author of "The Success Syndrome," period following a promot can be intensely angst-rid Many driven careerists "successful failures" who basically unhappy and that achievements only ad their sense of burden. T tend to have difficulty trans ing business success into sonal rewards. One Bos workaholic came to Berglas cause he regretted sacrific his family for his business suggested that he start by go to church with his famil Berglas recalls. "But instea sitting in the pew with his w he became a deacon. Again, had used success to substitute for a pers al relationship."

Can stress on the job be curtailed bef it damages morale and performance? I belated scramble to preserve their m precious resource, dozens of corporati are betting that it can. Many teach stre reduction techniques as part of more cc prehensive "wellness" programs. Th usually consist of short lectures, offe during lunch hours, on how to maint healthier diets, manage time better a stop smoking.

Psychological profile: Most effective p grams begin with a "stress audit," desig to identify sources of tension. At the Ae bics Center in Dallas, an organizati founded by exercise expert Dr. Kenne Cooper, participants fill out a 12-page p chological profile that attempts to isol the causes of their problems. Among t questions: "If I were to disagree with boss, I'd probably (a) keep it to mys (b) uncertain, (c) come out and say so." ("If I were called in by my boss, I'd (a) afraid I had done something wrong, (b) between, (c) make it a chance to ask something I want."

After analyzing the problems, comp nies take a variety of approaches to ta ling them. Cambridge Research Lab in B ton offers a class in the Oriental art of chi to help its workers blow off steam. T Long Island Lighting Co. spends $200,00 year for a biofeedback consultant. St other firms have instituted progra aimed at restoring a sense of contro employees' lives. Beth Israel Hospital Boston has launched a program that allo nurses to chart and monitor patient ca themselves, without the constant surve lance of physicians.

Laughter can also be a weapon in the w against stress. Companies like Manvil Corp., Safeway Stores and Northweste Bell Telephone have instituted "humo programs to help employees unwin Teaching workers to take their jobs le seriously is also a favorite tactic of

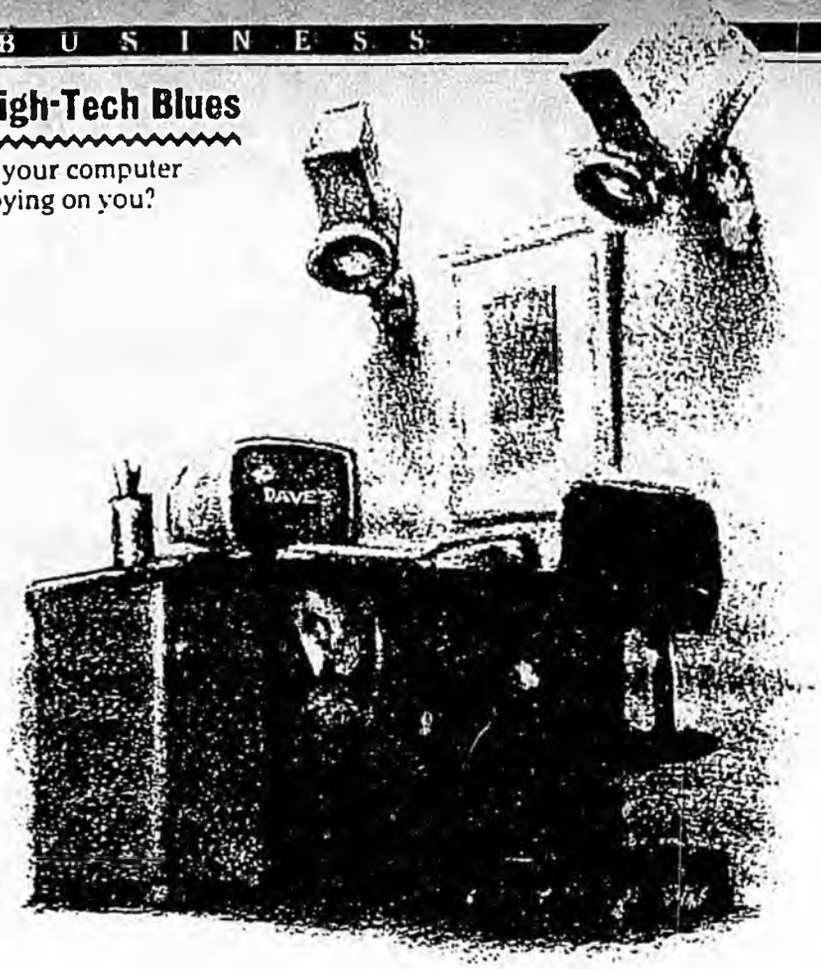


Takeover Jitters

They've made even CEO's unsure of the future

High-Tech Blues

Is your computer spying on you?



new breed of "stress consultants." One such practitioner is Dr. Steve Allen, physician and son of entertainer Steve Allen, who travels the country conducting executive workshops. In one exercise, he has managers juggle brightly colored scarves. "In laughter there is healing power," Allen says.

Inevitably, a number of enterprising companies are trying to find a market for antistress *products*. Enlighten, an Ann Arbor, Mich.-based computer-software company, has developed a program called Chuckle Pops to relieve what it calls "terminal boredom." The software allows users of IBM and IBM-compatible computers to call up a series of jokes while they work. Biodot International of Indianapolis has introduced "biodots," temperature-sensitive adhesive devices that workers can attach to their hands to determine their stress levels. The 1980s equivalent of mood rings, the dots may be far from sophisticated. But Biodot officials say they can register decreased blood flow to the extremities—a common sign of tension. Chrysler Corp. began distributing the dots this year as a way of encouraging its employees to participate in stress-management courses.

Just how well do these programs really work? Many corporations cite figures showing increased productivity. But a survey of 1,700 companies by the U.S. Department of Health and Human Services found that only 4.2 percent reported reduced health-care costs. Some experts attribute the inconclusive results to the haphazard manner in which most stress-management programs are selected and implemented. "If [corporate executives] used such bad judgment buying typewriters," asserts Pelletier of UC, San Francisco, "they'd probably never turn out a letter."

Companies can do little, experts also point out, unless workers are receptive. Dr. Herbert Benson, a cardiologist and assistant professor at Harvard Medical School, tries to encourage his patients to take advantage of the programs. He likes to invoke what's known as the Yerkes-Dodson law of job performance. Decades ago two Harvard professors, Yerkes and Dodson, conducted studies that showed that stress stimulates productivity up to a point—then causes it to fall off rapidly.

It's one thing to convince workers that stress is harmful; it's another to help them recognize signs in their own behavior. Dr. Daniel Macken, a cardiologist who counsels stress sufferers, uses business terms to paint the picture. He compares patients to depreciating assets. "If you blow it by continuing habits that are not healthy," he says, "you are becoming a very expensive commodity to your corporation."

'Imaging' techniques: For employees who want to learn how to decompress, experts recommend several forms of relief. Allen Elkin, program director for Stresscare, suggests abdominal breathing, meditation and "imaging" (conjuring up mental pictures that convey warmth, for example). He also recommends "perceptual restructuring"—a fancy term for not sweating the small stuff. When it comes to dealing with daily obstacles, he says, "we have a tendency toward catastrophizing and awfulizing."

How well workers deal with stress may also depend on how honest they are with themselves. Karen Ivory, a 30-year-old former TV producer, has learned the lesson only too well. A natural at her job, Ivory rose quickly through stations in smaller markets like St. Louis and Philadelphia. Then she landed a job with WCBS-TV in New York. The work was exciting, but agonizing. In the control room during broadcasts, Ivory was consumed with fear that a live remote would go dead or a show would run too long. Finally, one winter day in 1986, she took charge of her life. She left New York, trading her network career for a more tranquil life in public relations at a small Pennsylvania college. She may have mastered perhaps the most overlooked stress-management tool of all: knowing when to walk away. Not all of us can quit so easily. But with the help of counseling and common sense, we can learn when to fight back, when to walk away from office problems—and when not to sweat the small stuff.

ANNETTA MILLER *with* KAREN SPRINGEN *in Chicago,* JEANNE GORDON *in Los Angeles,* ANDREW MURR *in Atlanta,* BOB COHN *in Washington and* LISA DREW *and* TODD BARRETT *in New York*

JAMES D. WILSON—NEWSWEEK

Susan Silver

Real-Estate Broker

Symptoms: After years of scrambling to launch her own firm, she had become an anxiety-ridden workaholic.

Response: She cut her hours, bought a lap-top computer to use away from the office and started unwinding with reading and aerobics.

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STUART A. ROBERTSON, F.S.A.
CHAIRMAN EMERITUS

April 25, 1988

Representative John Sund
P.O. Box V
State Capitol
Juneau, Alaska 99811

Dear Representative Sund:

Milliman and Robertson, Inc. (M&R) was retained by the House Judiciary Committee to conduct an analysis of the latest version of Senate Bill 322 (i.e., as of April 20, 1988) and to evaluate the potential impact on workers' compensation insurance rates in Alaska. This letter presents the results of our analysis.

1. Estimated Impact on Cost Levels

We estimate that the proposed law will reduce benefit costs by slightly more than 6%, relative to current benefit levels. Table 1 below shows how this reduction was estimated.

TABLE 1: ESTIMATED CHANGE IN BENEFIT COSTS

	Fatal	Permanent Total	Permanent Partial Temporary	Permanent Partial Award	Temporary Total	Medical	Total
A: Cost under Current Law	3.0%	13.4%	20.1%	30.1%	5.1%	28.3%	100.0%
Proposed Law Change							
B: Revision to PP Award	1.000	1.000	1.000	0.867	1.000	1.000	
C: Weekly Benefit Maximum	0.996	0.999	1.000	1.000	0.995	1.000	
D: Out-of-State Claimants	0.950	0.950	0.950	1.000	0.950	1.000	
E: Overall Impact (BxCxD)	0.946	0.949	0.950	0.867	0.945	1.000	
F: Cost Under Proposed Law (AxE)	2.8%	12.7%	19.1%	26.1%	4.8%	28.3%	93.8%

As can be seen on Table 1, our estimates explicitly recognize the impact on costs of three provisions of the proposed law; i.e.,

1. The revised method by which permanent partial awards are to be calculated using the American Medical Association (AMA) disability guides and the whole man concept.

2. The reduction of the maximum weekly benefit to $700.

3. The reduction in benefits to out-of-state claimants to recognize higher living costs in Alaska.

In addition to these three "hard dollar" provisions, we believe there are many "soft dollar" provisions of the proposed law that have the potential to significantly impact costs. For example, strict adherence to the letter and spirit of the administrative provisions of the proposed law, emphasis on workplace safety, successful implementation of the "independent medical evaluation" concept, and effective implementation of more stringent controls on the vocational rehabilitation program should result in additional efficiencies. On the other hand, there are some aspects of the proposed law that could have a negative impact on costs. For example, under current law many claimants settle for a lump sum with a compromise and release agreement. Under the proposed law, permanent partial cases are to be automatically settled with a lump sum without the need for a compromise and release agreement. It appears that under the new law there is the potential for greater frequency of reopenings.

We were able to obtain data to estimate the likely magnitude of the "hard dollar" savings. In addition, our judgments of these savings were influenced by potential "soft dollar" savings. However, we believe there is the potential for significant "soft dollar" savings beyond those anticipated in our estimates, provided the proposed reforms are fully and successfully implemented.

2. Impact on Rate Levels

If current rate levels are adequate, we estimate that the proposed law would justify an overall rate reduction of 6%. However, the following should be recognized:

1. Our earlier analysis conducted for the Alaska Department of Insurance indicated that current rate levels may be inadequate; i.e., insufficient to sustain costs under the current benefit structure.

2. We believe that there is a general perception within the insurance industry that the current rate level in Alaska is inadequate.

3. While the proposed law will reduce costs in the short term, it is likely that costs will begin to rise again before the January 1, 1990 rate reduction

expiration date, due to medical inflation and the long-term trends towards greater benefit utilization.

The proposed law mandates a temporary rate reduction for the period July 1, 1988 through January 1, 1990 of at least 6%. It is not clear to us if the proposed law anticipates a rate freeze at 6% below current levels, or that any subsequent rate filing must reflect a 6% offset to recognize the proposed law.

We would advise strongly against implementing a rate freeze for a number of reasons:

1. Given the perception of current rate inadequacy, a rate freeze may precipitate market availability problems.

2. We believe it is in the long-term interests of all parties that rates reflect costs. Major problems have developed in states that have not adhered to this principle (e.g., Maine).

3. Rate reviews will measure the impact of all aspects of the proposed law as actual losses under the new law emerge. Frequent review will enable any required adjustments to rates and, if necessary, to administrative procedures, statutory provisions, etc., to be implemented before a crisis develops.

4. We believe there is the potential for savings significantly in excess of 6% if certain of the administrative provisions of the proposed law are successfully and strictly implemented. If such savings materialize, they should be reflected in the rates as soon as possible.

We suggest that the proposed law be revised to include an immediate reduction of rates of at least 6%, and a provision specifying that future rate filings (e.g., after December 31, 1988) must fully reflect the impact of the new law. This latter requirement should not be limited to the period July 1, 1988 through January 1, 1990. We would anticipate that the original estimated impact on costs of 6% would be gradually revised in future rate filings as actual data becomes available.

To assure that subsequent rate filings do fully reflect the impact of the new law, the Department of Insurance may want to consider special reporting requirements and enhanced actuarial analyses pertaining to emergence of costs under the new law.

We also note that the term "rate" used in the proposed law is somewhat ambiguous. It is not clear if the drafters mean the overall Statewide rate level or the rate charged each individual insured.

3. Estimated Impact on Benefits

As can be seen on Table 1, permanent partial award benefits are the most affected by the proposed law.

Permanent partial award benefits are typically paid to a partially disabled worker who has recovered sufficiently to return to work. The benefit is intended to compensate for loss of work ability and future earning capacity, and is paid in addition to temporary total benefits.

Exhibit 1 provides a comparison of estimated benefits under the current and the proposed law for "average" cases of different injuries.

4. Assigned Risk Surcharge

Although not part of the current version of SB322 provided to us for analysis, we have been provided with a proposed revision impacting the assigned risk surcharge; i.e.,

"(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 the percentage of the surcharge does not exceed 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."

While we have not had time to request data to analyze this proposal in detail, we have the following comments.

The proposal is likely to lead to a reduction of premium collected for assigned risks. This is because of small risks and new risks with poor loss potential do not have enough credible experience to produce a high experience rate modification. For these risks, the new law could substantially reduce the effective assigned risk surcharge from the current value of 20%.

Any reduction in assigned risk premiums will partially offset the indicated cost savings of 6%. For example, assume that assigned risks currently account of 15% of the total earned premium. Further assume that the proposal reduces the effective surcharge from 20% to 15%. The resulting overall statewide premium will then be reduced by about 0.6%. Thus, only 5.4%, rather than 6%, is available for an overall rate reduction.

In any case it should be recognized that reductions in assigned risk premium levels can only be accomplished at the expense of the voluntary market.

Before changing the assigned risk surcharges and risking

market dislocations, we recommend further study of relative rate adequacy of the assigned risk pool versus the voluntary market. This analysis should be extended to include the various segments of the assigned risk pool in which problems are perceived to exist (e.g., small risks, new risks, etc.). We therefore suggest postponing revision of the assigned risk surcharge at this time.

Methodology

This analysis is an extension of our earlier study for the Alaska Department of Insurance described in our report "Cost Analysis of the Alaska Workers' Compensation Program" dated February 10, 1988.

Our cost estimates are based on a modified version of the model developed by the National Council of Compensation Insurance (NCCI). The NCCI model was based on both countrywide and Alaska data. We have modified the model to reflect additional local Alaska data available from the Alaska Workers Compensation Insurance Handling System and also from the NCCI unit statistical plan for Alaska.

All the data was accepted for analysis without audit.

Variability

The proposed law represents a very significant revision to the Alaska workers compensation program. It must be recognized that there is significant variability in any actuarial estimate of future workers' compensation costs, and that variation from the estimates presented in this report are likely.

We welcome the opportunity to discuss this analysis in greater detail as the need arises.

Sincerely,

Michael McMurray /s

Michael A. McMurray, F.C.A.S., M.A.A.A.

Mark Crawshaw

Mark Crawshaw, F.C.A.S., M.A.A.A.

File: SOA Date: 04/25/88 07:36:16
Title: Alaska Workers Compensation
Estimated Average Permanent Partial Awards Under Current Law And Under SB 322 (As Of April 20, 1988

	SCHEDULED MINOR PP	(1) Average % Loss	(2) AMA Rating	(3) Estimated PP Award Under Current Law	(4) Estimated PP Award Under Proposed Law
Thumb:	1 Phalange	100	16.0	$8,132	$21,600
	2 or more	100	22.0	12,625	29,700
	Loss of Use	25	4.0	4,197	5,400
Ind Finger:	1 Phalange	100	6.0	4,525	8,100
	2 or more	100	12.5	7,476	16,875
	Loss of Use	32	3.2	2,951	4,320
Mid Finger:	1 Phalange	100	5.0	2,918	6,750
	2 or more	100	7.5	4,853	10,125
	Loss of Use	29	2.4	1,705	3,240
Ring Finger:	1 Phalange	100	3.0	2,853	4,050
	2 or more	100	4.5	4,296	6,075
	Loss of Use	31	1.6	1,836	2,160
Litt Finger:	1 Phalange	100	1.0	1,148	1,350
	2 or more	100	2.5	2,099	3,375
	Loss of Use	36	0.8	820	1,080
Great Toe:	1 Phalange	100	4.0	4,164	5,400
	2 or more	100	6.5	6,460	8,775
	Loss of Use	26	1.6	2,230	2,160
Other Toes:	Disenbarment	100	0.8	2,328	1,080
	Loss of Use	29	0.0	754	250
Other:	Hearing: One Ear	6	2.0	6,066	2,700
	Arm	13	8.0	11,936	10,800
	Hand	13	7.0	9,050	9,450
	Leg	18	8.0	10,334	6,750
	Foot	13	4.0	7,378	5,400
	Eye	15	4.0	6,886	5,400
	Hearing: Both Ears	17	6.0	11,149	8,100
	AVERAGE - ALL INJURIES			$6,690	$6,515

File: 80A Date: 04/25/88 07:36:16
Title: Alaska Workers Compensation
Estimated Average Permanent Partial Awards Under Current Law And Under SB 322 (As Of April 20, 1988

UNSCHEDULED MINOR PP	(1) Average % Loss	(2) AMA Rating	(3) Estimated PP Award Under Current Law	(4) Estimated PP Award Under Proposed Law
Head	6	4.8	N/A	$6,480
Back	10	8.0	N/A	10,800
Hernia	7	5.6	N/A	7,560
Heart Attack	12	9.6	N/A	12,960
Neck	11	8.8	N/A	11,880
Mental	11	8.8	N/A	11,880
Multiple Injuries	11	8.8	N/A	11,880
Other General	8	6.4	N/A	8,640
AVERAGE - ALL INJURIES			$14,049	$10,379

File: BOA Date: 04/25/88 07:36:16
Title: Alaska Workers Compensation
Estimated Average Permanent Partial Awards Under Current Law And Under SB 322 (As Of April 20, 1988

	SCHEDULED MAJOR PP	(1) Average % Loss	(2) AMA Rating	(3) Estimated PP Award Under Current Law	(4) Estimated PP Award Under Proposed Law
Arm:	Above Elbow	100	58.5	$53,580	$78,975
	Below Elbow	100	55.5	53,580	74,925
	Loss of Use	53	25.6	42,202	34,560
Hand:	Dismemberment	100	54.0	41,710	72,900
	Loss of Use	56	24.0	33,611	32,400
Leg:	Above Knee	100	38.0	49,383	51,300
	Below Knee	100	32.0	49,383	43,200
	Loss of Use	53	16.8	38,038	22,680
Foot:	Dismemberment	100	28.0	36,234	37,800
	Loss of Use	51	11.2	26,430	15,120
Eye:	Enucleation	100	24.0	29,135	32,400
	Loss of Use	88	16.8	27,413	22,680
Other:	Hearing: Both Ears	57	20.0	30,233	27,000
	AVERAGE - ALL INJURIES			$35,414	$28,147

File: BOA Date: 04/25/88 07136116
Title: Alaska Workers Compensation
Estimated Average Permanent Partial Awards Under Current
Law And Under SB 322 (As Of April 20, 1988

UNSCHEDULED MAJOR PP	(1) Average % Loss	(2) AMA Rating	(3) Estimated PP Award Under Current Law	(4) Estimated PP Award Under Proposed Law
Head	46	34.0	N/A	$49,680
Back	41	32.8	N/A	44,280
Hernia	53	42.4	N/A	57,240
Heart Attack	46	36.8	N/A	49,680
Neck	40	32.0	N/A	43,200
Mental	45	36.0	N/A	48,600
Multiple Injuries	47	37.6	N/A	50,760
Other General	44	35.2	N/A	47,520
AVERAGE - ALL INJURIES			$51,113	$46,633

DAVE GOTTSTEIN

04/12/88

Members of the House Judiciary Committee;

As you know the house Labor & Commerce Committee recently passed their version of the workers compensation reform package. Although the labor management task force that made most of the recommendations endorses the bulk of the legislation, we strongly feel there now exists some significant limitations and deficiencies in the legislation in the form it now takes. We would like to address those with you and ask that you strongly consider curing the problems.

Our first concern is with Sec.2 21.89.015. This section attempts to give benefit to those who have safety programs in place. We feel this is an admirable idea, but that the legislation as currently drafted, will have little or no real effect. For this program to work, it will require that every employer looking for savings have a safety inspection, every year. This is likely to be very expensive, and won't necessarily insure low injury rates. Fortunately there already exists incentives for employers not in the assigned risk pool to provide safe work places as safety practices ultimately reduce costs and therefore premium rates. For thoses in the assigned risk pool however, that logical system breakes down. We would recommend to the commitee that they strongly consider placing participants in the assigned risk pool into one of two pricing categories. Those first entering the pool would be charged according to appropriate industry higher risk rates. However, after three years of experience, employer premium charges should be modified to reflect their own history of injuries. Unsafe employer rates would go up, and safe employer rates would go down.

We are most concerned about changes to Section 18 23.30.095 (k) as it corrupts our attempts to install an effective IME process that results in an informed board making informed decisions. We feel it is critical that the board have wide latitude in obtaining outside expertise in critical medical information. This section, as passed by Labor & Commerce in an attempt to satisfy the chiropractic community, requires that the boards chosen IME be of the same specialty as the attending physician unless the board unanimously determines otherwise. There are several siginificant problems that are inherent with this approach. First of all the board, generally all being non-medical professionals, often asks that a panel of experts of varied professions, including medical doctors, orthopedic surgeons, psychiatrists, chiropractors, etc., counsel them on the physical and mental status of individuals. Limiting them to only specialties of the attending physician greatly limits their ability to gain the widest possible perspective in making decisions in complicated areas outside of their own expertise. The Labor & Commerce approach would suggest that less information is better than more. We know how this would directly benefit individual medical providers, but we don't see how this could possibly be to the benefit of the injured worker.

Secondly, for anyone familiar with professional people, there is a reluctance to challenge brother professionals. By limiting only to

an attending physicians specialty negates a large portion of the effective review process the task force had in mind. We all felt strongly that a medical provider would take greater care in evaluating a patients needs if they knew there was the potential for scrutiny down the road by a non "club" member. It was felt the board needed the flexibility to select, on a case by case basis, the profession, or professions, it felt it needed help from in order to make informed decisions. Our approach does not limit the board from using the same profession as the attending physician for its IME, it just expands it. The critical thing to remember about the IME process as envisioned by the task force was that the IME would only advise on the physical and mental condition of a patient, and the appropriate medical treatment to be persued. It is not the boards responsibility to admonish a medical provider for a prior course of treatment.

Finally it seems odd to us that if the Labor & Commerce Committee felt that the attending physician should be protected from outside scrutiny, which we think is off the mark from the issue at hand, that it do so by requiring a unanimous vote on behalf of the board to change professions. First it points to a weakness certain professions must feel about their own positions if they need a unanimous vote to allow for objective review. Secondly, and perhaps a bit philosophically, if you think of it, where else in our democracy do we require a unaminous vote, with no opportunuty for challenge. Not in making changes to our constitution, not in setting death as the penalty for certain crimes, not even in going to war. Not in anything but whether a workers compensation board in Alaska has the authority to expand the scope of information it has available to it in trying to make it's determinations, if the House Labor & Commerce committee has its way. We would strongly recommend that consideration be given to changing the language so that it is consitant with the Senate version of the bill.

I would like to make one brief comment about charges by some that this bill drastically limits the frequency and lenghth of medical care. Let me make a categorical and definitive statement in order to set at rest many fears brought about by all sorts of scare tactic misinformation. SB322 requires the employer to provide complete lifetime medical care to an injured worker for as long as that care promotes recovery, whatever the frequency.

Another area management has a problem in is section 27, 23.30.155(m). It requires additional information regarding the cost of workers compensation. We do not generally have a problem with this section except when it comes to defense attorney fees and expenses. All the other information is pertinent to determining the cost effectiveness of the system. It seems highly inappropriate though to require the reporting of defense costs. The reason claimant costs are gathered is because someone other than the claimant pays for them. We should not give a blank check to anyone to spend somebody elses money. However, since in most cases the burdon of proof lies with the defendent, the greatest legal costs are usually incurred by the defendents. It seems to us an ominous threat to suggest that there be limits or standards on how much someone can spend in their own defense. This is not to say that abuses in frivolity should not be

scrutinized and dealt with accordingly. However, for example a firm may decide to spend hundreds of thousands of dollars to defend a case it views as precedent setting in which a loss could ultimately cost millions of dollars. We believe this specific language gets off the mark of what is truly important and appropriate. We would recommend deleting the language regarding legal and litigation costs as they would apply to employers or insurers.

I know some of you have some thoughts about how strict the mental stress section of the bill is. Let me first say that this ominous and frightening cost element has the potential of making our current crisis look cheap. Not dealing with this area at this time, given the trend of what is happening across the country, would be like wishing away the ozone depletion problem. The task force felt that in order to be able to guarantee the other benefits we all felt were so important to maintain, we had to clearly define for the courts how stress could be addressed fairly and affordably. Both labor and management feel that the bill fairly and appropriately compensates for unusual work related stress.

Finally, there is one more change to the bill that may need to be addressed. It involves the cost of Permanent Partial Disability payments. The set of goals outlined by the task force when it crafted this section of the proposal was to break even on the cost of PPD payments, and to shift the payments somewhat from the least to the most injured workers, while not affecting the lower levels too negatively. We thought we had accomplished those goals. It appears now however that we went too far. In otherwords by raising the maximum benefit from $60,000 to $240,000, we wound up raising the cost of the PPD section signigicantly, and lowering the low injury benefits too much. It is obvious that an adjustment will have to be made here if we are to go to the whole man concept that the task force has embraced as a more progressive approach. If we can't come to terms on a new formula, we may have to abandon our hopes of solving the PPD problems this year. Milliman & Robertson has been retained to develop and cost out a new formulation, and we hope to have a fix to this problem in a day or two.

I don't have to remind you that we are currently in a cost crisis. The purpose of the Labor-Management Task Force on Workers' Compensaiton was to find a way to cut costs in a way that remains fair to the injured worker, and promotes recovery. Assuming we resolve the issue I mentioned, we believe we have accomplished that. The Labor & Commerce bill, along with the changes I have recommended, will get the bill back into a balance that most thought was not possible to accomplish.

Thank you for the opportunity to present our views.

David Gottstein

APR 12 1988

Pursuant to Rep. Navarre's request, the following is a written submission of my public testimony offered by teleconference March 24, 1988, regarding SB 322.

As set out in Section 1(a), Legislative Intent, this proposed bill is interpreted to assure quick, efficient, fair, and predictable delivery of benefits to the worker at a reasonable cost. Section 1(b) declares workers compensation laws must not be construed by the courts in FAVOR (emphasis added) of any party.

There is a recognized problem with the existing workers' compensation law, and everyone seems anxious to do something about it. However, the decision should be based on informed and complete knowledge and I feel the Legislature is not so completely informed of all facts and in their zeal to resolve the problem, they will satisfy the "quick" part of the Legislative intent, but the legislation, if passed, will not be "fair". Efficiency is apparently the streamlining of overall procedure. Fairness, however, is another matter, and without fairness, your predictability will be wrong.

Section 1(b) in essence also says, the laws must not be construed by the courts in DISfavor of any party; it therefore is a matter of equity and equality. If you fail to provide equality, you will be practicing discrimination.

Case in point. Section 14(c), lines 16 through 27 (AS 23.30.095(c)) has written into it inequality, inequity and is discriminatory by content against both the injured worker and Chiropractic physicians.

Chiropractic management of spinal injury by its nature requires the patient to submit to a program of treatment which calls for both repetitiveness and time to treat, stabilize and return the

worker to pre-injury status, giving some assurance that the worker does not have to fear re-involvement. Doctors of Chiropractic do not dispense drugs and Chiropractors do not perform irreversible spinal surgeries which are both very expensive to the program and fail with great regularity and in the process contributes greatly to the costs of temporary total and permanent partial disabilities.

Statistical information which has been compiled which compares the effectiveness and cost of Chiropractic management when compared to medical management of similar worker's back injuries, clearly shows that workers' disability time, compensatable time loss and overall treatment costs were half of that of the medical practitioners.

This information is and has been, disregarded by insurance underwriters, the WCCA, and apparently, the Legislature thus far. It is readily available from the offering authorities, the Department of Labor and Industries or Department of Worker's Compensation in the States of Oregon, California, Montana, Wisconsin, Florida, and Kansas.

Chiropractic care is simply more effective and less costly than any alternative mode of treatment for spinal injury and I am certainly in opposition and resistant to any change which would lessen the opportunity for the injured worker get well quicker, to save the State money, and to allow the practice of Chiropractic to function and provide its services unimpeded.

The premise of reducing the potential frequency of Chiropractic treatments to 20 in the first 60 days may sound appealing and maybe perceived as a way to reduce the overall expenditure, but in fact will ill serve the injured worker and puts constraints on one type of primary health care provider - specifically Chiropractic - without stating so and without placing similar restraints on other primary health care providers.

Whatever the frequency of treatment, it should be determined by the physician of record - in this case the Chiropractor. It may well be less than 20 visits in 60 days, but may just as well be more than 20. This is determined by a combination of factors, the severity of the injury, availability of the patient for care and the patient's response to care.

It is known fact that the majority of care is condensed and provided within the first 60-90 day period, when the patient's symptoms are at their worst.

During my two terms as President of the Alaska Chiropractic Society and twice Chairman of the Peer Review Committee, the question of over-utilization of care or abuse seldom presented itself. During this time, I testified before the W.C. Board and meet on occasion with the WCCA. While in testimony before the WC Board, it was first brought to my attention concerning utilization abuse in that a Chiropractor had rendered 390 treatments in a two-year period of time. Also during this presentation, it was

noted that there were abuses in 2%-3% of all claims treated by Chiropractors.

Very recently, a speaker for the current WCCA and contributor and promoter of the current legislative changes told me he was shown by a past WC Board member a case in which a Chiropractor had billed for 400 treatments in a two-year period of time. I suggest that both examples were one in the same. Perhaps you have been made aware of this one example, also.

On the positive side, 97% to 98% of all claims filed by all Chiropractors were deemed non-abusive. If the non-abusive cases were broken down, I believe you would find that in the majority of cases there were in excess of twenty treatments rendered in the first sixty days. Therefore, the concept of forcing Chiropractors to render less service when the injured worker most needs treatment, is unfair to the patient population and inequitable to the injured worker and compromises the Chiropractor's authority to render services to match the injury in most cases.

I do not condone abuses or excessive treatments as it would apply to any Chiropractor or any other healing discipline, but to put the example being touted into perspective, 400 treatments x $30.00 per treatment is equal to $12,000 or the equivalent of one back surgery.

I am hopeful that you will look long and hard at the facts before you support the proposed changes in this Section.

Section 15(e), line 3, line 6-14, page 16 (AS 23.30.095(e).

The issue of IME's has long been a concern of all parties involved with workers' compensation cases.

There are basically five specialties who treat back injuries. Four are medically-orientated: orthopedists, neurologists, osteopaths, and psychiatrists/psychologists, and then there are Chiropractors.

The patient, however, may enter the system by first visiting his/her general medical practitioner, who may initiate conservative care in the form of medication and bedrest for symptomatic palliative care and/or refer the patient to one of the specialties.

It is a known fact, no matter how unfortunate, that legislators, the public, and medical providers do not understand exactly what it is that Chiropractors do, nor why they do what they do, and why they are successful at what they do. This is particularly true of the medical physicians and, apparently, the insurance companies. They do not want to recognize the Chiropractic profession and have advertised their opinions over the years to anyone they felt they could influence. The medical profession has been caught in their efforts to influence others and has successfully been sued in the Seventh Circuit Court of Appeals in Chicago and found guilty of anti-trust and restraint of trade for amongst other things, opinion peddling by making false and

malicious statements to influence public opinion about the Chiropractic profession, its abilities, and its effectiveness of treatment and professional education.

I bring this into my testimony at this point to illustrate that unless you have had the benefit of a first-hand experience with a Chiropractor, your opinion, like those of your colleagues and those of the authors of this proposed legislation, is based on acquired opinion, rather than acquired knowledge.

I was glad to see the clarification of the language which exposes the term "employer" to reveal that the employer is really the insurance underwriter or insurance adjustor, those entities whose business it is to protect the premiums paid by the real employers and that it is they who request the IME.

So when the adjustor requests an IME, they are hypothetically doing so to acquire a truly independent evaluation of the current status of the injured worker. That in itself is fine, but here lies the fallacy of the IME concerning patients of Chiropractic. The standard, written request which accompanies the worker also asks the medical, and I stress <u>medical</u>, examiner to comment on current therapy and the necessity of continued current therapy in his recommendations. The adjustor knows full well that when a patient of a Chiropractor is sent to most medical specialists for an IME, the response is nearly, always the same and predictable and states that Chiropractic therapy is, or was ineffective and should be discontinued or needs no further Chiropractic care.

This prejudicial opinion allows the adjustor to immediately controvert - with cause - any further treatment by the attending Chiropractor and stops further benefits to the worker. At this point, if the worker maintains he is still injured, will request another, hopefully favorable IME to substantiate his claim for continued benefits.

I can testify that in my sixteen-plus years in practice in Alaska, dozens of my patients have had IME's done by medical physicians and only on one occasion did the examiner remand the patient for continuation of treatment for thirty days after which he said the patient would be well and would need no further Chiropractic therapy.

During this same period of time, I have never been requested to do an IME on the patient of a medical doctor. Why? For obvious reasons: medical patients will always be evaluated by their medical peers pure and simple. Both adjustors and medical doctors decry that Chiropractors could not possibly understand what medical doctors do and why they do it and that Chiropractors are not medically competent to render a valid opinion. So why should a medical doctor perform an IME on a Chiropractic patient?

I will reiterate to you that medics do not know what Chiropractors do, or why they do it, and are not competent to render a Chiropractic opinion.

I support an amendment to this bill which would establish a program of ICE's or Independent Chiropractic Examinations. Why shouldn't Chiropractic patients be examined by the peers of the treating Chiropractor. They are similarly trained, similarly examined by the State, and understand what it is that each other is doing, why they are doing it, and what can be expected to transpire.

Contrary to popular belief, the nemesis of the medical community is the mechanical back problem associated with the common sprain-strain complex involving the patient's neuromusculoskeletal system where as Chiropractors almost solely treat this type of injury. Chiropractors understand Chiropractic patient management procedures better than medical doctors know Chiropractic procedures, so let Chiropractors do IME's or ICE's on Chiropractic patients and please include this concept in this Bill.

An added benefit may well be appreciated in the form of additional savings. I believe that evaluations performed by Chiropractors can be performed for much less than the rates charged by medical doctors.

Lastly, I would like to address an item not found in the current proposal. There are very few statistics maintained concerning the budge breakdown - if they are available, I have never seen them.

The total cost of the worker's compensation budge for FY86 was $150 million, of that 38% was appropriate for all aspects of health care cost, of $57 million. Of this $57 million, what portion was paid directly to hospitals, to rehabilitation services, and to medical services? Of those monies paid out for medical services, how much was paid to medical providers and medical specialties, such as orthopedic surgeons, neurologists, osteopathic doctors, psychiatric or psycholcgic services, and Chiropractic doctors. By injury classification, what percentage of the injuries involved the spinal column? What portion of the medical costs were directly related to spinal injury treatment? And what percentage of that was paid to each provider group and what was the total monies paid to each group of providers?

It is precisely this type of information I would expect every legislator to know before voting on the proposed Bill, and there should be an amendment to the Bill to provide that a breakdown such as mentioned above be prepared each year for the Legislature's review.

Respectfully submitted,

DATED: 4-7-88

Jon J. Godfrey, D.C.

JON J. GODFREY, B.S., D.C.

cc: Rep. Navarre
Rep. Donley
Rep. Sund
Rep. Ulmer
Rep. Cotten
Rep. Davidson
Rep. Furnace
Alaska Chiropractic Society
Rep. Gruenberg
Rep. Barnes
Rep. Taylor
Rep. Koponen
Rep. Boucher
Rep. Ellis
Rep. Menard

WCCA CONTRIBUTORS

A & B Tool
Acme Fence
Alaska Airlines
Alaska Business Insurance
Alaska Cleaners
Alaska National Insurance
Alaska Oil Marketers Association
Alaska Pulp
Alaska Sales and Service
Alaska State Medical Association
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Newberry Alaska
Northern Adjustors
Northern Air Cargo
Pacific Movers
Professional Trust Administrators
R G & B Contractors
Rain Proof Roofing
Reeve Aleutian
Rental Association of Alaska
Saupe Enterprises
Smyth Moving
Spenard Building Supply
Standard Alaska Production
Steel Fabricators
TOTE
Udelhoven
Universal Motors, Inc.
UNOCAL
Usibelli Coal
VECO

April 22, 1988

The Honorable John Sund
Chairman
Judiciary Committee
House of Representatives
Pouch V
Juneau, Alaska 99811

Dear Chairman Sund:

The Joint Management/Labor Task Force has reviewed the committee work draft dated April 20, 1988 and would like to share our concerns and comments with you and your committee.

After your ordeal of the past month, you will probably agree that Workers' Compensation is an extremely complex issue and one to which changes in one section can result in positive or negative changes in other sections of the statute. After more than a year of analysis and negotiation, the Task Force presented a compromise bill to the Senate and House Labor and Commerce Committees which was designed to result in significant reductions in workers' compensation premiums paid by employers while at the same time increasing benefits to injured workers.

The draft presented to the House Labor and Commerce Committee had been estimated to result in a 5.7% reduction effective July 1, 1988. Due to an error in the calculations of our Task Force, we presented suggested modifications to the draft legislation on April 15, and at that time Milliman and Robertson indicated that the recommended changes--when placed in the Senate version of the bill--would result in a 6% premium reduction. The Task Force believes that the cost savings are potentially greater than that proposed, but because of the difficulty in pricing many of the sections of the bill, we believe that such savings will not be realized until future experience verifies or repudiates our opinions.

With this perspective, the Task Force has reviewed the committee work draft of April 20 to determine if the modifications will likely result in changes to the costs of the legislation or changes in the labor/management balance. For the most part, we believe that the modifications proposed will not affect prices or tip the labor/management balance. We do, however, believe that the following provisions will increase the costs of the legislation and reduce the potential savings of the bill.

1. Section 13, page 15, lines 19-23.

This section modifies our proposal to control the frequency of medical visits by establishing suggested limits which could be exceeded when documented by the physician. From 1983 to 1986, medical costs for workers' compensation increased from 23% of $75 million in costs to 37.5% of $153 million. To control this item, we attempted to deal with both the price and utilization of medical services. The proposed modification would effectively neutralize our attempt to control utilization and reduce the savings resulting therefrom.

We understand the committee's reluctance to legislate limits on medical visits, and accordingly we would propose that this section be modified to allow the Workers' Compensation Board to adopt such guidelines by regulation. In this manner the abuses could be controlled and the system would maintain the flexibility needed to react to changes in conditions and practices.

2. Section 25 and Section 26.

These sections increase the penalties associated with the failure to promptly pay compensation under the act. We understand the desire to punish employers or carriers that willfully or flagrantly fail to promply pay their claimants, but we believe that the proposed modifications are extreme and deal with a relatively insignificant problem. We are worried that such an increase in penalties in the absence of a recognized problem sends a message to the insurance industry that we are not willing to provide a mutually supportive environment for them.

We further believe that the size of the proposed penalties will lead to more controversions by employers as they attempt to avoid the penalties. We foresee this section serving to fuel further litigation as it provides an additional economic incentive to dispute and hence will drive up the costs of the system.

We would propose that the current practices remain as they currently exist except that he Board could increase the penalties to 50% when they deem that the employer or carrier flagrantly and willfully failed to pay claimants promptly. In this manner we would penalize the abusers of the system while still allowing the current penalties for tne relatively infrequent failures to pay in a timely manner.

3. Section 28, lines 23-25.

We would propose that this section be deleted as it relates to issues beyond the scope of workers' compensation.

4. Section 33(c), pages 26-27.

This section should have been removed when the permanent partial impairment schedule was reduced from $240,000 to $135,000. It was originally placed in the proposal to minimize the impact of the adjustment factors on the relatively minor injuries, but elimination of the adjustment factors removed the need for this section.

5. Section 44, page 32, lines 1-5.

We believe that the proposed modifications to the statute will result in reductions in the cost of workers' compensation and believe that the insurance industry has made a good faith effort to acknowledge those reductions when they proposed a 5.7% reduction effective July 1, 1988. We do not support a mandated roll-back since it will have little impact on the rate structure and might potentially encourage some carriers to withdraw from the Alaska workers' compensation market. We believe that a mandated rate reduction offers little long term economic gain and could cause irreparable harm to the workers' compensation insurance marketplace and consequently lead to higher, not lower costs.

We strongly support the work draft with our modifications and urge you to move the bill to the Finance Committee as quickly as possible. Your concerns and questions have been helpful and the bill is better because of the time your committee has invested in the issue. We are concerned, however, that the bill could be lost in the closing days of the session and, if so, employers and employees would be the true victims of such a consequence. For employees the legislation represents an improvement in benefits, and jobs. For employers it means a reduction in premiums and survival.

Very truly yours,

Robert Anders
Co-Chairman

Mary Pierce
Co-Chairman

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January 11, 1988

Senator Tim Kelly
Capitol Bldg., Room 101
Juneau, Alaska 99803

Dear Senator Kelly:

First of all, I would like to thank you for providing me with a copy of the draft legislation regarding the Alaska Workers' Compensation Act. I have reviewed this legislation in detail, and attached is a memorandum that I have done in regard to the changes. This memorandum was principally designed to identify the changes for myself and my clients. There are some comments as to what I perceive to be problem areas within the legislation.

As I mentioned to you on the phone quite some time ago, I am principally concerned with trying to obtain an amendment to the Act that would require disability benefits to be calculated upon the employee's wages at the time of the injury. To that effect, I have drafted a change to AS 23.30.220, which is attached. The definition of spendable weekly wage remains the same. The change is based on how to calculate the gross weekly earnings of the employee.

If the employee has worked for the employer in excess of forty weeks, his actual wages during the prior forty weeks will be divided by forty to determine his gross weekly earnings. This provision would eliminate many of the disputes that are now encountered in determining the compensation rate. In addition, the computation of disability benefits based upon the employee's wages at the time of injury would seem to more accurately reflect what the employee needs to survive on during the duration of his disability. Computing benefits in this manner would also follow the economic trends in the state of Alaska. During a down swing, benefits would drop, but during upswings, benefits would tend to increase. In addition, insurance carriers compute the premium to be paid based upon the actual wages paid.

Under the present system, it is not uncommon at all to find an employee who is making $10 an hour when he was injured receiving disability benefits that amount to $12 or $14 an hour or more. Under such a system, the employee has no economic incentive to return to work. In addition, the carrier is then faced with paying for a loss that he did not and could not anticipate when

he wrote the insurance policy.

The proposed legislation goes on to provide provisions for employees who have not worked for forty weeks, and have irregular paychecks. For those working overtime hours, the amount of overtime hours will be computed and added into the gross weekly earnings. The same is true for commissions for salesmen or other people that get paid based upon the actual amount of work performed. Monthly salaries are to be divided by 4.3 to determine the weekly wage.

The current provisions regarding minors or trainees is retained. The only difference is that there is a limitation so that the compensation rate of the employee does not exceed his actual spendable weekly wage at the time of his injury.

The current provision regarding ambulance attendants, policemen or firemen is retained.

I have inserted here the language regarding contributions by an employer to pension or profit sharing plans that was added to AS 23.30.265(15).

I do not represent any particular insurance company or adjusting company in regard to this proposed legislation. It is my own idea, and one that I have harbored for quite some time. I do believe that it will result in a more equitable situation for both the employee and the employer. In some cases, it will result in lesser benefits for the employee, but in other cases, it will result in more benefits. The major benefit that will be derived by both the employer and the employee is that there will be little room for dispute as to what the compensation rate shall be.

In order to present this concept to your committee, I would appreciate it if you could schedule me to testify to the committee for at least thirty minutes. In addition, I would appreciate the opportunity to address some other issues that are contained in the proposed amendments to the Act. If I could obtain an additional thirty minutes of time before the committee, I would certainly appreciate that opportunity. I will be available on both January 19 and 20 to testify. I will come by your Senate offices on January 18. Thank you very much for your cooperation, and if I can answer any questions or otherwise be

of help, please do not hesitate to give me a call. My home phone number is 694-9520.

Sincerely,

MASON & GRIFFIN

Robert B. Mason

RBM:mrm
Enclosures

MEMORANDUM

RE: Proposed Amendments to Workers Compensation Act

DATE: 1/11/88

This memo is intended to provide a brief overview of the significant changes in the proposed workers' compensation legislation that will be considered this session. This memo is not intended, nor does it purport to cover all aspects of the proposed changes. The section numbers referred to below refer to the sections of AS 23.30 and not the sections as identified in the Senate bill. There are several groups and committees who have reportedly drafted provisions/amendments that differ significantly from the ones presented here.

Section 1.

-- Workers' compensation cases are to be considered and decided upon the merits and the Act is NOT to be construed in favor of any party. The obvious exception to this is the presumption of compensability contained in Section 120.

-- The Board is to have virtually exclusive fact-finding responsibilities and decisions will be conclusive if supported by "any evidence."

Section 5.

-- The Department of Labor is empowered to adopt lists and procedures for selection, retention and removal of vocational rehabilitation counselors and/or physicians under Sections 41 and 95 of the Act.

Section 20.

-- If an employee makes a false statement regarding his physical condition on an employment application or questionnaire, he is not entitled to any benefits under the Workers' Compensation Act <u>if</u> the employer relied upon the false representation and that reliance was a substantial factor in hiring the employee, <u>and</u> there was a "causal connection" between the false representation and the injury. It is unclear what would constitute a substantial factor in the hiring and what would constitute a causal connection between the false representation and the injury. I would anticipate a substantial amount of litigation on these issues to determine their meaning and the result would be an application of a test to the facts in each and every case. The concept is good, but language could be

inserted in the Act to clarify the intent.

Section 40.

-- Requires the contribution to Second Injury Fund be made at the time of the report filed with the Department of Labor as required by Section 155(m).

Section 41.

-- There are substantial changes in the rehabilitation provisions within the Act. In addition, there seems to be a change in intent from "rehabilitation" to "reemployment."

-- The reemployment services administrator (RSA) has numerous responsibilities, including an annual report that is aimed at determining the cost of providing rehabilitation services. These reports should be distributed to interested parties.

-- Within 60 days of filing of the notice of injury, the employee may request an evaluation to determine whether he is eligible for reemployment benefits. The RSA will select the counselor to perform this eligibility evaluation from a rotating list which will deprive the carrier from having an input as to who they will hire for rehabilitation services. The counselor performing the eligibility evaluation is not necessarily the counselor that will provide rehabilitation services through the course of the claim.

-- The RSA has the authority to extend the 60-day period if he determines that "unusual and extenuating physical limitations of the employee preclude the employee from making a timely request." Thus, it would seem that the employee must request the rehabilitation counseling within 60 days of his injury; however, the employer can also request that such an evaluation be made. It is unclear whether the employee would waive his right to rehabilitation if he does not make the request within 60 days.

-- The eligibility evaluation is to be performed and apparently the report filed within thirty days following the initial referral. The RSA can grant an additional thirty days.

-- The employee shall be eligible for rehabilitation upon the employee's written request and if a physician determines or predicts that the employee will ultimately have physical capabilities that are less than those required to perform the job as described in the United States Department of Labor's "Selected Characteristics of Occupations Defined in the Dictionary of Occupational Titles," for the employee's job at the time of the

injury, and for any other job that the employee has held within ten years before the injury, or employment following the injury that has been sufficient enough to establish the employee's ability to function in that labor market. Thus, the employee has to make a written request for rehabilitation, and a doctor has to determine that he has a physical impairment that will preclude him from his normal occupation or occupations that he has had in the past. This is very significant when coupled with the definition of reemployability. Further, the burden of requesting reemployment benefits lies with the employee.

-- The employee is not eligible for rehabilitation if the employer offers him a job within his physical capabilities at at least 60 percent of his "gross hourly wages at the time of injury," and there is a labor market for those skills.

-- In addition, the employee is not eligible for rehabilitation benefits if he has been previously rehabilitated in a workers' compensation claim and returned to work "in the same or similar occupation in terms of physical demands." This does not require the same occupation, but only an occupation that requires the same physical capabilities.

-- Once eligible, the employee can select his own rehabilitation specialist. If the employer disagrees with the employee's choice, and the disagreement is not resolved, then the RSA shall assign the case to a third rehabilitation specialist. The employer and employee each have one right of refusal of the counselor selected by the RSA.

-- The reemployment plan requirements are essentially the same as they were before.

-- The priority of retraining is the same as it was before.

-- Non-cooperation will result in a termination of benefits as of the date of the non-cooperation. Non-cooperation is defined to mean failure to keep appointments, maintain average grades, attend programs, maintain contact with the counselor, cooperate in developing a plan and participating in activities relating to reemployment, comply with the requirements of the plan, or comply with the request of the RSA.

-- Benefits, which presumably includes disability benefits, will not extend past two years from the date of the acceptance of the plan.

-- The employer and the employee have ten days after it has been determined he is eligible for reemployment benefits to select a rehabilitation specialist. There are no provisions to determine how this will work or what happens if the ten days lapses, or who has to make the first choice. I can see some disputes developing here, although they should not be major ones.

-- The reemployment plan must be formulated and approved by the parties within 90 days of the determination of eligibility. I feel that this 90 day requirement is going to be impossible to meet in many cases, and there are no provisions for an extension of this time. It would seem that if the parties would agree to an extension of time there would be no problem. In addition, I would suspect that the RSA could extend the time within his reasonable discretion. This 90 days would expire within the first 180 days after the injury if the other time requirements are met. In some cases, six months is not long enough for the doctors to determine what the employee's physical capabilities will be, and the Plan cannot be formulated until that is determined.

-- The plan shall be initiated when the physician determines that the employee is physically able to engage in the plan. There should be a provision for extending the 90-day limitation added to this clause.

-- If a plan cannot be agreed upon, either party may submit a plan to the RSA. The RSA shall approve or deny a plan within fourteen days after it is submitted, and within ten days of that decision, either party may seek a review of the decision by hearing pursuant to Section 110. The Board shall uphold the decision of the administrator unless there is an abuse of discretion. This puts a great deal of power in the hands of the administrator. In addition, it opens up the rehabilitation field to employee and employer oriented firms. The natural prejudices of the individual counselors involved will be hidden under the guise of impartiality, but it is quite clear to me that the battle lines will be drawn within six months. This will put too much control in the hands of one person, whose personal beliefs and philosophies can cause a great deal of dispute. The abuse of discretion standard should be changed.

-- The cost of the plan cannot exceed $10,000, which apparently does not include disability benefits.

-- If the employee becomes medically stationary before completion of the plan, the carrier will begin paying PPD as opposed to TTD. However, if PPD benefits are exhausted before the completion or termination of the reemployment plan, the employer must pay up to 60 percent of the employee's spendable weekly wages, not to exceed $525, until the plan is completed. At the end of the plan, any PPD benefits remaining unpaid shall be paid in a lump sum.

-- The fees of rehabilitation counselors are paid by the employer, and this would include the cost of the one hired by the employee, and are not included in the $10,000 limitation of the cost of the plan. Thus, in many cases, there will be three rehabilitation counselors hired to assist the employee, not

counting the eligibility evaluation.

-- There is a limitation placed upon who can perform rehabilitation work, and if he is not a rehabilitation specialist, he must be employed by a firm that is. There should be a distinction drawn between rehabilitation specialists and job developers.

-- Employability means having the ability to engage in employment that is consistent with the employee's physical capabilities, "but not necessarily the opportunity." This would mean that once the person is retrained and has marketable skills, he is employable. This definition applies only to the rehab section. Once the employee becomes employable, rehab benefits would cease, as would temporary total disability benefits.

-- Labor market means the geographical area where the employee resides, the area of last employment, the state, other states. This provision does not limit the labor market that would be used in determining the employability of the injured employee. I can foresee some difficulties and intense litigation in the case where the employee moves to an economically depressed area and says "this is my area of residence." The definition of employability does not include the opportunity, but a labor market survey in the area of residence would indicate that there are very few skills that would provide a job opportunity for the injured employee. I am not sure what was intended by defining the labor market area in this manner, and it would appear to me that this section of the Act will cause a great deal of litigation and clarification is needed.

-- Physical capacity means "objective and measurable physical traits" such as lifting, carrying, etc.

-- Physical demand means the physical requirements of the job.

-- Reemployment benefits that are limited to $10,000 would include the cost of the eligibility determination and the plan development, but would not include provider fees. It does not say this, but it is quite clear that this would also not include PPD or TTD.

-- Rehabilitation specialist is defined to mean somebody who is a "certified insurance rehabilitation specialist" or someone with equal or better qualifications, as determined by the Board.

-- Renumerative employability means having the skills to allow a worker to earn wages equivalent to at least 60 percent of the worker's wages at the time of injury. If the employment is found out of state, it shall be adjusted to reflect the difference between the average weekly wages of the two states.

It is important to note that this is a comparison of the wages after return to work to the wages at the time of injury, and not necessarily the wages used to determine the compensation rate.

Section 55.

-- Deals with the exclusive remedy provisions, which stay essentially the same. The liability of the employer is exclusive even if the employee's claim is barred because of a misrepresentation on his job application.

Section 95.

-- In regard to medical care, the employee is to designate a physician inside the state where he resides, and cannot make more than one change in his choice of attending phyicians without the written consent of the employer. Referral to a specialist is not a change. Notice of changing attending physicians will be given before the change. There is nothing in here that states the penalty or repercussions for multiple changes or failing to provide notice of a change beforehand. It must be assumed that the employee would not be entitled to have his medical benefits paid if he does not comply with the statute. If he provides notice of the change after the fact, I would assume that the employer would be responsible for medical costs after notice of the change is received.

-- Where a course of treatment requires multiple treatments of a similar nature, a claim for the cost of those treatments is not valid unless the treatments are carried out pursuant to a written plan detailed and prescribed <u>before</u> the commencement of such treatment. In addition, the plan must be signed by the physician and mailed to the employer within one week of the beginning of the treatment. Again, there are no provisions as to what happens if this is not complied with. I would assume that the employer would not have to pay for any treatment up until the time the plan is received. If the plan is not developed before the treatment starts, the employer would presumably be only liable for treatments within the plan after the plan is completed.

-- The plan must include the objectives to be reached, the frequency of the treatment, and the method, manner and means of the treatment. The treatment plan cannot include more than twenty visits within the first 60 days, or four visits a month after the first 60 days. If this is not sufficient, the physician must document the need for services in excess of the guidelines contained herein. This sounds good, but it is not going to affect long range treatment plans, particularly by chiropractors. They will simply have a standardized plan drawn up and put inside their computerized typewriters. They will be

punched out with new names and some slight changes. I suspect there will be some litigation over this issue.

-- Specific penalties and repercussions for failure to comply with the above provisions should be delineated. If not, it will require Board interpretation to determine what happens, which will result in extensive litigation.

-- The employer can request an IME no sooner than 14 days after the injury, and every thirty days thereafter. Requests for an IME shall be presumed to be reasonable, and the employee should submit to the examination without dispute. If he refuses, his rights to compensation shall be suspended until the refusal ceases.

-- Fees charged for medical treatments are currently limited to "charges that prevail in the same community." Fees will be subject to the regulation by the Board "and may not exceed usual, customary, and reasonable fees for the treatment or service in the community in which it is rendered, as determined by the Board," pursuant to the change.

-- The Board is authorized to appoint a medical services review committee or to contract with somebody to provide such services as necessary to assist and advise the board in medical issues.

-- If there is a dispute regarding causation, medical stability, degree of impairment, functional capacity, the necessity of treatment, or compensability between the employee's attending physician and an IME doctor, a second IME shall be conducted by a physician selected by the Board. The cost of such IME shall be paid by the employer. The opinion of this doctor shall "in the absence of clear and convincing objective evidence to the contrary" be presumed to be correct. In other words, the IME as directed by the Board will in essence be conclusive. I can foresee a significant battle in identifying and determining which doctor will provide the IME. The battle lines of defense and plaintiff's doctor, which already exist, will be emphasized even more with this provision. Since neither party can object to the appointment of a physician, it would appear that the Board would have a great deal of control over who should perform the IME.

-- This doctor is protected from liability, except in the case of fraud.

Section 120.

-- The presumption of compensability does not apply to mental injuries.

Section 155.

-- When benefits are controverted solely because of the last injurious exposure rule or that another employer/carrier are responsible for whatever reason, the most recent employer or insurer who is a party to the claim and who may be liable is responsible to make the TTD benefit payments until the case is resolved. Upon a final determination, reimbursement is required to the prevailing party of the benefits paid, including interest and costs and fees. This payment shall be made within 14 days of the decision.

-- The statute does not specifically provide for the payment of attorney's fees to a prior employee who is brought in by a subsequent employer. However, it is safe to assume that what is good for the goose is good for the gander, and that costs and fees will become an expense to be awarded to the prevailing employers in a last injurious exposure rule claim.

Section 155(m)

-- Provides for the filing of annual reports and a reduction in the amount of penalties assessed for late filing of reports.

Section 175

-- The maximum compensation rate has been established at $700. The minimum compensation rate, initially, may not be less than $110. However, if it is determined that the employee's spendable weekly wage is less than $110 per week, "or less than $154 per week in the case of an employee who has furnished documentary proof of the employee's wages" the minimum compensation rate will be adjusted to equal the employee's spendable weekly wages. If 80 percent of the spendable weekly wages are less than $154, the employee's compensation rate shall be $154. I am not sure why there is a distinction between wages computed to be $110 a week pursuant to Section 220 and where the employee furnishes proof of $154 a week wage. In any event, the minimum comp rate has been changed to equal the employee's actual spendable weekly wages, or if the spendable weekly wages are greater than $154, and 80 percent of that figure is less than $154, the compensation rate shall be $154.

-- Overpayments will be deducted from unpaid compensation "in the manner the Board determines." This would indicate that in each situation, if the parties cannot agree, then they must go to the Board to determine how to recover the overpayment. The 20 percent deduction, now in effect, would seem to be the appropriate method to accomplish this.

-- For injured employees who reside out of the state of Alaska, their compensation rate shall be determined by multiplying the ratio of the cost of living in that state divided by the cost of living in Alaska. In theory, if the cost of living in the state where the injured employee resides is greater than Alaska, his comp rate could be increased.

-- In any event, the minimum comp rates will apply.

Section 180.

-- The definition of permanent total disability has not changed. However, in making the determination of whether the employee is permanently and totally disabled, the labor market to be considered is the area of residence, area of last employment, and the state. This would appear to mean that the first labor market considered is where the employee is currently residing, be it in Alaska or out of Alaska. The second area to be considered, in that priority, is the area of last employment, and the third is the state of Alaska. There are no provisions to state at what point you can change priorities, and therefore, it must be assumed that it would be based upon the reasonable probabilities of obtaining employment in each separate area.

-- Inherent in this provision is the concept that you can force an employee to move to accept employment or terminate his PTD benefits. It is unclear to me as to what this particular provision in this section and other sections is intending to accomplish. It should be defined in more definite terms. Failure to meet the wage goals as established in the rehabilitation provisions, that the employee have the skills that would allow him to earn wages that equate to at least 60 percent of his wages at the time of the injury (reduced proportionately if he is residing outside the state of Alaska) does not in and of itself constitute permanent total disability.

-- I am concerned that the establishment of the priorities for the labor market in this and other sections will be interpreted by the board and/or the courts to mean that you must rehabilitate the employee so that he has skills that would allow him to return to work in his area of residence. If that cannot be accomplished, and the employee is not willing to return to his area of last employment or to relocate to another portion of Alaska or the state where he currently resides, that he will be found to be unemployable. Again, the provisions listing the labor market throughout this proposed legislation should be explained in more detail.

Section 185.

-- TTD is to be paid based on 80 percent of the employee's spendable weekly wages for a maximum of two years, "regardless of the continuance of the disability." In addition, TTD benefits will not be paid after the employee is determined to be medically stable. At that point, PPD benefits kick in.

Section 190.

-- The concept of permanent partial disability has been completely revised, and it is entirely based upon a schedule with a presumed loss of wage earning capacity. In some cases, this will greatly increase the amount of benefits one person will receive without the need for such benefits, and greatly reduce the amount of benefits that another would receive when he is in dire need of such benefits. A journeyman carpenter and an attorney will receive the exact same amount of money for the loss of an arm, where it would have little impact on the attorney's ability to return to his prior employment, while precluding the carpenter from doing so. I have always favored the idea of permanent partial disability benefits being paid based upon the actual loss of wage earning capacity suffered by the injured employee. The use of a schedule will reduce the amount of dispute and litigation stemming from permanent partial disability, but it will result in some inequity in the system, and in some cases, a severe inequity.

-- PPD is based upon a total payment of $240,000, to be multiplied by the "percentage of net permanent impairment of the whole person." The payment is to be made in a lump sum and will not be discounted for present value.

-- Net permanent impairment is determined by multiplying the actual degree of permanent impairment as determined by the AMA Guide times the adjustment factor listed in the statute. A person with a 5 percent disability of the whole person would receive no permanent partial disability benefits. The factor increases with each 5 percent of impairment by .2. Thus, an employee with a 6 percent impairment rating for the whole man would receive 1.2 percent of $240,000, or $2,880. A person with an impairment of 30 percent would receive $57,600. For any impairment in excess of 30 percent, the employee would receive that percentage times $240,000. Thus, an individual with a 31 percent disability rating would receive $74,400.

-- The AMA Guides will be used to determine the impairment rating and the impairment rating is not to be rounded off to the nearest 5 percent. The board may adopt a supplemental schedule for injuries that cannot be rated by these guidelines.

-- The minimum payment for a permanent impairment is $250.

-- The percentage of impairment as determined under this section will be reduced by the percentage of permanent impairment that existed before this compensable injury. However, this reduction of an impairment rating will not preclude finding the employee to be permanently and totally disabled.

Section 200.

-- For temporary partial disability benefits, payments will be made based upon 80 percent of the difference between the employee's spendable weekly wages before the injury and the wage-earning capacity of the employee after the injury, for a period of not more than five years. This should be changed so that you are comparing the employee's actual weekly wages before the injury to the wage-earning capacity after the injury, as has been done in other sections.

-- TPD benefits are not to be paid after the employee has reached medical stability.

-- There is a contradiction in this statute where the proposed language says that TPD benefits will not be paid for more than two years regardless of the continuance of the disability. This is inconsistent with the five year period stated above.

-- The wage earning capacity is to be determined by the actual spendable wage if that figure fairly and reasonably represents the wage earning capacity of the employee. The board may use other factors if it does not fairly and reasonably represent the wage earning capacity of the employee. This is likely to cause some dispute, and it would seem, as noted above, that the actual wages before the injury should be compared to the actual wages after the injury.

Section 220.

-- The spendable weekly wage at the time of injury is the basis for computing compensation. This would equal the gross weekly earnings minus payroll tax deductions. Gross weekly earnings are computed by dividing the gross earnings in the two prior calendar years by 100.

-- If the employee has no earnings during the two calendar years or was voluntarily absent from the labor market for 18 months or more of the two calendar years, the board shall determine the gross weekly earnings by considering the nature of the employee's work and work history, but the compensation may not exceed the employee's earnings at the time of injury. This does not mean that the gross weekly earnings cannot exceed it, it means that the compensation rate cannot exceed it. Therefore,

in cases of a declining economy, it would not be unusual for an employee to have a compensation rate that equals his actual earnings at the time of injury.

Section 225.

-- If employer contributions to a pension or profit plan have been included in determining the gross earning and the employee is receiving pension or profit sharing payments, benefits are reduced by the amount so paid or payable. The amount of this reduction may not exceed the increase in compensation benefits caused by the inclusion of these contributions.

Section 247.

-- The employer cannot discriminate against a person who has filed a claim for workers' compensation. This is not to be construed as prohibition for an employer to require the completion of a preemployment questionnaire or application regarding the prospective employee's health or disability history, so long as this document is meant to either document written notice for the Second Injury Fund or to determine whether the employee is physically capable of doing the job. This statute should go further and allow employers to require prospective employees to fill out such a form. Many employees are refusing to fill out questionnaires.

Section 265(15).

-- The definition of gross earnings has been revised to include the total amount of contributions made by an employer to a pension or profit sharing plan during the two plan years preceding the injury, multiplied by the percentage of the employee's vested interest in the plan at the time of injury.

Section 265(17).

-- Injury does not include mental stress unless it is established that the work stress was extraordinary and unusual and the work stress was a predominent cause of the mental injury. The amount of work stress shall be measured by the actual events rather than the misperceptions of the employee. Mental injury does not arise out of the course and scope of employment if it results from a disciplinary action, work evaluation, job transfer, lay off, demotion, termination or similar action taken in good faith by the employer.

Section 265(34).

-- Medical stability means that point at which further objectively measurable improvement is not reasonably expected to be achieved from additional medical care or treatment, notwithstanding the possible need for additional care for the possibility of improvement or deterioration resulting from the passage of time. Medical stability shall be presumed in the absence of objectively measurable improvement for a period of 45 days. This presumption can be overcome only by clear and convincing evidence.

1. AS 23.30.220 is repealed and reenacted to read:

Section 23.30.220. Determination of Spendable Weekly Wage. (a) The spendable weekly wage of an injured employee at the time of an injury is the basis for computing compensation. It is the employee's gross weekly earnings minus payroll tax deductions. It is the intent of the legislature that the gross weekly earnings be computed as closely as possible to reflect the actual wages the employee was earning at the time of his injury. The gross weekly earnings shall be calculated as follows:

(1) If the employee has worked for the employer for a period of time in excess of forty weeks, the gross weekly earnings will be computed by dividing the total wages and/or commissions earned and dividing by forty. In the absence of clear and convincing evidence to the contrary, this shall be the employee's gross weekly earnings.

(2) The gross weekly earnings will include wages received for overtime hours. If the employee is working overtime hours on an irregular basis, an average of such overtime hours and the corresponding wages will be used to determine his gross weekly earnings. This average will be computed by determining the number of overtime hours per week worked in the twenty weeks immediately preceding the injury. If the employee has not worked for that employer for twenty weeks, then the number of overtime hours will be determined by first the number of overtime hours worked by the person that the employee replaced, or secondly, the number of overtime hours worked by employees of the same employer in the same job function.

(3) If the employee receives commission based on sales achieved or the amount of work performed, such commissions will be included in the determination of his gross weekly earnings. The average of such commissions will be computed by determining the number of commissions received in the twenty weeks immediately preceding the injury, or if the employee has not worked for that employer for twenty weeks, by determining the reasonable amount of such commissions to be earned by the employee over a twenty week period and dividing by twenty weeks.

(4) If the employee is being paid based upon a monthly salary, regardless of whether payments are made on a weekly, bimonthly or other basis, the gross weekly earnings shall be the monthly salary divided by 4.3.

(5) If an employee when injured is a minor, an apprentice, or a trainee, as determined by the Board, whose wages absent such injury would automatically increase during the period of disability, the projected increase will be included in computing the gross weekly earnings of the employee. This increase will be limited so that the compensation rate of the employee will not exceed his actual spendable weekly wage at the time of the injury.

(6) If the employee is injured while performing duties as a voluntary ambulance attendant, policeman or fireman, the gross weekly earnings for calculating compensation shall be the minimum gross weekly earnings paid a full time ambulance attendant, policeman or fireman employed in the political subdivision where the injury occurred, or if the political subdivision has no full time ambulance attendants, policemen or fi[illegible]n, at a reasonable figure previously set by the political subdivision to make this determination, but in no case may the gross weekly earnings for calculating compensation be less than the minimum wages computed on the basis of forty hours per week.

(7) Gross weekly earnings will include the amount of contribution made by an employer to a qualified pension or profit sharing plan, to be computed on a weekly basis. The gross weekly earnings will be increased by the amount of such contribution on a weekly basis, multiplied by the percentage of the employee's vested interest in the plan at the time of injury.

(b) The Commissioner shall annually prepare formulas that shall be used to calculate an employee's spendable weekly wage on the basis of gross weekly earnings, number of dependants, marital status, and payroll tax deductions.

2. Section 23.30.225 is amended by adding a new subsection to read:

(c) If employer contributions to a qualified pension or profit sharing plan have been included in the determination of gross earnings and the employee is receiving pension or profit sharing payments, weekly compensation benefits payable under this chapter shall be reduced by the amount paid or payable to the injured worker under the plan for any week or weeks during which compensation benefits are also payable. The amount of the reduction may not in any week exceed the increase in weekly compensation benefits brought

about by the inclusion of employer contributions to a qualified pension or profit sharing plan in the determination of gross earnings.

SITKA FAMILY HEALTH CLINIC
INTERNAL MEDICINE/DIAGNOSTICS
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1 SB 322

APR 21 1988

April 12, 1988

John Sund
State of Alaska
House Judiciary Committee
P.O. Box V
Juneau, AK 99811

Dear Representative Sund;

I am writing you regarding the newly proposed workers' compensation bill (H.B. 352/S.B. 322). I find there are a lot of difficulties with this as well as the present system that we are under. One of the provisions is to limit the number of visits for the first two months to 20 unless a treatment plan is provided. In most cases this is no problem because the number of visits in a two month period is usually substantially less than this. However, if the patient is hospitalized, this number of visits will be exceeded and I would think that a summary or hospitalization should be sufficient to supply information about what is going on. I think that the provision that has to do with forcing the worker to see the employers' doctor if requested every 2 months does constitute a way of harassing the patient.

The proposed bill would allow the patient to change physicians once. Unfortunately even now I have seen insurance companies use this to the patient's detriment. For example if I send the patient down to Seattle to have some type of orthopedic surgery done the patient should be continuing care in Sitka with me for follow up treatment. However at least two insurance companies have tried to consider surgeons either in Seattle or someplace outside of Sitka such as Ketchikan as the only treating physician so that the patient had no recourse for follow up treatment of their problem in Sitka. This situation I'm sure is common everywhere in Alaska outside of major towns which have orthopedic surgeons. Under the proposed revision of the law this could become an even more difficult problem.

I am also very negative about the practice of sending the patient down to the lower 48 for an exam by a biased group picked by the insurance company to basically give the answer that the insurance company wants. For example I recently had a patient who had been hired in a job. At the time she was hired she was free of back pain. Her job consisted of very frequent lifting. In the coarse of lifting she developed a back pain. No pre-employment back films were taken before this patient was hired and the back pain which had never been present before developed during the coarse of lifting at work. She was sent South by the insurance company to an evaluation group who in their wisdom determined that the patient had osteoarthritis and supposedly that was the reason for her back pain not the lifting which she was doing on the job. I would consider this and many other determinations basically cheating the patient out of medical care and other benefits which they were due.

If you really want to save money in workers' compensation insurance there are two areas of improvement. I know of one place that seems to consistantly hire people for heavy lifting without regard to the type of bone and muscle build that the person has. People hired for this type of lifting should have heavy bones and good musculature. No such selection is done and so as far as I know no pre-employment back films are taken. I think that it is important for companies to hire a person who is physically able to do the work if it involves heavy physical exertion of any sort.

The other problem that I see is that often workers will be injured repeatedly and a piece of equipment which is responsible for these injuries will not be fixed until two or three people have already had accidents. I think that companies that do this should be penalized and their insurance rates raised.

Yours truly,

J. Paul Lunas, M.D.

JPL/ty

cc: Judiciary Committee Members
Finance Committee Members

APR 21 1988

DATE: April 15, 1988

TO: House Judiciary Committee RE: CS, SB322 Workers' Compensation

FROM: Larry Smith, Fritz Creek, 99603, (907)235-7199, 7879

I am not associated in anyway with a labor organization, employer, or any business that profits from compensation. I am the Director of the Carpenter's Co-Op, a local group. I serve on the Bradley Lake Steering Committee established by the City of Homer and funded by the Alaska Power Authority to advise on socio-economic impacts of the project. Years ago, I served on the State Council of Carpenter's Safety Compensation Committee and as Chairman of the Anchorage Central Labor Council Industrial Safety Committee. Until his retirement in 1976, I worked with Pete Lannen, Executive Secretary/Treasurer of the State Council. Pete represented 32 workers before the Board, all of them successfully. It is no wonder that the industry caused a bill to be introduced forbidding representation except by attorneys. As Pete was the only non-attorney representing workers in those years this bill was called the Lannen Exclusion Act. What struck us was that these cases were only a small portion of many valid claims that had been rejected wrongfully, and we concluded, deliberately. I know of one questionable claim that was not only accepted, but over-paid, within days of filing. A claim by the president of a construction union local, who, ever after, could be heard advising rejected claimants that there was not point in pressing their claims against a

system that chose to err on the side of generosity. Some of these took Pete's advice instead and had their claims validated by the Board. Not one of the 32 decisions was appealed. Our impression was tha valid claims were routinely rejected to take advantage of the good and trusting nature of people unlikely to argue with a determination.

I have been a little dismayed to hear no echo from the institutional memory of the alternative which has most appealed to me since territorial days: the establishment of an exclusive state fund for workers' compensation. The experience of Alaska and other states where simple regulation of private insurance carriers is the method of choice, is grossly inferior to that of states and provinces with exclusive or partial state funds if the criteria are; the percentage of premiums that go to benefits, cost of program, and prompt and full treatment and rehabilitation of insured workers.

It may be reasonable to offer the benefits of a state fund with the option of pooling or self-insurance. We can predict the anguished whining of those who will call this unfair government competition. Hopefully, these pitiful laments will not emanate from the same sources appealing for state tax breaks and bail outs. I would a lot rather see the state administer a comprehensive not-for-profit health, welfare, workers' compensation and pension system then get us into competition with the private sector by gifts to extractive industries or their front companies.

It may be that, from time to time, a private insurance pool like the Alaska Timber Trust could compete with a state fund. Some pools for fishing vessels are pretty amazing; enclosed are the accountant's review and financial statements for the United Marine Fund. Membership requires the endorsement of three present members. The vessel owner who supplied the report paid 2/3 of the lowest non-pool alternative for identical coverage in 1987. His dividend from the pool amounted to 85% of premium. His net expense was 1/9 of the alternative. This fisherman has belonged to the pool since 1985. He anticipates a dividend in excess of premium by 1990. Past experience has been the pool paying fishermen to belong to it after five years of membership.

It is time to renew and make functional te social contract for workers' compensation. The parties to the contract have let us drift seriously off course in Alaska. The state has never made a decent effort to enforce the occupational safety code -- using standard methods of reporting compare our rate of death and serious injury with other states. The last time I read a National Safety Council report our rate for construction was 2 1/2 times the national average and 1 1/2 times the second worse state, Montana. Organized labor and business associations have failed to conduct meaningful safety programs. Safety complaints by unions are more frequently a tool used in unrelated disputes, while serious safety problems go untended. In

30 years at the carpentry trade I have rarely seen construction projects without serious, multiple code violations. There is good enforcement of the hard hat and notice posting regulations, but improperly maintained and operated heavy equipment, unshored ditches, defective scaffolding, and operating too close to powerlines is the rule. It is no accident when these gross violations produce injury and death; it is an accident that more people aren't hurt. Under the present system the insurance/medical/legal industry has no motive to reduce costs. It is hard to conceive incentives that would make the industry less immoral. Attempting to achieve the results by regulation is an enormously expensive and problematic undertaking given ability and willingness to litigate.

At the base of this pyramid of profit is the worker and his willingness to risk injury to make a living. It is profoundly correct for breadwinners to make sacrifices for their families. The exploitation of that instinct is a pervasive evil in the workplace. Made worse when work is scarce. In this boom and bust society we have trained our labor force to choose between risk and unemployment. It will take years of sustained effort to reverse the situation. To begin requires generous incentives and draconian penalties: a choice between cash bonuses or criminal sanctions. Making it worth the employers while to send a new and opposite message to employees: safety violations will cost you your job. To enforce regulations, effectively, requires something we have never come close to in Alaska:

a well-trained, well-organized, well-paid Division of Occupational Safety led by professional, not political, appointees. Code violators should pay the full cost of the enforcement effort related toa n offense. Short of making agents, lawyers, doctors take the pace of injured workers I don't know how to engage their interests in reducing the cost of patching up the job-wounded. It is surely time to reduce profits taken at the expense of too many injured breadwinners. An Alaska fund could accmplish this.

I have enclosed a chapter from the book USEFUL TOIL, edited by John Burnett, Penguin Books, 1984. On pages 286 and 287 is an account of carbon monoxide poisoning on the job that could have easily occurred in 1988 as in 1820. These days the most common temporary heat source for construction projects, hangar and shop heating and the like is a diesel burning unit that looks somewhat like a jet engine. In violation of the code these are commonly used unvented. In the construction of the new Homer High School 4 workers were hospitalized after sharing a confined space with a heater in place to warm a concrete pour. So poorly is our code enforced that forbidden hardware is readily fund for sale in Alaska's hardware stores. Stilts for drywall installation and scaffold lifts and brackets are examples. The grade of lumber required fro scaffold planks is almost impposible to come by in our lumber yards. All to the point that the code may be strict, but enforcement is all but non existant.

Larry Smith

Sirs:

As I tried To testify last Saturday the 16th of April, I became So stricken with grief and anger, I had to stop short of what I really wanted To say. That is; that the system that allow this ruthless treatment of helpless Claimants will never be free of Carriers or self insuring Corporations that profit by brutalizing harrassing and defrauding their victims.

I have seen the human suffering and despair in so many others as well as having Endured so much personally. I want to recommend again as I did in '83 to please run the Comp system as the state runs Unemployment - leaving Private Carriers out of the picture completely. let the state collect premiums and care for the disabled and adjust Claims and buy

annuities. It would be so much more humane (and lots cheaper) in the insurance game, Each claim is a Tug of War. On one side are multi million dollar Corporations - with teams of lawyers - some doctors, maybe even public officials. On the other end of the rope a helpless - confused often suffering + destitute claimant who doesn't stand a chance of being treated fairly.

No one can expect any thing of any carrier except the WORST and none of them will ever play fair when they profit by beating the claimant down completely. Please scrap the system and put the carriers out of business.

774 Smallwood
Frbks 99712

Sincerely
Diane Johnson

Anchorage, Alaska
April 13, 1988

To: Judiciary Committee
State of Alaska House of Representatives

Subject: SB 322

My name is Robert P. Clark, Jr. I am a member of Local 367 of the Plumbers and Steamfitters Union.

It is my opinion that the Insurance Industry in Alaska has mislead the joint labor and management legislative task force and the legislature by arbitrarily increasing insurance premiums on workman's compensation. I am convinced of this after learning of the major lawsuit by several state governments against several insurance companies for excess profiteering.

Admittedly the current Alaska Workers' Compensation Act needs some up-dating, however with proper enforcement of the Act we would have a better situation than if SB 322 were passed into law.

It is my recommendation that an independent audit be made of the insurance industry in Alaska and the results be made public before we decide to cut the benefits of the Alaskan worker in these inflationary times.

It is my hope that the judiciary committee and the House of Representatives will defeat SB 322 and delay amending the current law for a minimum of one year. Meanwhile obtaining more accurate information from insurance companies and more public input from injured and disabled workers. All of which should create a more livable atmosphere for employer and employee.

Thank you.

Robert P. Clark, Jr.

Robert P. Clark Jr.

NARPPS

National Association of Rehabilitation Professionals in the Private Sector

APR 21 1988

ALASKA CHAPTER

April 19, 1988

House Judiciary Committee
Representative John Sund, Chairman
Representative Max F. Gruenberg, Jr.
Representative Robin Taylor
Representative Fran Ulmer, Vice Chairman
Representative Mike Navarre
Representative Ramona Barnes
Representative Sam Cotten

RE: WORKERS' COMPENSATION REFORM LEGISLATION (SB 322)

Dear Representative:

I addressed the House Judiciary Committee during the public hearing on April 13, 1988, and I learned after my testimony that nearly all of the Committee Members had left the room prior to my testimony. Knowing now, that the Committee did not hear my comments, I am submitting a written version of my testimony and I certainly hope that you will take the time to read this.

My comments are made in behalf of the Alaska Chapter of the National Association of Rehabilitation Professionals in the Private Sector. Our Association Members consist of Nurses, Job Placement Counselors, Therapists, and Vocational Rehabilitation Counselors, who work in the private sector. As such, we have worked to a large extent within the Workers' Compensation system as service providers and we have an obvious interest in the structuring of the vocational rehabilitation provisions within that system. We have encouraged our membership to be individually active in expressing concerns and providing input and many of our members have done so. Additionally, we have attempted to poll our membership in order to define areas of common concern. We find a diversity of opinion among our membership in many areas in regard to the Workers' Compensation Bill, although there have been certain areas that have been addressed by a consensus of our members. We presented testimony to the Senate and House Labor and Commerce Committees on February 12, 1988, summarizing those findings. I will briefly reiterate those comments.

The most commonly stated area of concern focuses on the initial stages of the rehabilitation process. The Bill requires an injured

worker to submit a request for evaluation in writing within 90 days of the date of injury. Rehabilitation professionals are highly skeptical of the practicality of this. Injured workers are typically not ready or psychologically prepared to face the possibility of needing vocational rehabilitation until several months post-injury. Also, injured workers are typically not well versed in procedural matters and are dependent upon information supplied to them by adjusters, state agencies, employers, or whomever. Even when information is provided, confusion can be expected as a result of the injured workers entering into a system that seem intimidating. In short, we predict a great deal of difficulty in the early stages as a result of the proposed system. Rehabilitation providers feel that the injured worker should have the choice of whether or not to participate in vocational rehabilitation services, but that an initial evaluation should be mandatory at 90 days post-injury if it has not been done earlier. Beyond that point, at which time the worker will be more well informed of the benefit for rehabilitation, the worker should be allowed the choice of continuing with rehabilitation or not.

The eligibility criteria described in Section 10 (e) has also caused concern among our membership. According to this subsection, the physical demands representative of the employee's job at the time of injury will be extracted from the Selected Characteristics of Occupations Defined in the Dictionary of Occupational Titles for the employee's job at the time of injury and any jobs held within the last ten years. This becomes a theoretical assessment not requiring on-site job analysis of the specific job of injury and would not take into account any unique circumstances relevant to that particular job. The stipulation that all jobs held within the last ten years be considered seems arbitrary. In the practice of vocational rehabilitation as it is generally applied in the Workers' Compensation arena, employability is based upon an evaluation of the "whole person" which takes into account not only transferable work skills, but also considers such factors as other noninjury related medical or psychological factors; social, personal, and family variables; and labor market considerations. The concern of our membership is that the eligibility criteria currently listed in the Bill are based upon theoretical analysis and may not represent an actual and valid evaluation of the worker's employability. Our recommendation is that the ability to return to previous employment be evaluated according to actual on-site job analysis of that specific job. A second criteria for eligibility should a determination of whether or not the injured worker is likely to benefit from a Rehabilitation Services Plan, taking into consideration all of those factors previously indicated.

Rehabilitation providers are particularly sensitive to the need for regulatory guidelines pursuant to any statutory language. We strongly feel that the existing problems with rehabilitation result from the lack of clarity of existing statutory language. This leaves the system open for various interpretation and is a breeding ground for dispute and litigation. Whatever form the rehabilitation provisions take, we emphasize the need for very clearly stated and precise parameters defining the limits of rehabilitation. Our membership generally agrees that the proposed bill does a better job of this than the current one, but we also feel compelled to emphasize the need to expeditiously promulgate clear and precise regulations pursuant to any bill passed. We also want to emphasize the need for ongoing review and evaluation of procedures and processes within the Workers' Compensation system and we would hope that those people involved in the provision of these services become an integral part of that review process.

Sincerely,

Dennis J. Johnson, M.Ed., C.R.C., C.I.R.S.
President, Alaska NARPPS
3501 Denali Street, Suite 102
Anchorage, AK 99503
(907) 563-5014

DJJ/pjm

cc: Representatives:

Albert P. Adams	Cliff Davidson
H.A. (Red) Boucher	Mike Davis
Mark Boyer	Johnny Ellis
Ka Brown	Steve Frank
Bette Cato	Walt Furnace
Virginia Collins	Peter Goll
Ben Grussendorf	Alyce Hanley
Adelheid Herrmann	Lyman F. Hoffman
Niilo Koponen	Ronald L. Larson
Terry Martin	Curt Menard
Mike Miller	Drue Pearce
Fritz Pettyjohn	Randy Phillips
Pat Pourchot	Steve Rieger
Richard Schultz	C.E. Swackhammer
F. Kay Wallis	James E. Zawacki
Dave Donley	Bill Hudson
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HERBERT L. FAULKNER (1882-1972)
FRANK M. DOOGAN (1923-1977)

**ADMITTED IN WASHINGTON & ALASKA
OTHERS NOT ADMITTED IN WASHINGTON

April 20, 1988

Representative John Sund
Chairman of the House Judiciary Committee
Alaska State Legislature
P.O. Box V (MS 3100)
Juneau, Alaska 99811

Dear John:

As you know, for many years I have represented insurance companies in various capacities, including the defense of workers' compensation claims. It is perspective gained from that experience that causes me to write. I want to emphasize that this letter is not written on behalf of any client and is intended solely as comment by an interested citizen.

I understand that the current version of the proposed workers' compensation legislation contains a provision for a mandatory rate rollback. As of this date, I understand that a 6% rollback is in the bill and there is talk of increasing the number to 10%. It is my belief that adoption of such a provision is shortsided and the result is anti-consumer in nature. Adoption of such provision will surely result in a withdrawal of many carriers from the Alaska insurance market. While some carriers will remain in the business, competition will unquestionably be reduced. At the conclusion of any mandatory rate reduction, new rates will be adopted which reflect the realities of the marketplace and that will be a marketplace that has fewer competitors.

The Division of Insurance is charged with the responsibility for reviewing proposed rates and determining if proposed rates are justifiable. That mechanism should be sufficient to insure that insurance companies are not allowed an unfair rate of return. If it is not, the Division's practices and procedures should be reviewed. I cannot understand why the legislature would consider going beyond that

regulatory process in a fashion which would almost certainly decrease competition.

A reduction of competition in the insurance markets could have sweeping ramifications. It is my belief that stiff competition among workers' compensation insurance carriers in a fairly regulated market results in better claims handling and encourages carriers to offer more attractive total insurance packages which include various types of coverage. Legislation should foster rather than undercut that type of market.

I would like to add further comments regarding a proposal to require the Workers' Compensation Board to review and approve defense attorney fees. The proposal apparently arises from the fact that the Board is required to review and approve fees charged by plaintiff's attorneys. However, a comparison between defense and plaintiff attorney fees is not appropriate in this context. It is only in rare circumstances that the plaintiff's attorney is compensated as a result of a fee agreement with his client. Rather, the insurance carrier is ordinarily required to pay the plaintiff's attorney. There is no fee agreement between the carrier and the plaintiff's attorney and thus, an independent arbiter such as the Workers' Compensation Board is required to review and approve the fee. In rare circumstances the plaintiff's attorney is paid directly by his client and the paternalistic philosophy of the Compensation Act is reflected in the provision that requires the Board to approve such a fee, apparently to insure that the plaintiff's attorney does not unfairly take advantage of the injured worker.

The defense attorney is, of course, compensated under a fee agreement negotiated between the attorney and the insurance company. There is no paternalistic philosophy embodied in the Compensation Act that would require the Board to protect the insurance company from unfair charges by the attorney. More importantly, insurance companies are sophisticated consumers of attorney services and are fully capable of negotiating reasonable fees. The economics of the insurance industry compel carriers to limit litigation costs and thus, there is already significant pressure on carriers to keep fees at a minimum.

I understand that the legislative goal in adopting new workers' compensation language is to reduce the overall costs to the system. If the Workers' Compensation Board was granted power to cut back on the amount of litigation expense incurred

by insurance carriers, through a reduction in defense attorney fees, the carriers ability to defend itself would be reduced beyond the limitations already imposed by the Compensation Act and amounts paid for compensation and medical expenses would certainly increase as a result. Therefore, adoption of this proposal would not reduce total costs and I suspect that the end result would be an increase in overall system costs.

For all of these reasons, I would urge you to eliminate any amendment which requires the Board to review and approve defense attorneys' fees. This is particularly appropriate in light of the fact that, to my knowledge, there is no data to suggest that defense costs are a significant factor in contributing to the insurance premium crisis that presently exists.

I greatly appreciate your consideration of these matters.

Very truly,

Randall J. Weddle

RJW/llg
7674k

MTL SERVICES
9111 Vanguard Drive
Anchorage, Alaska 99507
(907) 344-7341

MARJORIE T. LINDER, M.A., C.R.C., C.I.R.S.
Vocational Rehabilitation Counselor

April 5, 1988

APR 11 1988

Representative John Sund
State of Alaska
House of Representatives
Juneau, Alaska 99811

Re: SB 322

Dear Representative Sund:

The following represents my feelings in support of scheduling all injuries using the Whole Person theory under the AMA Guides instead of using the wage-loss concept.

As a rehabilitationist, I believe that any system for compensating disability of any sort tends to contribute to the degree of disability by reducing the normal economic incentives for return to work. I believe that scheduled systems seem to offer an advantage over wage loss systems in that they discontinue the dependency relationship between the worker and the insurance company at the earliest possible opportunity. That minimizes the effect of compensation on functional overlay and incentives for return to work.

Scheduled systems also minimize the necessity for insurance companies to maintain relatively large numbers of reserves against the potential of future wage loss, a very expensive proposition in the current insurance rating system. By removing the interest of the claimant and his attorney to build awards based on wage loss, substantial savings in costs should be realized. By discontinuing the relationship with the insurance company at the earliest possible time, the claimant will also discontinue his relationship with his attorney sooner, thus reducing litigation (which I believe will be heavy at first.)

Despite the critics and actuarial reports, I know that while the currently scheduled awards may increase, the unscheduled awards will decrease and be more predictable. Please give every consideration to supporting this bill.

Yours truly,

Marjorie T. Linder, M.A., CRC, CIRS

2

MARJORIE T. LINDER, M.A., C.R.C., C.I.R.S.
Vocational Rehabilitation Counselor

MTL SERVICES
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Anchorage, Alaska 99507
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March 23, 1988

Representative John Sund
Pouch V
Juneau, Alaska

Dear Representative Sund:

I am a vocational rehabilitation counselor who has worked in Alaska in the workers' compensation system for ten years, which gives me a unique vantage point. I also worked on the WCCA rehab committee. Thus, I believe I understand the intent of the proposed legislation.

Rehabilitation under the current Alaska Workers' Compensation System reminds me of the movie, "Requiem for a Heavy Weight," which deals with a no longer popular but aging boxer. His trainer and manager arrange a phony wrestling match for this once proud athlete and then they bet against him. Like the movie's protagonist, the injured worker, in the course of his claim, must enter an arena he does not want, participate in a contest he does not choose, and purposely throw the fight to support others who bet against him. If he works hard to preserve his income, under the wage loss concept, he receives no money. I have seen many a frustrated claimant utilize rehabilitation not to advance himself but to advance his claim. Likewise, I have seen many an insurance company utilize rehabilitation services to decrease the value of the claim. Both are a waste of time, energy, and money!

I believe that SB322 provides the claimant with an alternative to winning by losing. By scheduling all injuries, the claimant can obtain a settlement based on the degree of medical impairment and help himself without hurting his claim. By requiring the claimant to invest the proceeds from his claim into his own support during his rehabilitation program should the program's length extend past medical stability, the system can attend to more motivated clients and promote early intervention. By reducing the amount of support provided after medical stability, the system will discourage crippling dependency. By making participation voluntary, the system will encourage freedom of choice. The increased length of training programs should make bonafide programs more possible.

While I hope I have your attention, I wish to comment on a recent amendment which came out of the House Labor and Commerce Committee regarding a Board order to change the specialty of the Board selected IME physician from that of the treating physician.

Some people have dubbed this the "chiropractic amendment". I believe the issue is much larger than chiropractor vs. M.D. It has to do with the Board's right to have complete information to make an informed decision without requiring the employer to put on an expensive hearing and the employee to incur delays in swift adjudication of his case. It has to do with quality medical attention. For instance, I can think of cases in which the claimant naively chose the wrong specialist as his treating physician. I remember a claimant who was utilizing a pulmonary specialist to treat her back pain. I remember a claimant who was misdiagnosed by a GP as having a herniated disc when the claimant's real problem was a disc space infection (a life threatening problem, I might add). I remember a chiropractor who alleged that a plantar wart was somehow related to a female claimant's lifting a cow. Yet another claimant's cancer of the spine was missed by his family practioner from whom he sought care after he experienced back pain on the job. Obviously, all of these folks were treating with the wrong specialist for their problem. Had it not been for an IME ordered by the employer, no one would have had appropriate information. In these cases, the IME physicians' opinions radically differed from the claimants' treating physicians. Under the House amendment outlined, the Board would be limited to selecting yet another inappropriate specialist for the claimant's problem. Somehow, this does not make sense in either the name of justice or the quality medical care.

Yet one more amendment to the bill disturbs me. This one has to do with a mandated roll back in insurance rates. I believe the proposed bill, should it not be tampered with, has at least a 6% reduction in costs built into it. My understanding is that a new NCCI report corroborates this belief. However, having a roll back in rates thwarts the free enterprise system. It may well chase carriers from Alaska leaving only one Alaskan based company. Creating a monopoly may foster opportunism. I strongly urge you to reconsider this additive, which I believe will prevent healthy competition and eventually raise the insurance rates.

In short, I support the original Senate Bill negotiated by the Labor Management Task Force and no House substitute. I invite you to call on me to provide information to you or your committee. Please thank Sherry Kockman for being responsive to my comments when I telephoned her last week.

Yours truly,

Marjorie T. Linder, M.A.,CRC, CIRS

Section 10 AS 23.30.041

(e) (2) other jobs that exist in the labor market that the employee has held or received training for within 10 years before the injury or that the employee has held following the injury, in either case for a period long enough to obtain the skills to compete in the labor market according to specific vocational preparation codes as described in the "Selected Characteristics of Occupations."

TESTIMONY ON SB 322
WORKERS' COMPENSATION REFORM

345-7181 FRANK THOMAS-MEARS
12541 Atherton 99516 ALASKA CHAPTER
AMERICAN SUBCONTRACTORS ASSOCIATION

MY NAME IS FRANK THOMAS-MEARS. I AM THE SECRETARY OF THE ALASKA CHAPTER OF THE AMERICAN SUBCONTRACTORS ASSOCIATION AND I AM TESTIFYING IN THEIR BEHALF TODAY.

FIRST, LET ME SAY WE ARE EXTREMELY SUPPORTATIVE OF THE ACTIONS OF THE LABOR/MANAGEMENT TASK FORCE AND OF THE WORKERS' COMPENSATION COMMITTEE OF ALASKA. WE APPLUAD THEIR COLLECTIVE EFFORTS. EACH INDIVIDUAL HAS DELIVERED ON THEIR PERSONAL COMMITTMENTS TO EFFECT REASONABLE CHANGES IN THE WORKERS' COMPENSATION SYSTEM AND THEY DESERVE OUR SUPPORT.

OUR APPRECIATION ASIDE, WE ARE NOT SATISFIED WITH THE FINANCIAL RESULTS OF SB 322.

SIXTEEN MONTHS OF NEGOTIATIONS HAVE ONLY MITIGATED A FUTURE PREMIUM INCREASE. THESE NEGOTIATIONS HAVE NOT REDUCED CURRENT PREMIUMS BY 15% AS WAS AGREED TO BY ORGANIZED LABOR AND MANAGEMENT. AND I THINK IT'S NOTEWORTHY HERE THAT THE ORIGINAL GOAL OF THE LABOR/MANAGEMENT TASK FORCE WAS A 30% REDUCTION IN CURRENT PREMIUMS.

WE ARE NOT SATISFIED WITH THE LEGISLATIVE RESPONSE MANDATING A PREMIUM DECREASE FROM THE INSURANCE COMMUNITY. WHY SHOULD THESE FREE ENTERPRISE INSURANCE CARRIERS BEAR THE FINANCIAL BURDEN OF WRITING WORKERS' COMPENSATION BUSINESS IN ALASKA AT A LOSS. WHY MAKE THEM RESPONSIBLE FOR THE SHORTCOMINGS OF THE SYSTEM.

WHILE WE APPLAUD THE INSURANCE INDUSTRY ON ONE HAND FOR VOLUNTARILY REDUCING THEIR PREMIUM LEVELS, WE ARE CRITICAL OF THE PROCESS AND METHOD BY WHICH THEY ARRIVED AT THIS COLLECTIVE ACTION. WE DO NOT BELIEVE THE PROCESS (and let me emphasis process) BY WHICH THEY ARRIVED AT THIS CONSENSUS IS IN THE BEST PUBLIC INTEREST.

SO HERE WE ARE TODAY, AFTER ALL THE NEGOTIATIONS AND POLITICING, WITH ALASKAN COMPANIES STILL UNABLE TO COMPETE WITH OUTSIDE FIRMS DOING BUSINESS IN OUR STATE. AFTER ALL THIS, WE STILL HAVE ONE OF - IF NOT THE MOST - EXPENSIVE WORKERS' COMPENSATION SYSTEM IN THE NATION.

SO WHERE DO WE STAND ON THE ISSUE OF WORKERS' COMPENSATION REFORM AND SB 322.

FOR OUR OWN SELF-PRESERVATION, WE SUPPORT PASSAGE OF SB 322.

WE HAVE WITNESSED THE DEMISE OF MANY CONTRACTORS AND SUPPLIERS DURING 1987 AND 1988. IN MANY INSTANCES, THE INCREASED COST OF WORKERS' COMPENSATION WAS THE FINAL STRAW THAT BROKE THE CAMEL'S BACK.

IF THIS LEGISLATION IS NOT PASSED, AND ALASKAN CONTRACTORS AND SUPPLIERS MUST ABSORB A PROJECTED 25% TO 30% PREMIUM INCREASE, MANY MORE OF US WILL DEMISE IN 1989 AND 1990.

TO REPEAT, WE ADAMANTLY STAND BEHIND PASSAGE OF SB 322.

NOW TO THE GOVERNMENT'S SIDE OF THE WORKERS' COMPENSATION EQUASION.

TESTIMONY ON SB 322
WORKERS' COMPENSATION REFORM

FRANK THOMAS-MEARS
ALASKA CHAPTER
AMERICAN SUBCONTRACTORS ASSOCIATION

WE FEEL THAT THE STATE OF ALASKA HAS A DUTY TO THE CITIZENS AND BUSINESSES OF THIS STATE TO ADEQUATELY ENFORCE OUR WORKERS' COMPENSATION LAWS AND REGULATIONS. IN MANY INSTANCES, WE DO NOT FEEL THE STATE HAS DONE AN ADEQUATE JOB.

WE HAVE LAWS CURRENTLY IN EFFECT THAT REQUIRE ALL BUSINESS ENTITIES DOING BUSINESS IN ALASKA TO HAVE WORKERS' COMPENSATION WITH ALASKA BENEFIT LEVELS.

THE DEPARTMENT OF LABOR IS CHARGED WITH THE RESPONSIBILITY TO ENFORCE THIS LAW. IN OUR OPINION, THE DEPARTMENT OF LABOR HAS INEFFECTUAL IN CARRYING OUT ITS DUTY AND IT HAS COST BUSINESS IN OUR STATE VERY DEARLY. WE DO NOT BELIEVE THIS IS BECAUSE THE DEPARTMENT OF LABOR LACKS THE WILL OR INCLINATION TO DO SO, WE BELIEVE IT IS BECAUSE THEY ARE NOT ADEQUATELY FUNDED.

WE UNDERSTAND THAT COMMISSIONER SAMPSON INHERITED THE CURRENT SYSTEM AND IS NOT RESPONSIBLE FOR ITS PAST FAILURE TO ADEQUATELY POLICE ENFORCEMENT OF THIS LAW. WE HAVE EVERY FAITH THAT HE WILL TAKE PERSONAL ACTION TO INCREASE THE ENFORCEMENT BUDGET FOR HIS DEPARTMENT TO RAISE THE STANDARDS OF ENFORCEMENT TO ACCEPTABLE LEVELS.

THE DIVISION OF INSURANCE, IN THE PAST, HAS NOT ADEQUATELY RESPONDED TO THEIR ROLE AS A PUBLIC REGULATOR AND FACILITATOR OF RULES, REGULATIONS AND STATUTE RECOMMENDATIONS TO MITIGATE THE EFFECTS OF AN ADVERSE SITUATION. IN PART, WE BELIEVE THIS WAS DO TO LACK OF LEADERSHIP AND ADEQUATE FUNDING.

WE HAVE BEEN PLEASED WITH THE IDEAS AND ACTIONS OF THE NEW DIRECTOR OF INSURANCE, MR. PAUL ROLLER, IN LAST SEVERAL MONTHS. WE BELIEVE HE IS PERSONALLY COMMITTED TO MAKING THE SYSTEM A BETTER AND MORE COST EFFECTIVE SYSTEM.

TO MR. ROLLER, WE WOULD VOICE TWO CONCERNS.

FIRST, WE WOULD POINT TO THE STATUTES DEALING WITH THE REQUIREMENT THAT INSURANCE CARRIERS IN THIS STATE CONFORM TO THE FORM AND RATE FILINGS OF THE NATIONAL COUNCIL ON COMPENSATION INSURANCE - HEREAFTER NCCI.

WHEN WAS THE LAST TIME THE DIVISION INSTITUTED A COMPETITIVE BIDDING PROCESS, WHEREIN NCCI- A RATING BUREAU - WOULD HAVE TO COMPETE WITH OTHER FREE ENTERPRISE RATING BUREAUS FOR THE PRIVLEDGE OF PROVIDING SERVICES TO INSURANCE CARRIERS IN THIS STATE. WE BELIEVE THERE IS A POTENTIAL TO GENERATE SIGNIFICANT COST SAVINGS TO PREMIUM PAYORS WITH SUCH COMPETITION.

SECONDLY, WE ARE OPPOSED TO THE EXCLUSION OF REPRESENTATION FOR PREMIUM PAYING ALASKAN BUSINESSES FROM A SUBSET OF NCCI KNOWN AS THE CLASSIFICATION AND RATE COMMITTEE.

CURRENTLY, ONLY MEMBERS OF NCCI AND THE DIRECTOR OF INSURANCE CAN SIT ON THE CLASSIFICATION AND RATE COMMITTEE. TO BE A MEMBER OF NCCI, ONE MUST BE AN INSURANCE CARRIER.

WE WOULD REMIND THE DIVISION, NCCI AND MEMBERS OF THE C&R COMMITTEE, THAT WHILE THE OPERATIONS OF THE INSURANCE INDUSTRY ARE BEST LEFT TO THE DEVICES OF THE FREE ENTERPRISE SYSTEM WITH PROPER STATE REGULATORY OVERSITE, WORKERS' COMPENSATION INSURANCE IS A TYPE OF INSURANCE WHICH TRANSENDS THE NEED OF THE FREE ENTERPRISE MARKETPLACE - IT IS A SOCIAL AND VERY PUBLIC ISSUE.

ALASKAN EMPLOYERS WANT A VOICE AND A VOTE ON THOSE MATTERS WHICH SO EFFECT OUR ECONOMIC WELLBEING. WE BELIEVE THE INSURANCE INDUSTRY WOULD FIND US REASONABLE AND COMPETENT PARTNERS, EAGER LEARNERS AND VALUABLE ALLIES - IF GIVEN A CHANCE.

WE HAVE BEEN INFORMED, ON SEVERAL OCCASSIONS, THAT EVEN WHEN THE DEPARTMENT OF LABOR OR THE DIVISION OF INSURANCE HAVE, IN THE PUBLIC INTEREST, STOPPED PRACTICES AGAINST PUBLIC LAW OR PUBLIC WELLBEING, THE STATE ATTORNEY GENERALS OFFICE HAS REFUSED TO COOPERATE - CITING THE NEED TO FRY BIGGER FISH. IF THIS IS INDEED THE CASE, THE ATTORNEY GENERALS OFFICE IS THE WEAKEST LINK IN THE CHAIN, AND THE SITUATION SHOULD BE CORRECTED - NOW.

WHILE WE ARE NO PROPONANTS OF INCREASED GOVERNMENT SPENDING, WE ARE VERY SUPPORTIVE OF INCREASED BUDGETS FOR BOTH THE DEPARTMENT OF LABOR AND THE DIVISION OF INSURANCE TO SUBSTANTIALLY ENHANCE THEIR ABILITY OF ENFORCE THE LAWS OF THIS STATE FOR THE PUBLIC GOOD.

IT IS INTERESTING TO NOTE THAT TO OUR KNOWLEDGE, THE DIVISION OF INSURANCE IS THE SECOND LARGEST INCOME GENERATOR FOR THE STATE OF ALASKA - PRODUCING IN EXCESS OF $20,000,000 PREMIUM TAX DOLLARS PER YEAR. THESE PREMIUM TAXES ARE PAID TO THE STATE, THROUGH INSURANCE PREMIUMS, BY EVERY INDIVIDUAL OR BUSINESS THAT PURCHASES INSURANCE IN ALASKA.

TO OUR KNOWLEDGE, THE NIETHER THE DIVISION OF INSURANCE OR THE DEPARTMENT OF LABOR ARE APPORTIONED ANY OF THESE PREMIUM TAX DOLLARS FOR LAW ENFORCEMENT, BUT RATHER THAT THESE PREMIUM TAXES ARE DIRECTED INTO THE STATE'S GENERAL FUND FOR OTHER PURPOSES.

GOOD PUBLIC POLICY WOULD DICTATE THAT A PORTION OF THESE PREMIUM TAX DOLLARS BE ALLOCATED TO PROVIDE FOR THE ENFORCEMENT OF INSURANCE AND INSURANCE RELATED STATUTES AND REGULATIONS.

WE PROPOSE, IN KEEPING WITH THE VITAL PUBLIC INTEREST THAT SURROUNDS THE ISSUE OF WORKERS' COMPENSATION, THAT SEVERAL MILLION OF THESE PREMIUM TAX DOLLARS BE ALLOCATED TO THE DEPARTMENT OF LABOR AND THE DIVISION OF INSURANCE TO FUTHER THEIR LAW ENFORCEMENT AND REGULATORY ACTIVITIES.

IN CLOSING, MUCH REMAINS TO BE DONE TO REDUCE AND STABILIZE THE COST OF PROVIDING WORKERS COMPENSATION INSURANCE TO ALASKAN BUSINESSES.

INSOMUCH AS IS POSSIBLE, ADMINISTRATIVE AND NON-STATUTE CHANGES WHICH DO NOT JEAPORDIZE BENEFIT LEVELS FOR THE TRUELY INJURED EMPLOYEE ARE THE REFORMS OF CHOICE.

BUT, ALASKAN LABOR, ORGANIZED AND UNORGANIZED, MUST WORK IN COOPERATION WITH ALASKAN EMPLOYERS AND BE ALSO WILLING TO REDUCE AND STABILIZE THE COST OF BENEFITS DELIVERY AND BENEFIT LEVELS.

LET US ALL, EMPLOYERS, LABOR AND GOVERNMENT, CONTINUE OUR EFFORTS. WE HAVE MADE A REASONABLE START - BUT ALL WILL BE FOR NAUGHT IF WE STOP AT THE END OF SESSION.

THANK YOU FOR THE OPPORTUNITY TO MAKE THESE REMARKS.

FACT AND ANALYSIS SHEET, RELATED TO AND OPPOSING PROPOSED CHANGES IN THE WORKERS' COMPENSATION ACT, VIA SB322 AND HB 352. See attached PETITION.

* The original intent of the Workers' Comp Act(s), was to protect and provide for injured workers and their families, due to job related injuries. The proposed bills do not accomplish this.

* The proposed bills are intended to "cut costs" of the WC system, but do so at a greater cost to the injured workers rights and benefits, families and health, and placing a burden on an already depressed economy and society.

* It appears that the so called Tort Reform has been extended to the WC system, which is already oppressive and unjust to injured workers and their dependents. With long, unnecessary delays in benefit delivery, claims settlements; causing improverishment, return to health and employment. (Insurance Reform, not Tort Reform is needed).

* The AWCC ad hoc committee (whose members recommended and drafted the bills), represent many business and insurance interests and not the majority and wide range of injured workers, themselves. (They now have opened an office representing employers only).

* Employers themselves need to be aware that an increase in comp claims is not the reason for the rise in premiums, but the high cost of defense litigation, too many independent medical evaluations (IME's), travel expenses for expert witnesses, pain clinics, rehabilitation, etc., in order to defeat ligitimate claims. Rates will not be reduced with the proposed bills, and the worker will also be paying a higher cost for his/her union health benefits.

* Many more "independent medical evaluations" will be required by the proposed bills, in an effort to deny benefits (to an already harassed injured person), and will not reduce costs, but increase them.

* Injured employee's are denied doctor/patient "privileged" information and communication, and their "free choice of physician" and treatment will challenged every 30 days, by an IME.

* There is no accountibility of physicians who "knowingly and willingly make false statements or misrepresentattions" in a comp claim. Those doctors should have their licenses suspended or revoked.

* Certified Rehabilitation Insurance Specialists are naturally pro employer/carrier. At present they are not licensed or regulated by the state, and in many cases not qualified. In many cases the injured worker is not reemployed, while it appears that only rehab agencies and personnel "profit" from such programs. Injured employees need equal protection, and should be allowed to discharge their Rehab counselor, etc. without losing their benefits.

* The proposed bills give almost total authority, privileges and immunity, to appointed board members, without accountibility for their actions and decisions.

* The injured workers' rights under the Constitution of the State of Alaska, specifically Article I §§ 3 and 7 (Inherent rights and due process), § 22 (Right to Privacy) are threatened by these bills, as well as Article VII §§ 4 and 5, regarding the promotion and protection of public health. There are many problems with the health care system in Alaska--- these problems need to be addressed and reformed, not the Workers' Comp system!

* this "pernicious" act."

Injured and Disabled Workers Asso.
PO Box 671495
Chugiak, AK. 99567
Phone-688-3011 / 338-4506

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PETITION

WE, THE UNDERSIGNED, STRONGLY OPPOSE AND FIND OBJECTIONABLE, SENATE BILL 322 AND HOUSE BILL 352 RELATING TO WORKERS' COMPENSATION, AS THEY FURTHER UNJUSTLY AND UNFAIRLY DEPRIVE INJURED AND DISABLED WORKERS OF RIGHTS AND BENEFITS DUE THEM UNDER THE LAW.

SIGNATURE	PRINTED NAME	ADDRESS	PHONE
Consuela L. Smith	Consuela L. Smith	4228 Rela Drive, Anch	337-8269
[illegible]	ERIKA [illegible]	[illegible]	[illegible]
Pammie Munson	Pammie Munson	4021 East 20th Unit 92	337-5112
Donna Meskimen	DONNA MESKIMEN	SR 5179 WASILLA AK	376 8254
Glen Rainwater	Glen Rainwater	7811 Marlene Cir Anch	243-8369
ROBERT C MELTON	ROBERT C MELTON	2702 DENALI	349-2072
C. Joseph Welsh		[illegible] E 8th Ave Anch	555-7278
Jerry Brinkley	JERRY BRINKLEY	4106 NORTHWOOD ANCH	248-0266
Larry Boswell	Larry Boswell	1890 E 58th Ave Anchorage, AK 99507	561-0722
[illegible]	D. KELLER	341 E 77th Ave AK 99518	344-8031
Donna Estell	Donna Estell	1001 Boniface, L-15 99501	333-4021
[illegible]	Sharon White	1550 Elcadore Dr	522 3540
Kathy Williams	KAthy WilliAMS	5530 E. 38th Ct	331-5620
[illegible]	[illegible]	[illegible]	[illegible]
Charles McKee	Charles E. McKee	525 E 12th Ave 99501	272-0695
[illegible]	JERRY [illegible]	4051 [illegible]	243 [illegible]
Leslie A Burnett	LESLIE A. BURNET	P.O. Box 773421 Eagle River	688-2441
Sharon K Frost	Sharon K Frost	PO Box 770790 ER Hill	(694-5211)
[illegible]	[illegible]	[illegible]	[illegible] 715
Mike Gardino	MICHAEL GARDINO	PO Box 670385 Chugiak	688-2448
[illegible]	THOMAS G. [illegible]	[illegible] ER	[illegible]
[illegible]	[illegible]	2702 Gambell #204	279 7491
Helen L Simpson	HELEN L. SIMPSON	401 E Northern Lts Blvd	272-9322
Robert E Locks	Robert E. Locks	18860 S. Kanaga Lp ER AK	694-0490
CHRIS TORL	Chris Torl	702 N. PARK, #5 Anch	274-4648
[illegible]	JACQUES HESPIN	8508 Boundary #11	333-4553
[illegible]	ERNEST Sylva	3431 Grissom Cir	243-0073
[illegible]	JOE A. [illegible]	7421 Foxridge Way	349-8176
Bert J Fulwider	Bert J. Fulwider	8541 Comet Ct. Anch 99507	346-3100
Loren Houts	Loren Houts	HC01 BOX 6183 Palmer AK	745-8325
[illegible] Bailey	[illegible]	4027 [illegible] Dr [illegible]	274-8519
Willard Fuller		PO Box 90395 [illegible]	274-5167
[illegible] Bailey	Donna Bailey	5720 Cape St. Anch [illegible]	561-0190

See attached Fact Sheet

... and Disabled Workers
... 671495
..., AK. 99567
... 338-4566

PETITION

WE, THE UNDERSIGNED, STRONGLY OPPOSE AND FIND OBJECTIONABLE, SENATE BILL 322 AND HOUSE BILL 352 RELATING TO WORKERS' COMPENSATION, AS THEY FURTHER UNJUSTLY AND UNFAIRLY DEPRIVE INJURED AND DISABLED WORKERS OF RIGHTS AND BENEFITS DUE THEM UNDER THE LAW.

SIGNATURE	PRINTED NAME	ADDRESS	PHONE
W D Bates	W D Bates	4[illegible] DR.	333 5454
Lillian C. Woods	Lillian C. Woods	3314 Newcomb Dr	333-1802
Charlotte Haynes	Charlotte S Haynes	177 Glacier Park DR.	344-2697
[illegible]	Cyrus Squires	177 Glacier Park DR.	344-2697
Linda Montgomery	LINDA MONTGOMERY	2246 GLACIER 307	337-7886
Mark Cooke	Mark Cooke	2224 Glacier 306	337-0552
Cheryl Rates	CHERYL RATES	2224 GLACIER 306	337-0552
Vernon R. West	Vernon R. West	2105 Farmer Pl	338-3132
Norma West	Norma L West	2105 Farmer Pl	338 3132
Robbin Sullivan	Robbin Sullivan	6135 E TUDOR RD #2	333-5206
DALE SPARGE	DALE SPARGE	6135 E TUDOR RD #40	333-5206
DEREK Dunkley	DEREK Dunkley	6135 E Tudor RD #40	333 5206
Don Grady	Don Grady	Meldeen Road	337-7570
Darla K. Buckson	Darla K. Buckson	3021A Chris Circle	344-7166
Gisela Harris	Gisela Harris	3401 Wisconsin	243-4893
Brentley McKnight	Brentley McKnight	3401 Wisconsin	243-4893
Terry L Bryant	TERRY L. BRYANT	3105 LAKESHORE DR.	243-5766
Jimmy Bryant	Jim Bryant	PO Box 10025	562-4296
Debbie Mercer		PO Box 10025	562-4296
Penny Harris	Penny Harris	1574 Vanguard	522-3626
Mark Harris	Mark Harris	1574 Vanguard	522-3626
David K Hafle	DAVID K. HAFLEY	11321 Pheasant Dr.	522-5265
John C. Herbst	John C. Herbst	1526 Zoo	272-6209
[illegible] Rates	[illegible] S-K A1	FRANCES RATES	561-6276
[illegible] Young	Fred Young	2224 Glacier 307	373-3800
[illegible]	Carlos Montgomery		337-7886
[illegible]	JAMES K CASTLEBERRY	2240 SANTOS Dr ANCH	344-2061
[illegible]	[illegible]	[illegible]	[illegible]

** See attached Page Sheet

Injured and Disabled Workers
PO Box 671495
Chugiak, AK. 99567

For information: [illegible] 338-4506

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PETITION

WE, THE UNDERSIGNED, STRONGLY OPPOSE AND FIND OBJECTIONABLE, SENATE BILL 322 AND HOUSE BILL 352 RELATING TO WORKERS' COMPENSATION, AS THEY FURTHER UNJUSTLY AND UNFAIRLY DEPRIVE INJURED AND DISABLED WORKERS OF RIGHTS AND BENEFITS DUE THEM UNDER THE LAW.

SIGNATURE	PRINTED NAME	ADDRESS	PHONE
[illegible]	[illegible]	[illegible]	[illegible]
Alicia Pollard	Alicia Pollard	1614 Marten St. Anch	337-[illegible]
[illegible]	[illegible]	[illegible]	[illegible]
Tyrone Pollard	Tyrone Pollard	1614 Marten St Anch	337-2380
Maureen Dilley	Maureen Dilley	5218 Tolan St #3 Anch	561-[illegible]
Carol Mahan	& CAROL MAHAN	202 East Potter Drive	561-[illegible]
[illegible]	[illegible]	[illegible]	[illegible]

** See attached Fact Sheet

Injured and Disabled Workers
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For information: [redacted] 338-4501

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PETITION

WE, THE UNDERSIGNED, STRONGLY OPPOSE AND FIND OBJECTIONABLE, SENATE BILL 322 AND HOUSE BILL 352 RELATING TO WORKERS' COMPENSATION, AS THEY FURTHER UNJUSTLY AND UNFAIRLY DEPRIVE INJURED AND DISABLED WORKERS OF RIGHTS AND BENEFITS DUE THEM UNDER THE LAW.

SIGNATURE	PRINTED NAME	ADDRESS	PHONE
Billy E. Jones	Billy E. Jones	P.O. Box 200641	277-1186
Glenn A. Smith	Glenn A. Smith	P.O. Box 110743	746-1303
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[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	Royce Kitton	3701 [illegible]	561-0727
John D. Anton	JOHN D ANTON	3322 W 88TH	2483114
[illegible]	Dominic Bo[illegible]	8415 [illegible]	333-5[illegible]
Dennis R. Stengrim	DENNIS R. STENGRIM	P.O. Box PALMER, ALASKA	745-2816
Alan A. Dickson	ALAN A. DICKSON	POB 770552 EAGLE RIVER AK	6949744
Kathy Dickson	Kathy Dickson	PO Box 770552	694-9744
Michael Swegen	MICHAEL SWEGEN	401 OOLWA 99504	333-9134
[illegible]	CHARLES H GILLICK	WRANGELL, AK 99929	338 7128
George F. Fuhry	GEORGE F FUHRY	P.O. Box 90265 ANCH	274-3797
[illegible]	Gerald Strachan	4225 Parker Pl Anc	5610051
John Sweeney	John Sweeney	P.O. Bx 111511	345-3376
[illegible]	Joe Warner	9401 [illegible]	2[illegible]-4577
Thomas P. [illegible]	THOMAS P. [illegible]	Box [illegible] [illegible] AK [illegible]	776-8236 776-8381
James E. McSorley	JAMES E McSORLEY	843 W. 11TH AVE #205, ANCHORAGE	279-1075
Robert Melton	ROBERT [illegible] MELTON	2702 DENALI-ANCH	349-207[illegible]
Barbara Pollock	BARBARA POLLOCK	480 W 34th #522 - Anch AK	563-8810
Patrick Doyle	PATRICK J. Doyle	1116 [illegible] Dr Anch AK	345-3221
[illegible]	[illegible] Lindblau	700 [illegible] Apt 2038	278-3341
Chris Hammond	Chris Hammond	8601 McLaughlin Dr #2	243-4081
Mark [illegible]	MARK GONZAL[illegible]	4110 Debarr	337-2126

** See attached Fact Sheet

Injured and Disabled Workers
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For information: 338-4506

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PETITION

WE, THE UNDERSIGNED, STRONGLY OPPOSE AND FIND OBJECTIONABLE, SENATE BILL 322 AND HOUSE BILL 352 RELATING TO WORKERS' COMPENSATION, AS THEY FURTHER UNJUSTLY AND UNFAIRLY DEPRIVE INJURED AND DISABLED WORKERS OF RIGHTS AND BENEFITS DUE THEM UNDER THE LAW.

SIGNATURE	PRINTED NAME	ADDRESS	PHONE
Paul Sweet	Paul Sweet	Box 1562 Talkeetna	745-2242
Pamela Foot	Pamela Foot	9545 Canyon Road	344-7411
Arthur V. Salyer Jr	ARTHUR V. SALYER JR	BLK 2 LOT 3 BAILEY HAS. WASILLA	376-5343
Diana Stone	Diana Stone	1001 Denali Place Sp #56	337-2330
Mary Chidzik	Mary Chidzik	7112 Foraker Dr	345-7113
Christi Chadwick	CHRISTI CHADWICK	9000 Amanda #13	248-9611
Thomas Hughes	Thomas Hughes	[illegible]	262-7845
Irene F Bales	IRENE F BALES	4513 WESLEYAN DR ANCHORAGE AK	333-5454
Phillip C Lake	PHILLIP C LAKE	10201 Abbott Loop Rd Anch AK	346-2295
Don W Sessoms	Don W. Sessoms	PO Box 670035 Chugiak AK 99567	688-2414
Stephen R Gress	Stephen R. Gress	8101 Medallin Ct. Anch 99507	340-7721
[illegible]	[illegible]	[illegible]	[illegible]
Kathy Cozens	KATHY K. [illegible]	P.O. Box 771658 Eagle River 99577	346-2326
Gisela E. Lindblom	Gisela E. Lindblom	700 Gum Apt 2038	278-334
Timothy J. Wilde	Timothy J. Wilde	24-342B Lilac Ct Anch, AK	333-3131

** See attached Fact Sheet

Injured and Disabled Workers
PO Box 671495
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For information: [illegible] 338-4566

PETITION

WE, THE UNDERSIGNED, STRONGLY OPPOSE AND FIND OBJECTIONABLE, SENATE BILL 322 AND HOUSE BILL 352 RELATING TO WORKERS' COMPENSATION, AS THEY FURTHER UNJUSTLY AND UNFAIRLY DEPRIVE INJURED AND DISABLED WORKERS OF RIGHTS AND BENEFITS DUE THEM UNDER THE LAW.

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William E Barnett	William E Barnett	4110 DEBARR Rd #250 99508	337-9370
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Frank W Waumann	Frank W Waumann	P.O. 70683 Chugiak	688-3955
Jim Ratter	Jim Ratter	1721 Eddy View Anch AK 99504	338-3191
Oliane Wallback	OLIANE WALLBACK	69?? WINDY [illegible] ANCH AK	2[illegible]6-[illegible]69?
Robert Warner	ROBERT WARNER	1521 Northwestern Anch AK 99	258 277-9277
Thomas M Morrison	THOMAS M MORRISON	2710 SCHERBROOK ANCH, AK 99504	337-3248
James Dixon	JAMES DIXON	7241 Dorchester Anch. AK 99502	2484194
Eric A Sundt	Eric A. Sundt	1419 Beaver Pl. Anc. AK 99504	333-9540
Robert P Clark Jr.	Robert P. Clark Jr.	2001 W 34th #344 Anch. 99503	349-1777
James Robb	James Robb	8811 Kib Court, Anch. 99507	344-6552
Larry Phillips	LARRY PHILLIPS	801 AIRPORTS HTS #256 ANCH AK 99508	274-0858
Donald P Wagner	DONALD P WAGNER	300 W KLATT Rd #[illegible] 99[illegible]	344-2[illegible]
Harold R Toussaint	Harold R Toussaint	7100 D[illegible]DR. Anch 99504	248-3562
Gerard L Wasson	GERARD WASSON	44420 STANLAFORD KENAI 99611	283-7173
Gerald E. May	GERALD E. MAY	RFI BOX 1224 KENAI [illegible]	776-8872
Hermann Kroener	Hermann Kroener	P O Box 394 Chugiak, AK 99567	688-2728
Jack Sledge	Jack Sledge	1114 Woodland RK Dr 99	243-1977
Franklin R. Taylor	Franklin R. Taylor	3501 G H2+01 MTS Anchor Point	502-4131
Roger Crosby	ROGER CROSBY	16950 CHANCE Anch AK	344-0781
Rick C. Nanton	RICK C. NANTON	HC02-93868 Palmer	745-7844
Dale Centofanti	DALE CENTOFANTI	4724 Kent Anch AK 99503	562-8414
Barry W. Davis	Barry W. Davis	2420 INGRA St. Anch AK 99508	561-4320
Albert A. Fronteras	ALBERT A. FRONTERAS	7721 MENTA ST ANCH AK	344-4455
Candido Amaro	CANDIDO AMARO	5741 E 11th Ave Anch AK	333-6788
Russ L Snyders	Russ L Snyders	3[illegible] Blvd. St Anch AK	330-7916
Randy Whitley	Randy Whitley	6[illegible] Tudor [illegible]	338-48[illegible]
Ron B Freeman	Ron B Freeman	5[illegible] North Star Anch AK 99504	694-[illegible]
Marcel N Dunais	MARCEL N DUNAIS	834 Lanwaller Cond. 99523	562-4909
Leslie Swerkson	Leslie Swerkson	2826 Red wind pl.	272-2004
Arvie Blankenship	Arvie Blankenship	1661 E Cedar Dr.	349 2417
Robert P. Eder	ROBERT EDER	2230 E. 52nd #3 99507	561-2018
[illegible]	DEFENDER	2121 W 38 F-3-R	243-8014

See attached Fact Sheet

Injured and Disabled Workers
PO Box 671495
Chugiak, AK. 99567

7

For information: [redacted] 338-4506

PETITION

WE, THE UNDERSIGNED, STRONGLY OPPOSE AND FIND OBJECTIONABLE, SENATE BIL. 322 AND HOUSE BILL 352 RELATING TO WORKERS' COMPENSATION, AS THEY FURTHER UNJUSTLY AND UNFAIRLY DEPRIVE INJURED AND DISABLED WORKERS OF RIGHTS AND BENEFITS DUE THEM UNDER THE LAW.

SIGNATURE	PRINTED NAME	ADDRESS	PHONE
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Robert A Connell	Robert A Connell	P.O Box 670886 99567	688-2420
Michele B. Carey	Michele B Carey	SRI Box 2220 Chugiak 99567	688-9487
Reginald R Bever	Reginald Bever	P.O #670591 Chugiak 99567	688-9553
Richard L. LaBaude	Richard L. LaBaude	4300 Arctic Blvd #2 Anch. 99503	561-8785
[illegible]	Calvin L. Taylor	[illegible]	243-1205
Stephen E Fiedler	Stephen E Fiedler	6534 Linden Dr.	345-1387
Carl E Sims	Carl E Sims	13111 Kristen Lee Dr.	3401-2253
[illegible]	[illegible]	[illegible]	243-2681
BRUCE SMITH		15231 SNOWFLAKE	345-4075
[redacted]	[redacted]		

Attached Fact Sheet

Injured and Disabled [illegible]
PO Box [illegible]
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Tel: 338.4506

8

PETITION

WE, THE UNDERSIGNED, STRONGLY OPPOSE AND FIND-UNOBJECTIONABLE, SENATE BILL 322 AND HOUSE BILL 352 RELATING TO WORKERS' COMPENSATION, AS THEY FURTHER UNJUSTLY AND UNFAIRLY DEPRIVE INJURED AND DISABLED WORKERS OF RIGHTS AND BENEFITS DUE THEM UNDER THE LAW.

SIGNATURE	PRINTED NAME	ADDRESS	PHONE
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Stanley L. Cook	Stanley L. Cook	PO Box 264 Wasilla AK	
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Michael L. Shaw	Michael L. SHAW	Box 97 Petersburg AK	
Kimberly J. Nelson	Kimberly J. Nelson	3021 Wiley Post Hwy	276-3188
Pamela A. Hulbert	Pamela A. Hulbert	2735 Telegraph Dr.	243-7563
Anita M. Mowery	ANITA M. MOWERY	BOX 2409 BIG LAKE AK	—
Steven Pradell	STEVEN PRADELL	BOX 102062 Anch. AK	276 3188
Anne Pierlka-Kelly	Anne Pierlka-Kelly	3340 Wiley Post Loop Anch. AK	248-4662
Jim McMahon	7915 W 135th #1	Jim McMahon	248-7642
Susan Gillett	Susan R Gillett	2911 W. 35th Anch AK	248-9823
William L Helms	William L Helms	2911 W. 35th Anch. AK	248-9823
[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]

** See attached fact sheet

Injured and Disabled Workers
PO Box 671493
Chugiak, AK. 99567

For information: [redacted] 338-4506

9

APR 12 1983

PETITION

WE, THE UNDERSIGNED, STRONGLY OPPOSE AND FIND OBJECTIONABLE, SENATE BILL 322 AND HOUSE BILL 352 RELATING TO WORKERS' COMPENSATION, AS THEY FURTHER UNJUSTLY AND UNFAIRLY DEPRIVE INJURED AND DISABLED WORKERS OF RIGHTS AND BENEFITS DUE THEM UNDER THE LAW.

SIGNATURE	PRINTED NAME	ADDRESS	PHONE
[illegible]	[illegible] DC	[illegible]	[illegible]
[illegible]	PATRICIA R HARDY, DC	[illegible] #163 Anc AK 99508	338-0248
S.W. Carraway	S.W. CARRAWAY	5070 NOTTINGHAM	561-0340
Kathy M. Headlough	KATHY M. HEADLOUGH	2510 NORTHWOOD 99517	248-4202
Cheryl Bautista	Cheryl BAUTISTA	1984 Commodore 99507	344-7572
Constance Carraway	Constance CARRAWAY	5070 Nottingham 99503	561-0340
Robert M. Robinson	ROBERT M. ROBINSON	7020 POTOMAC DR 99504	333-8082
Sandi Robinson	SANDI ROBINSON	7020 Potomac Dr 99504	333-8082
[illegible]	FRED [illegible]	4100 McLean Pl 99504	338-5873
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Mary L Holmes	MARY L Holmes	[illegible] Anc 99507	563-7201
Stanley Jacobs	Stanley Jacobs	4330 Dunbar Ct #1 Anch, 50[illegible]	333 4360
Susan L Campbell	Susan L Campbell	PO Box 190561 Anch 99519	[illegible]
Mark Kitter	Mark Kitter	PO Box [illegible] [illegible]	5[illegible]7-3,4[illegible]
[illegible]	Lisa Martin	4640 [illegible] Anch. [illegible]	[illegible]
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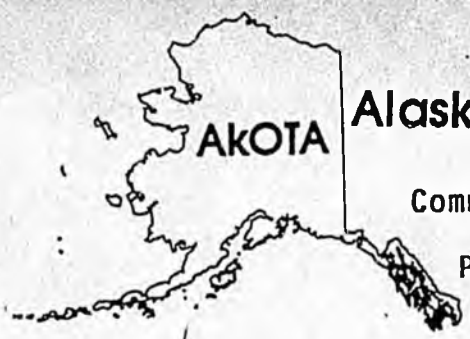
[illegible] Hillier	LINDA L. HILLIER	9301 PANORAMA DR. ANCH. 99516	34[illegible]
Dona Shockley	DONA Shockley	600 W 45th #15 Anch 99503	562-113[illegible]
Robert Rowen MD	Robert Rowen MD	1301 Hillcrest Dr. 99517	344777[illegible]
Maria Cassidy	MARIA CASSIDY	6201 TRAPPERS TRAIL ANC 99516	345-[illegible]
Alfredo Tolman	Alfredo Tolman	1635 BRINK Anch 99504	33721[illegible]

** See attached Fact Sheet

Injured and Disabled Workers
PO Box 671495
Chugiak, AK. 99567

For information: 688-3017



Alaska Occupational Therapy Association

Committee to Establish Standards for
Performance Based
Physical Capacities Evaluations

ALASKA PHYSICAL THERAPY ASSOCIATION, INC.

A CHAPTER OF THE AMERICAN
PHYSICAL THERAPY ASSOCIATION

Gary W. McCarthy
11132 Placer Circle
Eagle River, Alaska 99577
694-4590 or 561-1876

January 21, 1988

Senator Tim Kelly
Pouch V
Juneau, Alaska 99811

Attention: John Ringstad

Dear Mr. Ringstad:

This letter is in follow-up to our telephone conversation today. As we discussed, a joint committee of the Physical and Occupational Therapy Assocation is interested in incorporating Performance-Based Physical Capacities Evaluations into the new Workers' Compensation Legislation and Regulation. I have enclosed a list of committee members and proposed guidelines for these evaluations for your review.

Please keep us informed about the progress of the Bill, as well as the teleconferences scheduled for January 29th and February 12th. If you have any questions, please contact me.

Sincerely,

Gary W. McCarthy

Gary W. McCarthy, L.P.T.

GWM:ph
Enclosures

Adhoc Committee Members
PCE and Work Hardening Regulations

Liz Dowler, O.T.R./L.
Work Therapy Enterprises
3700 Woodland Drive
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243-6116

Linda Glick, O.T.R./L.
Alaska Hand Rehabilitation
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Duane Mayes, Q.R.P.
Northern Rehabilitation
Services, Inc.
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561-3152

Gary McCarthy, L.P.T.
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561-1876

Pat Montague, O.T.R./L.
Alaska Treatment Center
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Anchorage, Alaska 99508
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Eric Olson, Esquire
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Anchorage, Alaska 99503
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Lenore Rush, R.N.
Industrial Indemnity
4341 B Street
Anchorage, Alaska 99503
561-6000

Jane Thiboutot, L.P.T.
1840 Scenic Way
Anchorage, Alaska 95501
258-6245

Marcia Wakeland, L.P.T.
Alpine Physical Therapy
4200 Lake Otis Parkway, #103
Anchorage, Alaska 99508
561-1876

PROTOCOL #1 FOR PERFORMING PCE'S (up to 8 weeks post-injury)

Total time for evaluation: one hour

Purpose: To determine if patient can return to work.

When: Test to be performed any time between s/p injury and up to 8 weeks. Note: after 8 weeks s/p injury and patient has not been working refer to Protocol 2.

One Hour Evaluation - Pain level to be monitored during evaluation.

I. Subjective Interview:
   A Critical demands of job
   B. Brief work history
   C. Affects of environmental factors

   Objective: Height, weight, posture, gait, balance.

II. Range of Motion: Full ROM measurements of injured joint and related muscles of adjacent joints.

III. Strength: (Dynamic) Manual muscle testing of muscles surrounding injured joint
   A. Maximum effort tests
   B. Functional tests - i.e., squats or hand grip
   C. Lifting tasks - floor to knuckle
      knuckle to shoulder
      12" to knuckle
      knuckle to overhead
   D. Carrying
   E. Pushing/pulling
   F. Critical demands

IV. ADL: Evaluate body mechanics

V. Gross Coordination and Fine Manipulation: General assessment.

VI. Static Positions: observed (choose 1-2 appropriate to job)

VII. Endurance: reported (such as sitting, walking, standing)

Recommendations:

I. Return to work
II. More diagnostic testing
III. More acute therapy
IV. Work hardening or OJT

PROTOCOL #2 FOR PERFORMING PCE'S (greater than 8 weeks post injury)

Total time for evaluation: 6-8 hours

Purpose: To determine if patient can return to work.

When: Test to be performed on anyone off work 8 weeks or more after injury.

Need: Job Analysis

Six-Eight Hour Evaluation

I. Subjective Interview:
   A. Critical demands of job
   B. Brief work history
   C. Affects of environmental factors

   Objective: Height, weight, posture, gait, balance.

II. ROM: Full ROM measurements of injured joint and related muscles of adjacent joints.

III. Strength: (Dynamic) Manual muscle testing of muscles surrounding injured joint

   A. Maximum effort tests
   B. Functional tests - i.e., squats or hand grip
   C. Lifting tasks - floor to knuckle
      knuckle to shoulder
      12" to knuckle
      knuckle to overhead
   D. Carrying
   E. Pushing/pulling
   F. Critical demands
   G. Other maximum effort tests - climbing and bending

IV. ADL: Evaluate body mechanics

V. Gross Coordination and Fine Manipulation: Specific tasks that measure the function of injured joint.

VI. Static Position Strength Tests: muscles around affected joint. For back patients, use a dynamometer. For all patients be as objective as possible to measure inconsistencies.

VII. Endurance: (Objective measures) duplicate job tasks, frequency and other factors of job site as much as possible. Monitor pain, exertion and cardiovascular level of activity. Dynametric testing. In addition, sitting, standing, and walking as appropriate.

A. The injured worker can:
Sit for ___ hrs. at a time; ___ hrs. in an ___ hr. day.
Stand for ___ hrs. at a time; ___ hrs. in an ___ hr. day.
Walk for ___ hrs. at a time; ___ hrs. in an ___ hr. day.
Alternately sit/stand for ___ hrs. at a time; ___ hrs. in an ___ hr.day.
Alternately sit/walk for ___ hrs. at a time; ___ hrs. in an ___ hr. day.
Alternately stand/walk for ___ hrs. at a time; ___ hrs. in an ___ hr. day

Level Lift	___# frequently (60x in 8 hrs.); ___# occasionally (4x in 8 hrs.)
Stand Up Lift	___# frequently from floor height to waist height.
Weight Carry	___# frequently (60x in 8 hrs.); ___# occasionally (4x in 8 hrs.)
Push/Pull	___# frequently (60x in 8 hrs.); ___# occasionally (4x in 8 hrs.)

B. Additional Testing:

____	Squat/Kneel	Frequently; Occasionally
____	Bend/Stoop	Frequently; Occasionally
____	Crawl	Frequently; Occasionally
____	Climb	Ladders/Stairs
____	Reach Overhead	
____	Perform Fine Manipulation	
____	Operate Foot Controls	
____	Operate Hand Controls	

VIII. Feasibility Report: Based on evaluator's observations.

A. Correlation between pain rating and observed behavior. Good Fair Poor

B. Observed body mechanics and material handling ability. Good Fair Poor

C. Observed gross coordination. Good Fair Poor

D. Do the endurance projections appear to be reliable? Yes No
Explain: _____
_____

E. The results of this test appear to be valid. Yes No
Explain: [ ] Pain [ ] Poor Effort [ ] Other _____

F. Is client a symptom magnifier Yes No
If so, this is substantiated how? _____
_____

IX. Safety: _ _____
_____

Recommendations:

I. PCE level _____
II. Part time Full time
III. Limitations
IV. Remedial programs that might reduce client's physical limitations
V. Prognosis

This information was gathered during a _____ hour Physical Capacities Evaluation over ___ days.

REV. 2/1/88

PROTOCOL FOR PERFORMING HAND/UPPER EXTREMITY PCE'S

Time: 4 to 8 hours recommended

Purpose:

To determine if the worker can perform usual and customary work or a specified job.

To determine if modification can facilitate return to usual and customary work or a specified job.

To identify work restrictions.

To identify remedial programs for the worker.

To determine general upper extremity (UE) functional capacity.

To offer recommendations for job possibilities.

To assess worker feasibility and willingness to put forth maximum effort.

Requirements may include:

I. Job analysis

II. Pertinent medical records.

Evaluation:

I. Subjective: Pain complaints, major concerns, goals of the worker, functional level as perceived by the worker.

II. Objective:

- A. Skin/scar condition
- B. Altered physical appearance of hand/UE
- C. Body mechanics/compensatory posturing
- D. Edema/atrophy measurements
- E. ROM - active/passive
- F. Sensation
- G. Pressure/vibration tolerance
- H. Dexterity testing (standardized)
- I. Strength endurance
  - 1. manual muscle testing
  - 2. maximum effort testing - static, dynamic
- J. ADL's and hand/UE physical demands testing
  - 1. fingering
  - 2. handling
  - 3. reaching
  - 4. pushing/pulling
  - 5. torquing
  - 6. lifting

7. carrying
8. climbing
9. tool use
10. writing

K. Work simulation/situational assessment
L. Reevaluation
1. inflammatory response to activity
2. sensation
3. strength
4. pain

Summary and Recommendations:

I. General UE functional capacity

II. Job possibility recommendations

III. Validity assessment

IV. Limitations

V. Modifications

VI. Appropriate remedial programs

1/26/88

PROTOCOL

Education Courses

1. Keys Functional Assessments - Minnesota since 1982

   a. Protocol driven test
   b. Statistically correlated
   c. Tests are limited to what's been validated
   d. 3-day training program
   e. Use their form and send results to them; stats are updated
   f. Equipment needed

2. FCA Polinski - Minnesota

   a. 2-day training program
   b. Analyses of how a person moves
   c. Testing protocol
   d. Pay them $50/test for every test
   e. Equipment needed

3. Blankinship - P.T. - American Therapeutics

   a. Testing protocol - ideas
   b. State - minimal
   c. Equipment suggested (minimal needed)
   d. 2-1/2 day course - no certification
   e. Introduction to principles
   f. Only for back patients
   g. General functional abilities

4. Matheson - psychologist since 1970's (component symptom magnification)

   a. Principle work hardening evaluation
   b. All injuries
   c. Years of experience - not as much physical objective measurements
   d. Psychological measurement tools
   e. 2-1/2 day course
   f. Equipment needed

5. Other options electives

   a. Suanders
   b. American Back Seminars
   c. Group from Maine
   d. Hand Seminars (to be presented by Linda Glick)

LAW OFFICE OF
SHELBY L. NUENKE-DAVISON (907) 276-6555

2525 BLUEBERRY ROAD, SUITE 102
ANCHORAGE, ALASKA 99503

Date: February 3, 1988

To: Honorable Tim Kelly and Honorable Dave Donley

From: Shelby L. Nuenke-Davison
Attorney at Law
2525 Blueberry Road, Suite 102
Anchorage, AK 99503
(907) 276-6555

Re: Labor Management Task Force Bill

WRITTEN TESTIMONY

I have been practicing workers' compensation defense almost exclusively in the State of Alaska for the last six years. I testified just briefly at the hearings held in Anchorage, on January 29, 1988 and was the last witness. Since a lot of committee members were unavailable, I have decided to take the time to do some written testimony because I think this bill is crucial.

I am of the opinion that the Labor Management Task Force Bill should be passed with no amendments made to the bill that do not go through the Labor Management Task Force. The reason for this is because, though I can see legally where some language changes need to be made, I know from working in the Alaska workers' compensation arena that all the statutes are directly related to each other and are intimately intertwined.

I would like to briefly comment on why some of the proposed changes are of the utmost importance. Failure of me to address any particular portion of the bill does not mean that I am not in support of those aspects of the bill.

1. Page 1, Section 1, lines 14 & 15 state, "The legislature declares that the workers' compensation laws must not be construed by the courts in favor of any party." This language is crucial to get passed and quite frankly I think it should be a lot stronger in that no matter what workers' compensation reform is done by the legislature, unless there is a message given to the Alaska Supreme Court that wher there is any ambiguity in the workers'

compensation statute it should not go in favor of any party, then the Alaska Supreme Court through case law will nullify a lot of your work. Both the employer and employee give up significant rights in the workers' compensation arena. It is important that everybody understands this because much of the testimony has been surrounding the employee's rights. Employers give up the right to have the employee prove by a preponderance of evidence that he was injured, that the defendants are liable, and his damages. The employer also gives up his common law defenses to comparative negligence and assumption of risk. These are significant rights to give up and, as such, the law should not be construed just in favor of the employee. I understand that the employee also gives up his common law damages in exchange for the workers' compensation remedies. Because both parties give up significant rights, neither party should be favored in the law.

As the law presently stands, the Workers' Compensation Act does not state this. As such, the Alaska Supreme Court always construes the law in favor of the employee if there is any ambiguity in the statute. This is based upon a common law rule that the humanitarian purpose of the law is to favor claimants. To give you an example of how bad the Supreme Court is against employers, there is a common joke which goes around the workers' compensation arena, which is that if a claimant losses at the Board level, the claimant's attorney is malpractice not to appeal. That is somewhat of a significant statement and gives you an idea of how crucial this intent language is.

However, under this section, line 20, we should omit the word "any" evidence and substitute "substantial" evidence because that is the appropriate standard of review for appeals on issues of fact. Keep in mind, substantial evidence is easily found on appeal because it has been defined that any evidence is "substantial enough if it supports the conclusion in the contemplation of a reasonable mind."

2. I would now like to comment on page 2 of the bill Section 4, lines 24 through 29 and over to page 3, line 1. This proposed amendment is important to protect employers from being liable on a claim where an employee knowingly makes a false statement as to his physical condition and then allegedly has an aggravation to that condition. Because of the three-pronged test outlined in the proposed bill, this statute will be hard to prove and will not be easy to abuse against the claimant by the employer. This section however, needs to be supported by the new language in AS 23.30.055 which is on page 11, lines 9-10 & 11 of the

bill. Which states that, "the liability of the employer is exclusive even if the employee's claim is barred under AS 23.30.020 (b)."

3. AS 23.30.095, Section A which is found on page 12, lines 7 & 11, is an important amendment so as to avoid doctor shopping. Doctor shopping prolongs a claim unfairly to the employer. Doctor shopping can presently occur if a claimant goes to a doctor who does not support his position and wants to prolong the claim. Presently, there is nothing in the law stopping this and, therefore, claims go on indefinitely. This statute, however, appropriately protects a claimant if his treating physician refers him to a specialist in an area so as not to have the specialist be constituted a treating physician. At the hearing there was some testimony regarding the right of the employer to have IME's every 30 days and the fear that the claimant would be subjected to numerous "invasive diagnostic tests." As such, I recommend inserting on page 13, line 24 the following: "When possible, the IME physicians should use already existing diagnostic data to make his determination."

4. I would like to discuss briefly on two intertwined statutes which I think are very important to be passed untouched. There is nothing legally wrong with either of these paragraphs. One is Section 15 of AS 23.31.120 (c) which is found on page 16 of the bill, lines 4 through 7, and the other is Section 32, which is AS 23.30.265 (17) which is found on page 25 & 26, specifically on page 26, lines 4 through 14. Both of these amendments are absolutely crucial to be adopted without any changes because stress claims are as a general rule hard to objectify and are the up and coming big exposure for employers. Because there was no legislation on the books, the Alaska Supreme Court have made two devastating rulings on stress that make these claims almost undefensible. Since there are so many stressors in ones life and since a stress claim is subjective in nature, I urge you to enact both amendments untouched. These statutes still affords a party to file a stress claim.

5. Finally, the last areas I would like to address are Section 6, Voluntary Vocational Rehabilitation, Section 24, Temporary Total Disability, and Section 25, The Scheduling of All PPD Benefits and why these sections are important to pass without any significant amendments being made unless they go through the task force.

The present vocational rehabilitation statute in Alaska has already been labeled a failure by many claimants, employers, workers' compensation board members, and

vocational rehabilitation counselors alike. The Alaska vocational rehabilitation system is not fair because it is too intimately connected to the types, amount, and period of time benefits that will be received by the claimant and has resulted in increased litigation to the detriment of the employee. Because of its close connection to the types, amount, and period of time benefits that are received, vocational rehabilitation in Alaska is nothing more than a litigation tool, and as such, is usually computed to dollars and settled out in a settlement. After the settlement, the claimant is no longer entitled to vocational rehabilitation and will more than likely have to return to his work at the time of injury, even if he really should not.

To understand the failure of the present vocational rehabilitation statutes, one must understand the interplay between Temporary Total Disability benefits, Permanent Partial Disability and Vocational Rehabilitation under the present law. Under the present law, it is important for you to understand because there is no cap on the amount or period of time a person can collect Temporary Total Disability benefits and there is a cap on Permanent Partial Disability benefits and because the Alaska Supreme Court in a case called Bignell v. Wise, determined that until a person is both "medically and vocationally stationary" he is entitle to get Temporary Total Disability benefits, the claimant has no interest in getting off Temporary Total Disability and on to Permanent Partial Disability benefits. Therefore, because vocational rehabilitation is so closely tied to how much a person gets and for how long it results in a lot of litigation. This is why vocational rehabilitation does not work in the present system because all it is really used for is a tool to facilitate larger claims and/or to prolong the claim. This is where we lawyers do a lot of our work. As such, the Joint Labor Management Task Force Bill should be passed because it removes vocational rehabilitation from the litigation process and puts a cap on Temporary Total Disability benefits of two years and does not make Temporary Total Disability benefits or Permanent Partial Disability benefits tied to whether or not the patient is vocationally stable. However, in the bill pending vocational rehabilitation is still afforded to claimants who need the services. Only those claimants who truly want these services will use them if they are not tied so intimiately to the claim. Even though no one can give hard dollars in terms of savings, I cannot see how this concept would not save a lot of costs in the workers' compensation system.

If any of you have any questions in regard to this bill or any legal questions on this matter, please feel free to

connect me. Thank you for taking the time to read this written testimony.

Sincerely,

Shelby L. Nuenke-Davison

Shelby L. Nuenke-Davison

SND/kac

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800

M E M O R A N D U M December 17, 1987

SUBJECT: Workers' Compensation
(Work Order No. 15-1514)

TO: Senator Tim Kelly
Chairman, Senate Labor and Commerce

FROM: Michael F. Ford
Legislative Counsel

The changes you requested to the existing workers' compensation laws have been incorporated into the attached draft. The draft language received from your office has been changed for purposes of form and style. There are a few substantive matters that remain unresolved that I wanted to bring to your attention:

1. Although there is a reference in section 2 to "panels established in AS 23.30.041 and 23.30.095", I could not find any language establishing panels in those sections. Therefore, the language in section 2 has been slightly changed.

2. The applicability section, section 34, provides that the Act applies to injuries sustained after July 1, 1988, which is also the effective date of the bill. But several sections of the bill would apply to injuries sustained prior to July 1, at least regarding reporting of compensation and contribution to the second injury fund. Specifically you may want sections 4, 18, and 33 to have retroactive application. If those sections are to apply to the entire calendar year, rather than the period after the effective date of the bill then the applicability section should be changed.

3. There may be constitutional equal protection problems concerning the exclusivity language in section 6, which would prevent an employee who is barred from receiving compensation benefits from bringing a lawsuit for any injuries sustained. In combination with section 3, an injured employee guilty of this kind of misconduct would be denied

both workers' compensation and access to the courts. The constitutional question should be researched.

Please contact me if you have any further questions.

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THE SUPREME COURT FOR THE STATE OF ALASKA

CORAZON FOX, Appellant, v. ALASCOM, INC., Appellee.	File No. S-482
	O P I N I O N
	[No. 3051 - May 9, 1986]

Appeal from the Superior Court of the State of Alaska, Third Judicial District, Anchorage, Karen L. Hunt, Judge.

Appearances: Ernest N. Rehbock, Rehbock & Rehbock, Anchorage, for Appellant. Marilyn F. Bain, Vancouver, Washington, for Appellee.

Before: Rabinowitz, Chief Justice, Burke, Matthews, Compton and Moore, Justices.

RABINOWITZ, Chief Justice.

This case involves an employee who suffered a mental disability allegedly due to non-traumatic, gradual work-related stress. The Workers' Compensation Board held that in order to recover benefits in this situation the employee must make a preliminary showing that the on-the-job stress she experienced was greater than the stress which all employees experience. We hold that under the Workers' Compensation Act the board erred in imposing such a requirement.

FACTS.

Appellant Corazon Fox was hired by appellee Alascom, Inc. in October, 1974, as a Senior Clerk Typist in the field installation department. Her duties included processing weekly time reports, making travel arrangements, requisitioning supplies, keeping business expense reports, distributing payroll checks, answering the telephone, distributing mail, typing, and filing. In April, 1979, she was transferred to the traffic administration department as a clerk. Her duties in this job included processing weekly time reports, verifying absences, balancing the bi-weekly payroll, doing fill-in secretarial work, typing, and obtaining supplies. Fox continued at this job until she left work in February, 1982.

Fox experienced many medical problems during her years at Alascom. These problems became particularly acute during 1977 and 1980 after the Caesarean birth of her second child. Among these problems were a variety of physical ailments to which no physical cause could be found, such as pains in her legs and breathing difficulties. Fox also experienced irritability and an inability to concentrate.

Fox continued experiencing these problems through 1982. During this time she was seeing a physician, Dr. Wilder, who could not find a physical cause for her complaints and who advised her to see a psychologist. On February 1, 1982, Fox went to Dr. Wilder on an emergency basis, stating that if she had not left work a few moments before she probably would have had a complete nervous breakdown. Fox was placed in a "sick leave" category where she apparently remained until she was terminated in September, 1982.

Fox filed a workers' compensation claim against Alascom for temporary total disability benefits, medical expenses, vocational rehabilitation costs, and attorney's fees and costs. Fox alleged that she had "suffered a nervous breakdown due to stresses and pressures placed upon her in the course of her employment." The board held a hearing on May 5, 1983. The evidence before the board consisted of a variety of medical reports, Fox's deposition,

the deposition and reports of Dr. Robert Ohlson, Ph.D., a psychologist who interviewed Fox several times in early 1983, and the testimony at the hearing of several Alascom employees.

The evidence before the board clearly indicated that Fox perceived her job with Alascom as the source of her physical and emotional problems. Fox attributed her problems solely to her job and denied that she experienced stress from other events in her life such as the Caesarean birth of her child and financial difficulties. Fox also stated that even though she was no longer employed by Alascom her present stress was caused by memories of her job there. Fox felt that stress from the job emanated from not being told what was expected of her and from being treated unequally. Among Fox's more specific complaints were that her supervisors talked behind her back; she was denied requests to take several hours off for personal business; she was the last one to know about her transfer to another department; she had many rush jobs; her supervisors refused to move a filing cabinet closer to her desk; and she was required to answer the phones during lunch.

Fox's three supervisors testified at the hearing. They stated that Fox was good at her job and received regular merit pay increases. They also stated that they did not feel their relationship with Fox was stressful or tense,

and they did not believe her job was stressful. They also stated that they did not talk about her behind her back nor fail to tell her what was expected of her. The woman who replaced Fox and worked at her position for ten months testified that in her opinion the job was not stressful and that her personal relationship with her supervisor was neither stressful nor tense.

The major medical evidence upon which the board relied was provided by Dr. Ohlson. Dr. Ohlson indicated that Fox's exact diagnosis was unclear but that her symptoms resembled a "conversion disorder," a "psychogenic pain disorder" or a "somatization disorder." Dr. Ohlson made clear that in his opinion Fox was not malingering and that in Fox's mind her job with Alascom was the only source of her stress. This conclusion was not disputed by Alascom.

Dr. Ohlson indicated that Fox's work-relationships had created a great deal of stress for her. However, he also indicated that there were many other non-employment factors in Fox's life that were more likely to be the "real sources" of stress. One of these factors was that Fox's husband had been unemployed since 1975, thereby forcing a reversal in expected roles, with Fox becoming the family's main provider. Another factor which Dr. Ohlson felt would be very stressful was that Fox and her husband experienced great financial difficulties, eventually having to declare

bankruptcy. Other likely sources of stress were the Caesarean births of her children, her difficulties in caring for them, and surgery which Fox had for the removal of an ovary.

Dr. Ohlson stated that these other factors rated higher as sources of stress on a "Social Re-adjustment Rating Scale" than did "trouble with the boss." Dr. Ohlson acknowledged that the fact that an item rated lower or did not appear on the scale did not necessarily preclude it from being stressful to a given individual. Dr. Ohlson felt, however, that Fox's difficulties would have developed if she had never worked at Alascom:

> [I]n my opinion, the condition would have developed no matter where she worked. Just the experience of having to work with all the other kinds of things that were going on in her life would have caused the same kinds of stresses.

Fox, however, denied that these other factors were stressful to her and attributed all her stress to her job at Alascom. In Dr. Ohlson's view this denial was a defense mechanism against intense feelings which would normally be expected from the other factors.

On July 27, 1983, the board issued a Decision and Order denying Fox's claim. The board stated that under the Alaska Workers' Compensation Act "it is presumed that an injury is compensable in the absence of substantial evidence

to the contrary." The board next stated, quoting this court in Burgess Construction Co. v. Smallwood, (Smallwood II) 623 P.2d 312, 316 (Alaska 1981), that "before the presumption attaches, some preliminary link must be established between the disability and the employment." The board stated that in order for this preliminary link to be established the claimant had to show that "the employment situation produces mental stress and tension greater than all employees must experience."

The board held that the preliminary link had not been established in this case. The board found that none of the testimony indicated that work related stress was greater than that which all workers must experience and was not a substantial factor in causing Fox's disability. The board stated that "[h]aving to work is something all employee [sic] must do. Therefore, the stress of having to work is not greater than the stress all employees experience." Since the preliminary link had not been established the presumption did not attach. Therefore Fox had to prove all the elements of her claim and the board concluded that she had not done so.

Fox appealed the board's decision to the superior court. The court upheld the decision, holding in part that the "greater than all employees must experience" requirement was consistent with AS 23.30.265(17)'s definition of

"injury" as "arising out of and in the course of employment." The superior court was of the further view that the requirement was consistent with the board's own prior decisions and "with the trend nationally to use objective standards for determining work-relatedness in mental disability claims." The court also rejected Fox's argument that the test should focus on the claimant's "honest perception" of whether the employment was the source of the injury. The superior court concluded that the record fully supported the board's finding that Fox had not proved that "work stress" was a substantial factor in creating her emotional disability. Fox appealed to this court.

DISCUSSION.

A. Introduction

AS 23.30.120(a)(1) provides that it is presumed that a claim for compensation comes within the coverage of the Workers' Compensation Act unless there is "substantial evidence to the contrary." We have held that before this presumption attaches,

> some preliminary link must be established between the disability and the employment, and . . . in claims 'based on highly technical considerations' medical evidence is often necessary to make that connection.

Smallwood II, 623 P.2d at 316.

The purpose of requiring this preliminary link is to rule out cases in which the claimant can show neither that the injury occurred in the course of employment nor that it arose out of it. See Smallwood II, 623 P.2d at 316. Such a requirement is necessary under AS 23.30.265(17) which defines "injury" as "accidental injury or death arising out of and in the course of employment."

The "arising out of" requirement is present in all workers' compensation statutes. The requirement is essential to the political compromise behind the statute whereby the employer bears the initial cost of injuries that arise from employment related risks, regardless of "fault," and the employee surrenders his common-law right to sue in tort when an employment related risk creates his injury. See L. Joseph, The Causation Issue in Workers' Compensation Mental Disability Cases: An Analysis, Solutions, and a Perspective, 36 Vand. L. Rev. 263, 280 (1983). The requirement reflects the primary "policy" or "legal" causation formula by holding employers responsible only for compensating employment related risks. Id. at 283.

There is an inherent difficulty, however, in determining whether a mental disorder "arises out of" employment. The problem is simply that "the body of knowledge regarding mental or emotional injuries is not certain enough to make rational determinations as to the

true nature, extent and cause of injury." S. Sersland, Mental Disability Caused by Mental Stress: Standards of Proof in Workers' Compensation Cases, 33 Drake L. Rev. 751, 752 (1983-84).

As another commentator put it:

> The precise etiology of most mental disorders is inexplicable. Mental disorders result from an extraordinarily complex interrelation between an individual's internal or subjective reality and his external or environmental reality . . . The precise psychogenesis of an individual's subjective reality is impossible to determine. Moreover, the interrelation between subjective and environmental realities is so profoundly complex that no method exists either to quantify or qualify the extent to which one reality and not the other is a cause of mental disorder. Therefore, the time lapse between an external stress and the manifestation of mental disorder symptoms, and the intensity, suddenness, or gradualness of the external symptoms are irrelevant in determining cause . . . When mental disorder symptoms appear in parts of the body other than the brain, medical science is able, in most cases, to attach a quantitative or qualitative etiological probability. Scientists cannot make this determination, however, when the symptoms manifest themselves subjectively. An individual who suffers a mental disorder has an a priori personal subjective vulnerability or predisposition to the disorder.

Joseph, 36 Vand L. Rev. at 271-72 (footnotes omitted); See also Sersland, Drake L. Rev. at 752-58; Comment, Workmen's Compensation Awards for Psychoneurotic Reactions, 70 Yale L.J. 1129 (1961).

It is this inherent difficulty in proving causation that has led courts in many jurisdictions to impose additional definitional limits on the compensability of mental injury caused by mental stress by looking "objectively" at the type and/or degree of the stress. Some jurisdictions have held that mental injuries are not compensable unless there is some "physical element" involved or unless the mental stimulus is a "sudden," "traumatic" event or a series of such events. See Hanson Buick v. Chatham, 292 S.E.2d 428, 429-30 (Ga. 1982); Albanese's Case, 389 N.E.2d 83, 86 (Mass. 1979). See generally Sersland, 33 Drake L. Rev. at 759-67, 767-72; 1B A. Larson, Workmen's Compensation Law §§ 42.23, 42.23(a) at 7-647 - 7-661 (1986). Some jurisdictions have held that mental injury caused by gradual mental stress is compensable, but only if the employee shows that he was subject to mental stress and tension "greater than all employees must experience." See, e.g., Sloss v. Industrial Commission, 588 P.2d 303, 304 (Ariz. 1978); Townsend v. Maine Bureau of Public Safety, 404 A.2d 1014, 1020 (Me. 1979); Seitz v. L&R Industries, Inc., 437 A.2d 1345, 1351 (R.I. 1981); Jose v. Equifax, Inc., 556 S.W.2d 82, 84 (Tenn. 1977); School District #1 v. Dept. of Industry, Labor and Human Relations, 215 N.W.2d 373, 377 (Wis. 1974).

B. The "Greater Than All Employees Must Experience" Test.

The Board applied the "greater than all employees must experience" test in this case. Courts that have adopted this test have often expressed a fear that due to the difficulty in determining the causes of mental illness, failure to impose additional objective requirements would "open the flood gates" to fraudulent mental injury claims. E.g., School District #1, 215 N.W.2d at 377. Courts also often state that worker's compensation acts were not designed to make employers "general insurers," which could happen if there were no objective threshold requirements, since some causal connection between the mental illness and employment could be established in most cases. E.g., Townsend, 404 A.2d at 1018-19. Alascom argues that the "greater than all employees must experience" test is appropriate to ensure that the injury "arise out of" employment by providing that there is some objective, realistic, connection between the injury and the employment.

While we recognize these concerns, we reject the "greater than all employees must experience" test, or any other additional "objective" threshold requirement, for several reasons.

First, we are unconvinced that requiring a showing of stress greater than all employees must experience will

make it more likely that employment was a contributing cause of the mental injury.

> The existence of a mental impact stimulus or unusual excessive mental employment stresses, however, does not medically assure the genuineness of the causal relationship between a worker's mental disability and his employment any more than does the existence of a physical impact. The intensity of the mental stresses is etiologically irrelevant. The metaphorical description of the threshold limitations by courts as "sufficient badge[s] of reliability", therefore, is accurate: like the objective criteria in tort actions for emotional injury, these "badges" at best assure the appearance of an objective causal relation.

Joseph, 36 Vand. L. Rev. at 305 (emphasis in original) (footnotes omitted); see Comment, 70 Yale L. J. at 1138-45. We therefore think that the "greater than all employees must experience" test is neither essential nor even germane to the legislative requirement that the injury "arise out of" the employment.

Second, we believe the argument that threshold requirements are necessary for mental injuries because such injuries are easier to feign than physical injuries is unsubstantiated. There is no evidence that it will be easier to feign or more difficult to detect complex patterns of psychoneurotic reactions than certain "physical" injuries. See Comment, 70 Yale L. J. at 1137.

Finally, and most importantly, we think that adoption of the "greater than all employees must experience" requirement is contrary to the fundamental principle in workers' compensation law that the Act should be read liberally and that the employer must take the employee "as he finds him." See, e.g., S.L.W. v. Alaska Workmen's Compensation Board, 490 P.2d 42, 44 (Alaska 1971); Wilson v. Erickson, 477 P.2d 998, 1000 (Alaska 1970). There will be employees who will suffer mental injuries from "usual," "everyday," employment stresses. Under this requirement these "eggshell" employees would not be compensated for their injuries, because the stress to which they succumbed was a stress to which the average worker would not have succumbed.

Several jurisdictions have rejected the "greater than all employees must experience" requirement on the explicit or implicit grounds that the employer must take the employee as he finds him, and that there is nothing in the workers' compensation statute that implies there should be any different rule for mental illness. See Royal State National Insurance Co. v. Labor & Industrial Relations Appeal Board, 487 P.2d 278,282 (Hawaii 1971); Yocom v. Pierce, 534 S.W.2d 796, 798-800 (Ky. 1976); Breeden v. Workmen's Compensation Comm'r, 285 S.E.2d 398, 400 (W.Va. 1981); McGarrah v. SAIF, 675 P.2d 159, 167 (Or. 1983);

Albertson's, Inc. v. Workers' Compensation Appeals Bd. of State of California, 182 Cal. Rptr. 304, 307 (Cal. App. 1982).

We agree with these decisions. "Greater stress than all employees must experience" does not insure that the injury "arises out of employment." While no "test" can adequately insure this, we have not imposed additional threshold requirements in physical injury cases where it was difficult to determine whether employment was a causal factor. See, e.g., Providence Washington Insurance Co. v. Bonner, 680 P.2d 96 (Alaska 1984). In Delaney v. Alaska Airlines, 693 P.2d 859 (Alaska 1985), a pilot who had Crohn's disease claimed compensation. We rejected Delaney's claim that Crohn's disease was an occupational disease of airplane pilots caused by excessively stressful conditions because there had been no medical testimony that the disease had originally been caused by conditions of employment. Id. at 862. Therefore the preliminary link between the illness and the employment had not been established. We then stated that the "preliminary link" had been established as to whether the employment conditions aggravated, accelerated or combined with a pre-existing disease to produce disability. Id. at 863. We held, however, that the employer had produced "substantial evidence" that employment stress was not a contributing factor, based on unequivocal expert

testimony, and therefore had rebutted the presumption of compensability. Id. at 863.

While ultimately rejecting the employee's claim in Delaney, we did not vary from the traditional analysis even though the question of whether the employment contributed to the injury was novel and difficult. We see no reason to vary from the traditional analysis in mental injury cases by imposing additional requirements on the quality or quantity of employment conditions. No legal approach can be entirely accurate in this area because there is insufficient scientific knowledge regarding what actually causes mental disorders. The creation of additional requirements that do not necessarily bear on whether there is a connection between the injury and the employment, and which per se exclude a class of claimants from legislatively directed compensation coverage, is not the way to deal with this reality.

C. The "Honest Perception" Test

Fox urges us to adopt the approach taken in Deziel v. Difco Laboratories, Inc., 268 N.W.2d 1 (Mich. 1978). In Deziel the court adopted a "strictly subjective" causal nexus to determine compensability. Under this standard:

> [A] claimant is entitled to compensation if it is factually established that claimant honestly perceives some personal injury incurred during the ordinary

> work of his employment "caused" his disability. This standard applies where the plaintiff alleges a disability resulting from either a physical or mental stimulus and honestly, even though mistakenly, believes that he is disabled due to that work-related injury and therefore cannot resume his normal employment.

Id. at 11 (emphasis in original).

The court stated that this test was appropriate because psychoneuroses were, by definition, subjective injuries and disabilities existing only in the minds of their victims. The court viewed the "honest perception" test as reflecting the central fact that the mentally ill claimant was "mis-manufacturing" or misperceiving reality. Id. at 12. The court also stated that the workers' compensation act should be construed liberally and that "[c]ompensation for disability takes preference over any subsidiary doubts about the existence of an objective causal nexus." Id. at 15.

We decline to adopt the "honest perception" test because we believe it is fundamentally inconsistent with the statutory requirement that the injury "arise out of" the employment. The "honest perception" approach does not take into account the fact that objective, environmental realities, such as employment, may or may not contribute to the disability. See Joseph, 36 Vand. L. Rev. at 308-09. While it is true, as a general policy preference, that remedial

legislation should be construed liberally, this does not give us license to ignore the statutory directive. The "arising out of" requirement is the legislature's primary means of limiting compensation to employment related risks. A test that focuses exclusively upon the employee's honest perception ignores the statutory directive because it does not ask whether the mental injury arose from an employment related risk nor does it even look to whether an employee's subjective reaction to work stresses actually contributed to the injury. Under this test, even if the subjective reaction of a predisposed or "eggshell" employee did not contribute to the employee's injury, the injury would still be compensable if the employee "honestly perceived" that his job caused the injury.

The dissent in Deziel pointed out that this scenario could occur often since it is very likely that a claimant would "perceive" his employment as the cause of his disorder:

> [F]or a neurotic state to exist, . . . the person must be unable or unwilling to recognize and resolve these [inner conflicts and emotional weaknesses]. The disorder is an unconscious attempt at resolution. The only possible causative factor of which the claimant is, or will allow himself to be, consciously aware is the work-related trauma. Reality is elusive. It is, therefore, highly unlikely that the claimant's perception of causation will be anything but his employment.

268 N.W.2d at 24.

D. The "Preliminary Link"

We conclude that this case should be analyzed in the same way as any other claim for workers' compensation benefits. We are not alone in treating a claim for mental injury caused by gradual mental stress in the same manner as any other workers' compensation disability claim. See Royal State National Insurance Co. v. Labor & Industrial Relations Appeal Board, 487 P.2d 278 (Hawaii 1971); Yocom v. Pierce, 534 S.W.2d 796 (Ky. 1976); McGarrah v. SAIF, 675 P.2d 159 (Or. 1983); Breeden v. Workmen's Compensation Comm'r, 285 S.E.2d 398 (W.Va. 1981). The "preliminary link" and presumption of compensability is established if there is evidence that the employment contributed to the injury. See Bonner, 680 P.2d at 99. The fact that the employee perceives employment as the source of the injury is not enough to establish the preliminary link unless there is some testimony that the employment affected the employee to help create the disability. As one court put it, there must be some evidence that the employment played an "active role" in the development of the mental disability and did not "merely provide a stage for the event." Albertson's, Inc. v. Workers' Compensation Appeals Bd. of State of California, 182 Cal. Rptr. 304, 309 (Cal. App. 1982).

Here the evidence establishes a preliminary link between the employment and the disability. While Dr. Ohlson indicated that in his opinion there were a variety of factors more likely to produce stress in Fox, he also stated that "[Fox's] relationship with fellow workers and supervisors at Alascom has evidently produced a tremendous amount of stress in her." Dr. Ohlson also stated that Fox's employment with Alascom was a factor causing stress although he thought it was not the exclusive nor precipitating factor.

In order to establish the preliminary link necessary for the presumption of compensability the claimant need not present substantial evidence that his or her employment was a substantial cause of his disability. Such a showing would be necessary only if the employer had rebutted the presumption of compensability. See Bonner, 680 P.2d at 98 (Alaska 1984). The record contains evidence that the employment was a factor in creating Fox's disability. This is enough to establish the presumption of compensability. On remand, Alascom may rebut the presumption by presenting substantial evidence that Fox's disability was not work-related through (1) affirmative evidence that the disability was not work-related, or (2) elimination of all reasonable possibilities that the injury was work connected. Burgess Construction Co. v.

Smallwood (Smallwood III), 698 P.2d 1206, 1211 (Alaska 1985). If Alascom does rebut the presumption then Fox will have to prove all the elements of her claim by a preponderance of the evidence. Id. at 1211.

REVERSED and REMANDED for proceedings consistent with this opinion.

Workers' comp legislation no help to workers

By CHANCY CROFT

COMPASS
POINTS OF VIEW FROM OUR COMMUNITY

Workers' compensation reform was touted as reducing costs 15 to 20 percent until reality entered the debate.

A study by the National Council of Compensation Insurance was followed by a second major study from a private actuarial firm. Both concluded that the legislation under consideration in Juneau would not reduce costs. There might even be a cost increase! Yes, that's right — the hard number boys said there might be a cost increase.

The bill was touted as providing jobs from cost savings to employers. Without any cost savings, of course, no jobs will be created. But senators, anxious to please their business constituents, ignored the hard facts and passed a resolution — which has no legal effect — asking insurance companies to reduce premiums by 2 percent.

Even a fictitious 2 percent reduction would provide a saving of only a few hundred dollars to the average employer. The permanent fund dividend would be three times as large as any fictitious savings to an employer under SB 322.

Do we have the most expensive workers' compensation system in the United States? No. Several states have more expensive systems, including Oregon and Montana.

Are we the only state that's facing an increase? No. Oklahoma, Louisiana, South Carolina, Maine and New Hampshire are all facing larger increases.

So why is there an increase in Alaska? Nobody can say for sure. The Division of Insurance has no figures, the Workers' Comp Division has no figures.

The only thing we know for sure is the injury frequency has hit a 10-year high and that the delay in handling cases has increased 70 percent. This alone probably accounts for some of the increase. But SB 322 ignores safety and makes delays worse.

If the legislation does nothing to control insurance companies or reduce premiums, does it benefit injured workers? Only a few workers at the expense of the many. Some legislative provisions are good. Many more are regressive.

The benefits are not worth the price most injured workers will pay.

• Seriously disabled workers get less. People with closed head injuries, burn victims, multiple trauma injuries requiring repeated operations, all are arbitrarily cut off temporary disability after two years. This is done in the name of a false premium reduction to those employers who caused the injury in the first place.

• All payments for permanent partial wage loss are totally eliminated. This would make Alaska the first state to reject compensation to injured workers based on permanent loss of earning capacity. Instead payment is solely on medical impairment.

If you're a lawyer and lose an arm you'll get a lot, but if you're a laborer with a bad back, you're mostly out of luck.

• Workers pay their own time loss during rehabilitation once they are medically stationary.

• A worker's right to a determination of actual earning capacity is ignored, claims based on stressful jobs are excluded, compensation is limited regardless of actual earnings, out-of-state benefits are reduced (a similar provision was declared unconstitutional years ago) and workers get only one choice of a doctor.

• Court review of board decisions is severely restricted.

But even more strangely, all medical benefits are excluded. To the average Alaska family, medical benefits are more important than pension. Some states have mandated that employers continue health insurance for injured workers — why not Alaska?

The legislation was the result of long hours of hard work by a select group of people. But it has three philosophical premises not in the interest of injured workers.

First, the legislation is arbitrary. What is the legal or moral authority to make arbitrary rules about injured workers? Who can say that some workers get a high percentage of their pre-injury earnings and others have to get by on less? Why aren't all workers treated equally?

Second, a case is closed regardless of condition. Injured workers are treated like dated products on a grocer's shelves. After time, they are disposed of.

Third — and the most serious fallacy behind this legislation — is the notion that workers' compensation can be reduced without reducing benefits. It's a nice theory, but it doesn't work here. In short, there's no free lunch. This bill is the first workers' comp legislation in a long time that both raises costs and reduces benefits!

The theory of workers' compensation legislation is "that the cost of all industrial accidents should be born by the consumer as part of the cost of the product." *Searfus vs. Northern Gas Company*, 472 Pacific 2nd 966 (Alaska 1970).

If workers' compensation is costing too much, it's because employers are injuring too much. If the cost of doing business in Alaska is too great because workers are too careless, why reduce benefits to injured workers? Do Alaska businesses really deserve an economic bailout from the state and a subsidy by their injured workers, as well?

Do Alaska businesses really deserve an economic bailout from the state and a subsidy by their injured workers, as well?

Workers in other states are fighting winning battles for a higher minimum wage, decent health insurance and better working conditions. Why do Alaska workers have to settle for a second-rate compensation act?

So, I come back again to the question each of us should ask. Why is it that when injured workers and businesses alike are affected by increased delays by the Division of Workers' Compensation, the legislative solution is to increase those delays? Why is it that when workers' comp costs increase because of an increasing injury rate, nobody does anything about safety?

Why is it that if insurance companies want an increase in premiums one year, nobody asks if they made excess profits years before? Why is it that every time something is done about insurance costs the reaction is always to reduce benefits to the state's 25,000 injured workers? Why must the workers always pay the price?

☐ Chancy Croft is an Anchorage attorney.