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HOUSE COMMITTEE REPORT

(7)

Date referred: 3/28/88

FURTHER REFERRALS: Resources

DATE: 4/26/88

The Labor & Commerce Committee has considered CSSB 309 (Res)

"An Act relating to the definition of commercial fisherman under statutes regulating commercial fishing."

RECOMMENDS:

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

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(S):

- fiscal impact same as previous fiscal note published _____
- zero fiscal note same as previous zero fiscal note published 3/22/88
- zero with analysis

SIGNING DO PASS:

SIGNING OTHER RECOMMENDATIONS:

Donald Douley

W. L. Kozma

Clyde Davidson

Chas. A. Pugh

Samuel M. ...

J. Ellis

W. J. ...

Donald Douley
Chairman's signature

STATE OF ALASKA
1988 LEGISLATIVE SESSION

BILL VERSION: CSSB 309 (Res)

PUBLISH DATE: _____

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Labor
 Title: "An Act Relating to the
definition of commercial fisherman..." BRU: Workers' Compensation
 Sponsor: Zharoff Components: Workers' Compensation
 Requestor: House Labor & Commerce

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

Prepared by Jacque McClintock Phone: 465-2790
 Division: Workers' Compensation Date: 4/26/88
 Approved by Commissioner: Jim Sampson Date: 4/26/88
 Agency: Department of Labor

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

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Labor
 Title: "An Act Relating to the Definition of Commercial Fisherman" BRU: Workers Compensation
 Sponsor: Zharoff Components: Workers Compensation
 Requestor: Senate Labor and Commerce

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

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

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

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Jacquie McClintock Phone: 465-2790
 Division: Workers' Compensation Date: 1/26/88
 Approved by Commissioner: Jim Sampson Date: 1/26/88
 Agency: Labor

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

ALASKA STATE SENATE



SENATOR TIM KELLY
ANCHORAGE/EAGLE RIVER
CHAIRMAN

SENATOR DICK ELIASON
SITKA
VICE CHAIRMAN

LABOR AND COMMERCE COMMITTEE

MEMBERS
SENATOR BETTYE FARRENKAMP
FAIRBANKS

SENATOR RICK UEHLING
ANCHORAGE

SENATOR MIKE SZYMANSKI
ANCHORAGE

Letter of Intent for CSSB 309 (L&C)

It is the intent of the Legislature that a person injured while working as a processing worker shall not be able to claim benefits from the Fishermen's Fund even though that person may hold a commercial fishing license.



SENATOR FRED F. ZHAROFF
ALASKA STATE LEGISLATURE

P.O. BOX 405, KODIAK, ALASKA 99615 (907) 486-5259

DURING SESSION:

P.O. BOX V, JUNEAU, ALASKA 99811 • (907) 465-3473 • 465-3474

G

DISTRICT N

ALASKA PENINSULA • ALEUTIAN CHAIN • BRISTOL BAY • KODIAK ISLAND • LAKE CLARK/LAKE ILIAMNA • PRIBILOF ISLANDS • SHUMAGIN ISLANDS

TO: Representative David Donley
Chairman
House Labor and Commerce Committee

FROM: Senator Fred F. Zharoff *F. Zharoff*

DATE: March 31, 1988

RE: CS For Senate Bill 309 -- "An Act relating to the definition of commercial fisherman under statutes regulating commercial fishing."

SB 309 amends 16.05.940(4) to eliminate processing workers on floating fish processing vessels from the definition of "commercial fisherman".

In 1986, the legislature passed a bill that exempted commercial fishermen from workers' compensation coverage. This was done for two reasons: (1) Commercial fishermen were not originally intended to be covered by workers' compensation. (2) Injured commercial fishermen are compensated under the provisions of maritime law; workers' compensation coverage would be an unnecessary duplication. The bill had the effect of affirming and clarifying the Department of Labor's current interpretation of the law.

The passage of the bill, however, resulted in one, unintentional side effect. Under current statutes, processing workers on board floating seafood processing vessels have been defined as "commercial fishermen" since they are part of the crew of a "floating craft used in transporting fish". Under the new law, they were now exempt from workers' compensation coverage, which raised havoc with floating processors' insurance rates. It was never the intent of the legislature to prevent processing vessel workers from being covered by workers' compensation.

In addition, SB 309 addresses an inconsistency in state law, now corrected by a recent attorney general's opinion. As commercial fishermen, floating processing vessel workers were required to hold commercial fishing licenses. Over half the proceeds from the sale of commercial fishing licenses (\$18 from a \$30 resident license and \$54 from a \$90 nonresident license) go to the Fishermen's Fund, a compensation program for injured commercial fishermen. Under a previous attorney general's opinion, floating processing workers were barred from receiving any benefits from the Fishermen's Fund. In the interest of fairness, people who cannot receive benefits from the fund should not be forced to pay into it.

In an opinion dated Oct. 20, 1987 (attached), however, the attorney general determined that processing workers did not, in fact, need to purchase or possess commercial fishing licenses. The attorney general found that

processing workers on seafood processing vessels were manufacturing employees (the same as their counterparts in a shoreside processing plant) and distinct from the traditional definition of a "commercial fisherman".

The seafood processing companies have told us that despite the October attorney general's opinion, they are still encountering a great deal of resistance in convincing their insurers that workers on floating processors qualify for workers' compensation.

SB 309 would clear up this issue and leave absolutely about what the statute means.

Backup information for SB 109 is attached, as follows:

1. Department of Labor fiscal note.
2. Department of Public Safety fiscal note.
3. Chronology of events.
4. Senate Labor and Commerce Letter of Intent.
5. Attorney General's opinion, dated Oct. 20, 1987, stating that processing workers on mobile floating processing vessels are not required to hold commercial fishing licenses.
6. Attorney General's opinion, dated Feb. 22, 1984, stating that workers on floating processing ships need commercial fishing licenses and workers in shorebased processing plants do not.
7. Attorney General's opinion, dated Nov. 15, 1982, stating that floating processor workers do not qualify for Fishermen's Fund benefits.
8. Excerpt from the Division of Legal Service's "Report to the Thirteenth State Legislature Examining Court Decisions and Opinions of the Attorney General Construing Alaska Statutes", October, 1984, recommending legislative review of this issue.
9. Copies of the relevant state statutes, 16.05.480 (Commercial fishing license) and 16.05.940(4) (Definition of commercial fisherman).
10. Chapter 77 from the 1986 session laws, "An Act Exempting commercial fishermen from workers' compensation coverage."

STATE OF ALASKA
1988 LEGISLATIVE SESSION

BILL VERSION: SB 309
PUBLISH DATE: _____

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: "An act relating to the definition of commercial fisherman."
Sponsor: Zharoff
Requestor: Senate Labor & Commerce

Agency Affected: Labor
BRU: Workers' Compensation
Components: Worker's Compensation

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

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

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

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Jacque McClintock Phone: 465-2790
Division: Workers' Compensation Date: 1/22/88

Approved by Commissioner: Jim Samson Date: 1/22/88
Agency: Labor

Distribution (by preparer):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: An act relating to the definition of commercial fishermen
Sponsor: Zharoff
Requestor: Senate Resources

Agency Affected: Public Safety
BRU: Fish & Wildlife Protection
Components: Enforcement

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

No fiscal impact is anticipated.

JNR
2/10/88

Prepared by: Captain Conrad G. Seibel *C. Seibel* Phone: 269-5509
Division: Fish & Wildlife Protection Date: 2/2/88

Approved by Commissioner: *J. Hooley, Dep. Comm.* Date: 3-2-88
Agency: Department of Public Safety

Distribution (by preparer):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

CHRONOLOGY OF EVENTS SURROUNDING SB 309

- Nov., 1982 - Attorney General issues opinion (Asst. A.G. Gary Amendola to Glenn Lundell, deputy commissioner, Dept. of Labor, Nov. 15, file #366-252-83) saying that crewmembers on board floating fish processing vessels are not, by definition, engaged in "commercial fishing" and they do not qualify for Fisherman's Fund benefits (a special fund, administered by the Department of Labor, for compensating injured commercial fishermen).
- Feb., 1984 - Attorney General issues opinion (Asst. A.G. Kathleen McGuire to Lt. Col. Tetzlaff, Div. of Fish & Wildlife Protection, Feb. 22, file #166-358-84) saying that employees on board floating processing vessels, since they are engaged in the transport of fish, are required to have commercial fishing licenses.
- Oct., 1984 - The legislature's Division of Legal Services notes in its "Report to the Thirteenth State Legislature Examining Court Decisions and Opinions of the Attorney General Construing Alaska Statutes" the inconsistency in the two previous AG opinions -- floating processing workers are required to have commercial fishing licenses, but they are denied Fisherman's Fund benefits. Legislative review is recommended.
- May, 1986 - As part of an effort to clear up ambiguities and problems in regard to marine insurance, the Alaska Legislature passes a bill exempting commercial fishermen from workers' compensation.
- Spring, 1987 - Seafood processors contact Senator Zharoff. They complain their insurance companies have informed them that since the employees on floating processing vessels are defined as "commercial fishermen", and since commercial fishermen are now exempt from workers' compensation, the insurance companies will no longer sell the processors workers' compensation coverage. Instead, the processors must buy more expensive marine protection and indemnity (P&I) insurance policies.
- May, 1987 - Senate Bill 309 introduced in an effort to resolve the problem.
- Summer, 1987 - Seafood processors complain about Fish and Wildlife Protection officers boarding their processing vessels to enforce the requirement that all workers have commercial fishing licenses.
- Oct., 1987 - Attorney General issues opinion (Asst. A.G. Sarah McCracken to Col. Jack Jordan, director, Div. of Fish and Wildlife Protection, Oct. 20, file #661-87-0428) saying that processing workers on board mobile floating vessels are not "commercial fishermen" and do not need to hold commercial fishing licenses.
- Spring, 1988 - Insurance companies continue to charge P&I rates despite the most recent Attorney General's opinion. Source: Rick Lauber of the Pacific Seafood Processors Association in testimony to the Senate Resources Committee, April 21.

SB 309

The Labor and Commerce Committee considered SENATE BILL NO. 309 (An Act relating to the definition of commercial fisherman under statutes regulating commercial fishing) and a majority of the committee recommended it be replaced with

CS FOR SENATE BILL NO. 309(L&C)

and do pass with a Letter of Intent. The report was signed by Senator Kelly, Chairman and concurred in by Senators Szymanski and Uehling.

Zero fiscal note published today from Department of Labor.

Letter of Intent
for
CSSB 309(L&C)

It is the intent of the Legislature that a person injured while working as a processing worker shall not be able to claim benefits from the Fishermen's Fund even though that person may hold a commercial fishing license.

SENATE BILL NO. 309 was referred to the Resources Committee.

SB 353

The Resources Committee considered SENATE BILL NO. 353 (An Act extending the agricultural production credit law). Senator Coghill, Chairman signed "do pass". Senators Duncan, Fanning and Fischer signed "no recommendation".

Zero fiscal note published today from Department of Natural Resources.

SENATE BILL NO. 353 was referred to the Finance Committee.

SB 317

The Rules Committee considered SENATE BILL NO. 317 (An Act relating to the refunds of fisheries tax proceeds made to local governments) and a majority of the committee recommended calendar. The report was signed by Senator Hensley, Vice-chairman and concurred in by Senators Faiks, Binkley and Jones.

MEMORANDUM

State of Alaska DEPARTMENT OF LAW

TO: Col. Jack Jordan, Director
Division of Fish & Wildlife
Protection
Department of Public Safety

DATE: October 20, 1987

FILE NO: 661-87-0428

TELEPHONE NO:

THRU:

SUBJECT: Commercial fishing
licenses: applicability
to processors

FROM: Sarah E. McCracken ^{SEM}
Assistant Attorney General
Natural Resources-Anchorage

A March 17, 1987, memorandum from then Acting Director Capt. James Nutgrass requested our advice regarding various aspects of Alaska's commercial fisheries licensing statutes (copy of memorandum attached). The memorandum asks essentially three questions requiring interpretation of relevant law:

1. Is a person who works on the fish processing line of a mobile floating processor or catcher-processor required to hold a commercial fishing license?
2. Are crewmembers on a tender or mobile floating processor required to hold commercial fishing licenses?
3. Must the skipper or crew of a freight vessel hauling processed fish to market for sale hold a commercial fishing license?

A subsidiary question raised by the memorandum is whether the definition of "fish" in AS 16.05.940(10), as that term is used in the licensing requirement at AS 16.05.480 and in the definition of "commercial fishing" in AS 16.05.940(5), includes fish that are already dead or processed.

Our summary response to these questions is that an employee on a mobile floating processor or catcher-processor whose sole function is to work on the fish processing line (gutting, packing, or maintaining freezing equipment, etc.) and who does not engage in actual fishing activities (setting and hauling nets, operating and repairing gear) or in the navigation and operation of the vessel (independent of its processing functions) is not required to obtain a commercial fishing license. However, if that person, in addition to mere processing of fish, also engages in fishing activities or activities related

to the navigation or operation of the vessel itself, he must obtain a commercial fishing license. Crewmembers engaged in the operation and navigation of tenders or mobile floating processors that transport unprocessed fish must obtain commercial fishing licenses. The skipper or crew of a freight vessel used only to transport processed fish need not hold a commercial fishing license. Our analysis follows.

1. Commercial fishing license requirement.

The genesis of your inquiry is AS 16.05.480(a), which requires every person engaged in "commercial fishing" in waters subject to Alaska's jurisdiction to obtain a commercial fishing license from the state. 1/ This provision has existed in virtually identical form since the first state fish and game code was enacted in 1959. 2/

The term "commercial fishing" is defined in AS 16.05.940(5) as follows:

(5) "commercial fishing" means the taking, fishing for, or possession of fish, shellfish, or other fishery resources with the intent of disposing of them for profit, or by sale, barter, trade, or in commercial channels; the failure to have a valid

1/ The full text of AS 16.05.480(a) provides:

Sec. 16.05.480. Commercial fishing licenses. (a) A person engaged in commercial fishing shall obtain a commercial fishing license. The fee for the license is \$30 for residents, and \$90 for nonresidents. Except for those which are also entry or interim-use permits, all commercial fishing licenses are nontransferable. The commercial fishing license shall be retained in the possession of the licensee, readily accessible for inspection at all times. No more than one fee may be charged annually against a person. For the purposes of this section, "commercial fishing license" includes entry permits and interim-use permits issued under AS 16.43 and crewmember fishing licenses.

2/ Sec. 6, art. III, ch. 94, SLA 1959.

subsistence permit in possession, if required by statute or regulation, is considered prima facie evidence of commercial fishing if commercial fishing gear as specified by regulation is involved in the taking, fishing for, or possession of fish, shellfish, or other fish resources;

This definition, with the exception of reference to the failure to have a valid subsistence permit in possession, has also existed in virtually the same form since statehood. 3/

On its face, AS 16.05.480(a), as its terms are defined in AS 16.05.940(5), requires a commercial fishing license only of those persons who are actually taking, fishing for, or possessing fishery resources with the intent of selling them.

As explained in 1984 Inf. Op. Att'y Gen. (Feb. 22; 166-358-84), "possession" of fish requires a degree of ownership or control. A person who merely works on a processing line at a cannery and whose sole function is to process fish does not exercise the requisite indicia of possession to fit within the meaning of a person "taking, fishing for, or possessing" fish to require a license. See cases cited in 1984 Inf. Op. Att'y Gen., supra. In this regard, the principle of statutory construction that when legislative intent is unclear, the meaning of doubtful words may be determined by referring to associated words (noscitur a sociis) is applicable, as explained below. See 2A N. Singer Sutherland Statutory Construction, §47.16 (4th ed. 1984); see also State, Real Estate Comm'n v. Johnston, 682 P.2d 383, 386-87 (Alaska 1984).

To the extent that the word "possession" in AS 16.05.940(5) is unclear, it should be interpreted in light of the related terms "taking" and "fishing" for fish. 4/ In this

3/ Sec. 2(n), art. I, ch. 94, SLA 1959.

4/ The term "take" is defined in AS 16.05.940(31) as follows:

(3) "take" means taking, pursuing, hunting, fishing, trapping, or in any manner disturbing, capturing, or killing or attempting to take,
(Footnote continued)

context, we believe "possession" of fish should be interpreted to mean possession that is associated with fishing activities, i.e., exercising some control over the fish, as opposed to mere handling of fish in a processing plant. We believe this applies regardless of whether the worker is processing fish on board a floating or a stationary processing vessel. 5/ Similarly, a person who is merely processing fish on board a catcher-processor and who does no other function related to fishing or the operation of the vessel, would not require a commercial fishing license. 6/

2. Definition of "commercial fisherman."

The above conclusions are consistent with the interpretation of AS 23.35 articulated in 1982 Inf. Op. Att'y Gen. (Nov. 15; 366-252-83), that employees processing fish on floating processors are not "commercial fishing" and hence do not qualify for "fisherman's fund" benefits. (Copy of memorandum attached). That memorandum noted, however, that "the [D]epartment [of Fish and Game] has been advising owners of processors to purchase commercial fishing licenses for those persons employed on board although the law is not perfectly clear on that requirement."

The ambiguity regarding whether employees on floating cannery vessels or fish processors are "commercial fishing" derives from the statutory definition of "commercial fisherman" set out at AS 16.05.940(4):

(4) "commercial fisherman" means an individual who fishes commercially for, takes, or attempts to

(Footnote continued)

pursue, hunt, fish, trap, or in any manner capture or kill fish or game;

5/ To the extent that this conclusion departs from that reached in 1984 Inf. Op. Att'y Gen. (Feb. 22; 166-350-84), the earlier memorandum is hereby overruled on this point only.

6/ We recognize that on many catcher processors, crewmembers participate at times in all aspects of the operation -- both fishing and processing. These crewmembers would require a license.

take fish, shellfish, or other fishery resources of the state by any means, and includes every individual aboard a boat operated for fishing purposes who participates directly or indirectly in the taking of these raw fishery products, whether participation is on shares or as an employee or otherwise; however, this definition does not apply to anyone aboard a licensed vessel as a visitor or guest who does not directly or indirectly participate in the taking; and the term "commercial fisherman" includes the crews of tenders or other floating craft used in transporting fish;

The term "commercial fisherman" is not actually used in AS 16.05.480(a) nor in AS 16.05.940(5), the operative provisions that require a person engaged in "commercial fishing" to obtain a commercial fishing license. However, the existence of the definition in AS 16, and its ostensibly broad application to "the crews of floating craft used in transporting fish," raises some question as to whether employees who work on fish processing lines aboard vessels are "commercial fishermen" and whether that definition correlates precisely with the definition of "commercial fishing" in AS 16.05.940(5).

The relationship between the definition of "commercial fisherman" in AS 16.05.940(4) and the class of persons who must obtain commercial fishing licenses is fortified by two factors: (1) the legislative history of the term and (2) interpretive regulations.

First, the statutory definition of "commercial fisherman" in AS 16.05.940(4) derives from section 2(o), ch. 94, SLA 1959. 7/ The present statutory requirement regarding

7/ The text of that definition provided:

(o) "Commercial fisherman": an individual who fishes commercially for, takes or attempts to take fish, shellfish, or other fishery resources of Alaska by any means, and including every individual aboard boats operated for fishing
(Footnote continued)

commercial fishing licenses derives from section 6, article III, ch. 94, SLA 1959, which provided:

Sec. 6. Commercial Fishing License. A commercial fishing license shall be obtained by each and every individual before he shall become engaged as a fisherman as above defined. The fee for such license shall be \$10.00 for residents, and \$15.00 for non-residents.

There is no definition of "fisherman" in ch. 94, SLA 1959; however, there is the above definition of "commercial fisherman" set out in section 2(o), article III, ch. 94, SLA 1959, and logically this must be the definition referred to in section 6. Thus, unlike the present statutory language at AS 16.05.480(a) that requires commercial fishing licenses of people engaged in "commercial fishing," the statutory language from which this provision derives did reference the definition of "commercial fisherman," and each "commercial fisherman" had to obtain a license.

Although we have found no legislative history that sheds light on the reason for the language change from section 6, article III, ch. 94, SLA 1959 to the language now in AS 16.05.480(a), it does not appear that there was any legislative intent to divorce the statutory license requirement in AS 16.05.480(a) from the definition of "commercial fisherman." Hence we believe that the current definition of "commercial fisherman" should be read in harmony with AS 16.05.480(a) and be a guide in interpreting who must obtain a license.

(Footnote continued)

purposes who participates directly or indirectly in the taking of the raw fishery products above mentioned, whether such participation be on shares or as employee or otherwise; provided, however, this shall not apply to anyone aboard a licensed vessel merely as a visitor or guest who does not directly or indirectly participate in the said taking. The term "commercial fisherman" shall also include the crews of tenders or other floating craft used in transporting fish.

The above conclusion is strengthened also by the fact that the board of fisheries has adopted a regulation, 5 AAC 39.110(a), that requires a "commercial fisherman" who does not hold a valid interim-use or entry permit to obtain a "crew member fishing license." 8/ In the absence of any discreet definition of "commercial fisherman" in the administrative code, we interpret this term in light of the statutory definition of "commercial fisherman" in AS 16.05.940(4). We also read "crewmember fishing license" as included within the definition of "commercial fishing license" in AS 16.05.480(a). 9/

Based upon the above analysis, we believe that the definition of "commercial fisherman" in AS 16.05.940(4) should be a guideline in determining who is "commercial fishing" and hence required to obtain a commercial fishing license. However, although the definition of "commercial fisherman" appears to cover broadly the "crews of tenders or other floating craft used in transporting fish," we do not find that this covers employees aboard floating craft who merely process fish and who do not engage in the operation or navigation of the vessel. This

8/ The text of 5 AAC 39.110(a) provides:

5 AAC 39.110. Crew member fishing license requirements. (a) Each commercial fisherman who does not hold a valid interim-use or entry permit card issued by the Commercial Fisheries Entry Commission shall obtain a crewmember fishing license before fishing in any waters of Alaska. A crew member fishing license is not required for the holder of a valid interim-use or entry permit card.

9/ As 16.05.480 specifies that "'commercial fishing license' includes entry permits and interim-use permits issued under AS 16.43 and crewmember fishing licenses." The term "crew" is defined in 5 AAC 39.110(e) as:

(e) In this section, "crew" means the activities of a commercial fisherman as defined in AS 16.05.940(4), who is actively engaged in the operation of fishing gear that is being operated in the manner described in 5 AAC 39.107.

conclusion is based upon a review of the statutory scheme as a whole and a reading of associated words within the definition of "commercial fisherman," explained below.

3. Scope of "crews of other floating craft used to transport fish."

First, as discussed above, we do not view AS 16.05.480(a), standing alone, as requiring persons who merely process fish to hold a commercial fishing license. The statutory definition of "commercial fisherman," while, as explained above, relevant in interpreting who must hold a license, should be construed in harmony with the terms used in AS 16.05.480(a). See generally State v. First Nat. Bank of Anchorage, 660 P.2d 406, 413 (Alaska 1982).

Second, reading doubtful words in harmony with associated words in AS 16.05.940(4), we believe that "tenders or other floating craft used in transporting fish" relates to craft used in taking and transporting raw, rather than fully processed fish. AS 16.05.940(4) specifies that "commercial fisherman" "includes every individual aboard a boat operated for fishing purposes who participates directly or indirectly in the taking of these raw fishery products ..." (Emphasis added). Since tenders transport raw fish, we believe that the term "tenders and other floating craft used in transporting fish" must be read in association with the rest of AS 16.05.940(4) to refer to vessels used to transport raw or partially processed fish, as opposed to barges carrying fully processed fishery products to market. ^{10/} We also do not view an employee on a processing vessel who merely processes fish and does not engage in other aspects of the

^{10/} Captain Nutgrass had requested in particular an interpretation of the word "fish" defined in AS 16.05.940(10); he suggested that if "fish" includes dead (processed) fish, by logical extension "personnel of airlines and freight companies transporting fish to market would be required to have commercial fishing licenses." For the reasons stated above, we conclude that in context, the term "fish" as used in AS 16.05.940(4) does not include fully processed fish. However, we also believe that the general definition of "fish" in AS 16.05.940(10) (which includes fish "in any stage of its life cycle") does include dead and processed fish, unless the context otherwise provides.

Col. Jack Jordan, Director
Division of Fish & Wildlife Protection
661-87-0428

October 20, 1987
Page 9

vessel's operation to be a "crewmember" within the meaning of a person engaged in "commercial fishing." Such a broad interpretation would not harmonize with the other language (discussed above) in AS 16.05.940(4) and AS 16.05.940(5). 11/

4. Summary.

In summary, your specific questions and our answers are as follows:

Q.1. Is a person who works on the fish processing line of a mobile floating processor or catcher-processor required to hold a commercial fishing license?

A. No, so long as the person does not engage in any

11/ It may be of some use to compare certain other state and federal laws that distinguish between crewmembers who operate vessels and other employees aboard. For example, the Fair Labor Standards Act provides certain exceptions from minimum wage requirements for employees who process, can, or pack fish or shell fish "at sea as an incident to ... fishing operations" (29 U.S.C. §213(a)(5)), and for "seamen." (29 U.S.C. §213(b)(6)). The latter term is defined as an employee who performs "service which is rendered primarily as an aid in the operation of [a] vessel as a means of transportation, provided he performs no substantial amount of work of a different character." 29 C.F.R. §783.31. See also 29 C.F.R. §783.32. And see Worthington v. Icicle Seafoods, Inc., 796 F.2d 337, 338 (9th Cir. 1986). Under Alaska law, the minimum wage exemption only applies to "seamen." AS 23.10.060(12). Thus, in some areas of law, a distinction is made between the functions of seamen (who may be viewed as "crewmen") and employees who merely process fish. (However, compare citizenship requirements for "seamen" on certain large documented vessels. 46 U.S.C. §8103(b) and 46 U.S.C. §8701(a)(7) and (b). The term "seamen" is not defined in these statutes and there appears to be a difference of interpretation as to whether the term "seamen" applies only to the deck crew and persons in a position directly related to navigation, or to any employee engaged in any capacity on the vessel. See e.g. definition of "seamen" under merchant seamen protection and relief law, 46 U.S.C. §10101(3))

Col. Jack Jordan, Director
Division of Fish & Wildlife Protection
661-87-0428

October 20, 1987
Page 10

activities relating to operation and navigation of the vessel (other than processing).

Q.2. Do crewmembers on a tender or mobile floating processor require a commercial fishing license?

A. Yes, but in context a "crewmember" does not include a person whose sole activity is processing fish.

Q.3. Must the skipper or crew of a freight vessel hauling processed fish to market for sale hold a commercial fishing license?

A. No.

I hope this answers all the questions raised in Captain Nutgrass's request. If we can be of further assistance on this matter, please let us know.

SEM/jmo

cc: Hon. Don W. Collinsworth, Comm'r, ADF&G
Norman Cohen, Deputy Comm'r,
Ken Parker, Dir., Div. of Comm'l Fisheries
Bob Clasby, Comm'l Fisheries
Larri I. Spengler, AGO
Lance Nelson, AGO

a:JORDAN.MOA

MEMORANDUM

State of Alaska

TO: Lt. Col. Tetzlaff
Div. of Fish & Wildlife
Protection
Dept. of Public Safety

DATE: February 22, 1984

FILE NO: 166-358-84

TELEPHONE NO: 276-3550

FROM: Norman C. Gorsuch
Attorney General

SUBJECT: Commercial Fishery
Licenses

By: Kathleen McGuire *KMG*
Assistant Attorney General

You requested an opinion as to whether workers assigned to shore-based canneries must possess a commercial fishing license under AS 16.05.480.

The summary answer is that shore-based cannery workers do not need a commercial fishing license. AS 16.05.480(a) provides in part that "a person engaged in commercial fishing shall obtain a commercial fishing license" and AS 16.05.940(2) defines a commercial fisherman as "every individual aboard a boat operated for fishing purposes..." which includes "the crew of tenders or other floating craft used in transporting fish."

The two statutes read together make it clear that employees of canneries attached to land do not need commercial fishing licenses because they are not aboard a boat that is transporting fish. However, employees aboard floating processors that transport fish do require commercial fishing licenses.

Specifically, you have asked whether employees of shore-based but floating cannery are required to hold a commercial fishing license under AS 16.05.480(a). Two types of canneries are prevalent in Alaska: shore-based and floating. For tax purposes, AS 43.75.140(5) and (6) define shore-based canneries as including floating craft that are permanently attached to land, or remain in the same location in the state for an entire tax year. 1/

1/ AS 43.75.015 provides tax advantages to processors that are shore-based. AS 43.75.140 extinguishes those tax advantages, if the processors move their location. Because of the tax advantage, few shore-based canneries will be moving. However, if the shore-based canneries do move they are considered floating processors and their employees would be required to hold commercial fishing licenses under AS 16.05.480(a).

Lt. Col. Tetzlaff
Div. of Fish & Wildlife Protection
166-358-84

February 22, 1984
Page 2

Based upon the above definitions, the employees of a floating shore-based facility would be exempt under the definition of "commercial fisherman" in AS 16.05.940(2) because the floating shore-based facility would not be used for "transporting" fish because it must remain in the same location all year.

The employees of a floating shore-based facility would also be exempt under the definition of "commercial fishing" in AS 16.05.940(3). AS 16.05.940(3) defines possessing fish as commercial fishing. Although cannery workers handle fish, they are not in possession. Tinglev v. Brown, 380 So.2d 1289 (Fla. 1980). Possession requires a degree of ownership or control. Florida v. Brider, 386 So.2d 818, 819 (Fla. Dist. Ct. App. 1980). Cannery workers universally do not have ownership or control of the fish they handle.

CONCLUSION

Employees of shore-based floating canneries are not required to have a commercial fishing license. Employees of floating canneries are required to have a commercial fishing license.

KIM/ssr

MEMORANDUM

State of Alaska

TO: Glenn H. Lundell
Deputy Commissioner
Department of Labor

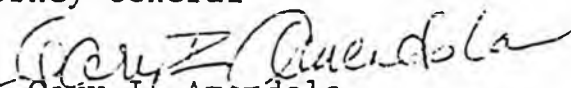
DATE: November 15, 1982

FILE NO: 366-252-83

TELEPHONE NO: 465-3603

FROM: Wilson L. Condon
Attorney General

SUBJECT: Interpretation of
Statute regarding
Workers on Fish
Processors

By: 
Gary I. Amendola
Assistant Attorney General

Under AS 23.35 and under the proper circumstances, "fishermen" can obtain medical and related benefits through a fund known as the "fisherman's fund". You have asked whether fish processing employees injured while working on a fish processor qualify for fisherman's fund benefits. You have also asked, in the event that the answer is in the affirmative, whether only specific employees on the processor are entitled to those benefits.

AS 23.35.070 states:

BENEFITS. A fisherman, upon becoming disabled, is entitled to receive benefits as follows: Immediately after he sustains an injury or disability arising out of an accident directly connected with his operations as a fisherman, either ashore, in the state, or in Alaska water, or suffers an occupational disease, the fisherman is entitled to emergency treatment, transportation to the nearest place where approved medical facilities are available, medical care and hospitalization. As used in this section, "Alaska water" means the inland and territorial water of the state and the fishery conservation zone adjacent to the state established by sec. 101 of the Fishery Conservation and Management Act of 1976, P.L. 94-265 (16 U.S.C. 1801 et seq.).

AS 23.35.080 -- AS 23.35.140 indicate the extent of other benefits offered, the manner in which the benefits may be provided, and the time and monetary limitations on benefits.

AS 23.35.150(4) reads:

"fisherman" means a person who is licensed by the state to engage in commercial fishing under

Glenn H. Lundell, Deputy Commissioner
Department of Labor
366-252-83

November 15, 1982
Page 2

AS 16.05.480 or who is the holder of a permit issued under AS 16.43 and who, at the time injury is sustained or illness is contracted, is actually so engaged or is occupied in Alaska in preparing or dismantling boats or gear used in commercial fishing.

I am advised by representatives of the Department of Revenue that all crewmembers on board a floating fish processor are required to have commercial fishing licenses.

I am advised by representatives of the Department of Fish and Game that all persons working on board a harvester/processor and on board tenders are required to have commercial fishing licenses. See AS 16.05.480 and AS 16.05.940(2). The department has been advising owners of processors to purchase commercial fishing licenses for those persons employed on board although the law is not perfectly clear on that requirement. For purposes of this opinion, however, the resolution of that particular issue is not necessary.

In order to qualify as a "fisherman" under AS 23.35 and therefore qualify for "fisherman's fund" benefits, a person must not only be licensed to engage in commercial fishing or be the holder of a limited entry permit, the person must also at the time the injury is sustained or illness is contracted, (1) be engaged in commercial fishing, or (2) occupied in Alaska preparing or dismantling boats or gear used in commercial fishing.

The "plain meaning" rule of statutory construction requires that an unambiguous statute be read to mean what it clearly expresses. There is thus no need to interpret it except to the extent that the words themselves have inexact meaning. State v. Alex, 646 P.2d 203, 208, n.4 (Alaska 1982); Application of Babcock, 387 P.2d 694, 696 n.6 (Alaska 1963); 2A Sutherland, Statutes and Statutory Construction, § 46.01, at 48-49 (4th Ed. Sands, 1973). There is little question that employees on fish processors are not commercial fishing nor occupied in Alaska preparing or dismantling boats or gear used in commercial fishing.

However, to the extent one could argue otherwise, reference to related statutes in order to interpret a particular statute is customary if there is some ambiguity perceived. 2A Sutherland, Statutes and Statutory Construction, § 51.01, at 287-289 (4th Ed. Sands, 1973). The fish and game statute which

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Department of Labor
366-252-83

November 15, 1982
Page 3

defines "commercial fishing" does not include employees on fish processors. AS 16.05.940(3) states:

"commercial fishing" means the taking, fishing for, or possession of fish, shellfish or other fishery resources with the intent of disposing of them for profit, or by sale, barter, trade, or in commercial channels; the failure to have a valid subsistence permit in possession, if required by statute or regulation, is considered prima facie evidence of commercial fishing if commercial fishing gear as specified by regulation is involved in the taking, fishing for, or possession of fish, shellfish or other fish resources.

It is our view, therefore, that employees processing fish on a floating processor are not "commercial fishing" and do not qualify for "fisherman's fund" benefits.

GIA/bap

AS 16.05.480(a)
AS 16.05.940

WORKERS AT SHORE-BASED CANNERIES NEED
NOT POSSESS COMMERCIAL FISHING LICENSE.

In response to an inquiry from the division of fish and wildlife protection, the Attorney General stated that an employee of a shore-based floating cannery is not required to have a commercial fishing license, but that an employee of a floating cannery is required to have a commercial fishing license. The Attorney General stated that the definition of "commercial fisherman" includes "the crew of tenders or other floating craft used in transporting fish" (AS 16.05.940(4)). Therefore, those who transport fish must have the license; those who don't transport fish need not have the license, the Attorney General concluded. AS 16.05.480 requires that a person "engaged in commercial fishing" obtain a commercial fishing license. The definition of "commercial fishing" does not include "transporting" (AS 16.05.940(5)). Thus, one must have a commercial fishing license if one is engaged in commercial fishing, regardless of whether one is a commercial fisherman or is involved in transporting. In a previous opinion the Attorney General stated that "there is little question that employees on fish processors are not commercial fishing . . ." Op. Atty. Gen. (Alaska, November 15, 1982). On that basis, the Attorney General concluded that processor employees were not entitled to benefits of the fisherman's fund. Now, however, the Attorney General is saying that employees on floating processors are engaged in commercial fishing. Op. Atty. Gen. (Alaska, February 22, 1984)

The intent of the Legislature is not clear. The Attorney General has construed the law in an apparently inconsistent manner, saying that certain persons must have a license because they are engaged in commercial fishing, but they should be denied fisherman's fund benefits because they are not engaged in commercial fishing. Legislative review is recommended.

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AN ACT
Exempting commercial fishermen from workers'
compensation coverage.

* Section 1. AS 23.30.230 is amended by adding a new subsection to read:

(b) A commercial fisherman, as defined in AS 16.05.940, is not covered by this chapter.

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY
LEGISLATIVE REFERENCE LIBRARY

POUCHY - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

May, 1988

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

Mary Van Nimwegen

HL+C

4-26-88

1:30 p.m.



Official Business

DATE: April 26, 1988

SIGN-IN

- HB 544 Contractor bonds/public buildings and works
- SB 61 Civil liability for plane inspection
- SB 61 Rehire of injured state employees
- SB 309 Definition of commercial fisherman
- SB 211 Civil liability
- SB 461 Liability of hospitals for nonemployees

PLEASE PRINT
NAME & TITLE

REPRESENTING

ADDRESS & ZIP

PHONE

DO YOU WANT
TO TESTIFY?

SUBJECT:
BILL #

✓ Sharon Anderson	Humana Hospital		H W 276-1131	Yes	SB 461
✓ Adrienne Anderson	Nat'l Campaign Against Toxic Hazards	1266 Cook St. Denver Colorado 80206	H W ³⁰³ 333-9714	YES	SB 211 SB 461
✓ Jeff Steffen	DOT & PF	P.O. Box 7 JUNEAU	H W 465-2151	IF NEEDED	HB 558
Karl Ohls	Sen. Zharoff	P.O. Box V, Juneau	H W 465-4922	Yes, if needed	SB 309
✓ David McGuire	Citizens Coalition for reform	4501 Laurel	H 349-1752 W 562-4142	yes	SB 211 SB 461
✓ Au Gross	ATL	8470 N. D. ...	H W	yes	SB 211
✓ Paul Roller	D.O.I		H W 465-2513	Yes	
RICHARD RITTER	AMERICAN INST. of ARCHITECTS	800 GLACIER AVE., JUNEAU	H W 586-1371	YES, IF NEEDED	SB 211
MARY KANCEWICZ	AFL	Assembly Bldg	H W	yes	SB 211
			H W		

NEEDS TO TESTIFY TODAY WON'T BE IN JUNEAU 4/27
Must also testify today before S



Official Business

COMMITTEE
HOUSE LABOR & COMMERCE
DATE: April 26, 1988

SIGN-IN

- SB 199 License exemption; boat trailer dealers
- SB 223 Civil liability of zoos/zoo operators
- HB 558 Contractor bonds/public buildings and works
- HB 544 Civil liability for plane inspection
- SB 61 Rehire of injured state employees
- SB 309 Definition of commercial fisherman
- SB 211 Civil liability
- SB 461 Liability of hospitals for nonemployees

PLEASE PRINT
NAME & TITLE

REPRESENTING

ADDRESS & ZIP

PHONE

DO YOU WANT TO TESTIFY?

SUBJECT: BILL #

SHERIE GOLL	ALASKA WOMEN'S LOBBY	419 Kennedy Street, Sino 99511	H W 586-4788	YES	SB 211
Bob Davitt	AARP State Legis- lative Comm.	130 Deward St # 205-99801	H W 586-2066	yes	211/461
Kevin Chase	Providence Hosp	3200 Prov Dr.	H 261 3101 W	yes	211/461
John Vowell	Wrangell Hospital	P.O. 80 Wrangell	H W 874-3356	yes	211/461
Kent Dawson	AK Trial Lawyers	Juneau	H W 586-2667	NO	211/461
			H W		
			H W		
			H W		
			H W		
			H W		

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HOUSE COMMITTEE REPORT

(7)

Date referred: 2/26/88

FURTHER REFERRALS: Judiciary

DATE: 3/15/88

The Labor & Commerce Committee has considered CSSB 322(L&C)

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

RECOMMENDS:

- replace with HCS CS SB322(L&C) the same title
- attached amendment(s) a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(s):

- fiscal impact same as previous fiscal note published _____
- zero fiscal note same as previous zero fiscal note published _____
- zero with analysis

SIGNING DO PASS:

SIGNING OTHER RECOMMENDATIONS:

David Douley (NO REC)

W. L. Kaper (no rec)

Sam Hammad - WTR

B. A. Brubaker (no rec)

J. Ellis (no rec)

David Douley
Chairman's signature

Original sponsor: Labor and Commerce
Committee

1 IN THE SENATE

BY THE LABOR AND
COMMERCE COMMITTEE

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

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

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

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

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

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

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

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

27 (2) reduce disincentives to return to work; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10 (D) the cost of reemployment benefits;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5 (6) the date the plan will commence;

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

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

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

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

16 (1) on the job training;

17 (2) vocational training;

18 (3) academic training;

19 (4) self-employment; or

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

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

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

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

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

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

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

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

- 3 (1) keep appointments;
4 (2) maintain passing grades;
5 (3) attend designated programs;
6 (4) maintain contact with the rehabilitation specialist;
7 (5) cooperate with the rehabilitation specialist in devel-
8 oping a reemployment plan and participating in activities relating to
9 reemployability on a full-time basis;

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

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

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

25 (p) In this section

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

28 (2) "employability" means possessing the ability but not
29 necessarily the opportunity to engage in employment that is consistent

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

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

4 (A) area of residence;

5 (B) area of last employment;

6 (C) the state;

7 (D) other states;

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

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

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

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

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

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

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

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

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

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

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

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

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

7 (c) A claim for medical or surgical treatment is not valid and
8 enforceable against the employer unless, within 14 days following
9 treatment, the physician giving the treatment or the employee re-
10 ceiving it furnishes to the employer and the board notice of the
11 injury and treatment, preferably on a form prescribed by the board.
12 The board shall, however, excuse the failure to furnish notice within
13 14 days when it finds it to be in the interest of justice to do so,
14 and it may, upon application by a party in interest, make an award for
15 the reasonable value of the medical or surgical treatment so obtained
16 by the employee. A claim for a course of treatment requiring con-
17 tinuing and multiple treatments of a similar nature is not valid
18 unless the treatments are carried out under a written treatment plan
19 prescribed before the commencement of the course of treatment, com-
20 pleted and signed by the attending physician, and mailed to the em-
21 ployer within one week of the beginning of treatment. The treatment
22 plan must include objectives, modalities, and frequency of treatment.
23 The initial treatment plan may not include more than 20 visits in the
24 first 60 days. If more than 20 visits are required within the first
25 60 days, or more than four visits a month after the first 60 days, the
26 physician shall document the need for services in excess of the guide-
27 lines in the written treatment plan.

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

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

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

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

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

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

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

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

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

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

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

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

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

1 determined by the board, time limitations notwithstanding.

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

3 (c) Before a hearing is scheduled, the party seeking a hearing
4 shall file a request for a hearing together with an affidavit stating
5 that the party has completed all necessary discovery, obtained all
6 necessary evidence, and is fully prepared for the hearing. An oppos-
7 ing party shall have 10 days after the hearing request is filed to
8 file a response. If a party opposes the hearing request, the board or
9 a board designee shall within 30 days of the filing of the opposition
10 conduct a prehearing conference and set a hearing date. If opposition
11 is not filed, a hearing shall be scheduled no later than 60 days after
12 the receipt of the hearing request. The board shall give each party
13 at least 10 days' notice of the hearing, either personally or by
14 certified mail. After a hearing has been scheduled, a continuance may
15 not be granted. After completion of the hearing the board shall close
16 the hearing record. Evidence or arguments filed after the conclusion
17 of the hearing may not be considered by the board, unless the board
18 determines that good cause exists for failure to complete the hearing
19 at the scheduled time. If a settlement agreement is reached by the
20 parties less than 14 days before the hearing, the parties shall appear
21 at the time of the scheduled hearing to state the terms of the settle-
22 ment agreement. Within 30 days after the hearing record closes, the
23 board shall file its decision. If the employer controverts a claim on
24 a board-prescribed controversion notice and the employee does not
25 request a hearing within two years following the filing of the con-
26 troversion notice, the claim is denied.

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

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

1 stress.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 earned in the state;

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

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

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

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

23 (1) area of residence;

24 (2) area of last employment;

25 (3) the state of residence; and

26 (4) the State of Alaska.

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

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

1 disability.

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

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

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

12 Sec. 23.30.190. COMPENSATION FOR PERMANENT PARTIAL IMPAIRMENT.

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

Degree of Actual Impairment	Adjustment Factor
0 - 5	0
6	0.060
7	0.120
8	0.180
9	0.240
10	0.300
11	0.333

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

(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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27 * Sec. 42. AS 23.30.210 is repealed.

28 * Sec. 43. TRANSITIONAL PROVISIONS. Notwithstanding AS 23.30.040(b),
29 as amended by sec. 8 of this Act, and AS 23.30.155(m), as amended by
HCS CSSB 322(L&C)

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

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

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

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

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

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

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

Subject of meeting:

A presentation on the Alliance Bank and the proposed Hallwood Stabilization Trust.
 HJR 64 "Relating to Alaska's participation in the bottomfish fisheries in the exclusive economic zone."
 SB 15 "An Act relating to trade secrets."
 HB 482 "Appropriation loan to the Alaska Power Authority."
 HB 483 "An Act relating to loans from the Railbelt energy fund; and providing for an effective date."
 SB 322 "An Act relating to workers' compensation and providing for an effective date."

COMMITTEE:

HOUSE LABOR & COMMERCE

DATE: March 15, 1988

SIGN-IN



Official Business

PLEASE PRINT
NAME & TITLE

REPRESENTING

ADDRESS & ZIP

PHONE

DO YOU WANT
TO TESTIFY?
YES / NO

SUBJECT:
BILL #

City Manager Nancy Gross	City of Unalaska	PO Box 89 Unalaska 99685	H W 581-1251	HJR64	
			H W		
TONY GUMBNER	CHAIRMAN OF THE BOARD THE HALLWOOD GROUP	767 Third Avenue NY NY 10017	H W		
JIM CAIRNS	CHAIRMAN OF THE BOARD ALLIANCE BANK	MINNESOTA / BENSON BLVD AK AK	H W		
GARY DAILY	CITY OF UNALASKA	Box 89 Unalaska AK 99685	H 581-1682 W 581-1254	HJR64	HJR64
Barbara Shenberg	State Div. of Governmental Coordin.	PO Box AEW 99811	H W		
C.S. Christensen	Sen Fales	Capitol Bldg Rm 107	H W 3755	IF NEEDED	SB 15
			H W		
			H W		
			H W		

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May, 1988

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

Mary Van Nimwegen

HL+C

3-15-88

2:30 p.m.

STATE OF ALASKA
1988 LEGISLATIVE SESSION

BILL VERSION: HCS SCS SB322(L&C)

PUBLISH DATE: _____

FISCAL NOTE

REQUEST:

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

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

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

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

FUNDING: (Thousands of Dollars)

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

* Second Injury Fund

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

(See Attached)

Prepared by: Jacque McClintock Phone: 465-2790
 Division: Worker's Compensation Date: 3/16/88
 Approved by Commissioner: Jim Sampson Date: 3/16/88
 Agency: Department of Labor

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

#1

A M E N D M E N T

Offered in the HOUSE

By Donley

TO: HB 352

Page 27, after line 3:

Insert a new bill section to read:

"* Sec. 36. Notwithstanding AS 21.39.030, an insurer providing workers' compensation insurance in the state shall provide at least a 10 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."

Renumber remaining bill sections accordingly.

Page 27, line 4:

Delete "This Act applies only"

Insert "Sections 1 - 35 of this Act apply"

for any payment) on account of death, provided the individual in its employ

(1) has not the option to receive instead of provisions for such death benefits, any part of such payment, or, if such death benefit is insured, any part of the premium (or contributions to premiums) paid by his employing unit; and

(2) has not the right under the provisions of the plan or system or policy of insurance providing for such death benefits to assign such benefits or to receive a cash consideration in lieu of such benefits, either upon his withdrawal from the plan or system providing for such benefits or upon termination of such plan or system or policy of insurance or of his services with such employing unit. [1951 c 265 § 5; 1949 c 214 § 6; 1945 c 35 § 35; Rem. Supp. 1949 § 9998-173. Prior: 1943 c 127 § 13; 1941 c 253 § 14.]

Severability—1951 c 265: See note following RCW 50.98.070.

50.04.350 Wages, remuneration—Excepted payments. The term "wages" shall not include the payment by an employing unit (without deduction from the remuneration of the individual in its employ) of the tax imposed upon an individual in employment under section 1400 of the federal internal revenue code, as amended, or any amount paid to a person in the military service for any pay period during which he performs no service for the employer: *Provided, however,* That prior to January 1, 1952, the term "wages" shall not include dismissal payments which an employing unit is not legally required to make. [1951 c 265 § 2; 1945 c 35 § 36; Rem. Supp. 1945 § 9998-174. Prior: 1943 c 127 § 13; 1941 c 253 § 14.]

Severability—1951 c 265: See note following RCW 50.98.070.

50.04.355 Wages, remuneration—Average annual wage—Average weekly wage—Average annual wage for contributions purposes. On or before the fifteenth day of June of each year an "average annual wage", an "average weekly wage", and an "average annual wage for contributions purposes" shall be computed from information for the preceding calendar year including corrections thereof reported within three months after the close of that year by all employers as defined in RCW 50.04.080. The "average annual wage" is the quotient derived by dividing total remuneration reported by all employers by the average number of workers reported for all months and if the result is not a multiple of one dollar, rounding the result to the next lower multiple of one dollar. The "average annual wage" thus obtained shall be divided by fifty-two and if the result is not a multiple of one dollar, rounding the result to the next lower multiple of one dollar to determine the "average weekly wage". The "average annual wage" for contribution purposes is the quotient derived by dividing total remuneration reported by all employers subject to contributions by the average number of workers reported for all months by these same employers and if the result is not a multiple of one dollar, rounding the result to the next lower multiple of one dollar. [1977 ex.s. c 33 § 2;

1975 1st ex.s. c 228 § 1; 1973 6.]

Effective dates—Construction—
following RCW 50.04.030.

Effective date—1975 1st ex.s. c amendatory act are necessary for the public peace, health, and safety, and its existing public institutions. Sunday following signature by the g 19.]

Effective date—1973 c 73: See note following RCW 50.04.030.

Effective date—1970 ex.s. c 3: See note following RCW 50.04.020.

50.04.360 Week. "Week" means any period of seven consecutive calendar days ending at midnight as the commissioner may by regulation prescribe. [1945 c 35 § 37; Rem. Supp. 1945 § 9998-175. Prior: 1943 c 127 § 13; 1941 c 253 § 14; 1939 c 214 § 16; 1937 c 162 § 19.]

Chapter 50.06

TEMPORARY TOTAL DISABILITY

Sections

50.06.010	Purpose.
50.06.020	Allowable beneficiaries.
50.06.030	Application for initial determination of disability— Special base year—Special individual benefit year.
50.06.040	Laws and regulations governing amounts payable and right to benefits.
50.06.050	Use of wages and time worked for prior claims— Effect.
50.06.900	Chapter prospective.
50.06.910	Partial invalidity of chapter.

50.06.010 Purpose. This chapter is enacted for the purpose of providing the protection of the unemployment compensation system to workers who have suffered a temporary total disability compensable under industrial insurance and is a recognition by this legislature of the economic hardship confronting those workers who have not been promptly reemployed after a prolonged period of temporary total disability. [1975 1st ex.s. c 228 § 7.]

Effective date—1975 1st ex.s. c 228: See note following RCW 50.04.355.

50.06.020 Allowable beneficiaries. Only individuals who have suffered a temporary total disability and have received compensation under the industrial insurance laws of this state, any other state or the United States for a period of not less than thirteen consecutive calendar weeks by reason of such temporary total disability shall be allowed the benefits of this chapter. [1975 1st ex.s. c 228 § 8.]

Effective date—1975 1st ex.s. c 228: See note following RCW 50.04.355.

50.06.030 Application for initial determination of disability—Special base year—Special individual benefit year. An application for initial determination made pursuant to this chapter, to be considered timely, must be filed in writing with the employment security department within twenty-six weeks following the week

in which the period of temporary total disability commenced. Notice from the department of labor and industries shall satisfy this requirement. The records of the agency supervising the award of compensation shall be conclusive evidence of the fact of temporary disability and the beginning date of such disability. The employment security department shall process and issue an initial determination of entitlement or nonentitlement as the case may be.

For the purpose of this chapter, a special base year is established for an individual consisting of the first four of the last five completed calendar quarters immediately prior to the first day of the calendar week in which the individual's temporary total disability commenced, and a special individual benefit year is established consisting of the entire period of disability and a fifty-two consecutive week period commencing with the first day of the calendar week immediately following the week or part thereof with respect to which the individual received his final temporary total disability compensation under the applicable industrial insurance laws except that no special benefit year shall have a duration in excess of three hundred twelve calendar weeks: *Provided however*, That such special benefit year will not be established unless the criteria contained in RCW 50.04.030 ~~has been met~~ *attached* except that an individual meeting the disability and filing requirements of this chapter and who has an unexpired benefit year established which would overlap the special benefit year provided by this chapter, notwithstanding the provisions in RCW 50.04.030 relating to the establishment of a subsequent benefit year and RCW 50.40.010 relating to waiver of rights, may elect to establish a special benefit year under this chapter: *Provided further*, that the unexpired benefit year shall be terminated with the beginning of the special benefit year if the individual elects to establish such special benefit year. [1975 1st ex.s. c 228 § 9.]

Effective date—1975 1st ex.s. c 228: See note following RCW 50.04.355.

50.06.040 Laws and regulations governing amounts payable and right to benefits. The individual's weekly benefit amount and maximum amount payable during the special benefit year shall be governed by the provision contained in RCW 50.20.120. The individual's basic and continuing right to benefits shall be governed by the general laws and regulations relating to the payment of unemployment compensation benefits to the extent that they are not in conflict with the provisions of this chapter. [1975 1st ex.s. c 228 § 10.]

Effective date—1975 1st ex.s. c 228: See note following RCW 50.04.355.

50.06.050 Use of wages and time worked for prior claims—Effect. The fact that wages, hours or weeks worked during the special base year may have been used in the computation of a prior valid claim for unemployment compensation shall not affect a claim for benefits made pursuant to the provisions of this chapter; however, wages, hours and weeks worked used in computing entitlement on a claim filed pursuant to this chapter shall not be available or used for establishing entitlement

[1975 1st ex.s. c 228 § 11.]

Effective date—1975 1st ex.s. c 228: See note following RCW 50.04.355.

50.06.900 Chapter prospective. This chapter shall be available only to individuals who suffer a temporary total disability, compensable by an industrial insurance program, after the effective date of this chapter. [1975 1st ex.s. c 228 § 12.]

Effective date—1975 1st ex.s. c 228: See note following RCW 50.04.355.

50.06.910 Partial invalidity of chapter. Should any part of this chapter be declared unconstitutional by the final decision of any court or declared out of conformity by the United States secretary of labor, the commissioner shall immediately discontinue the payment of benefits based on this chapter, declare it inoperative and report that fact to the governor and the legislature. [1975 1st ex.s. c 228 § 13.]

Effective date—1975 1st ex.s. c 228: See note following RCW 50.04.355.

Chapter 50.08 ESTABLISHMENT OF DEPARTMENT

Sections

50.08.010 Employment security department established.
50.08.020 Divisions established.

Displaced homemaker act, departmental participation: RCW 28B.04.080.

50.08.010 Employment security department established. There is established the employment security department for the state, to be administered by a commissioner. The commissioner shall be appointed by the governor with the consent of the senate, and shall hold office at the pleasure of, and receive such compensation for his services as may be fixed by, the governor. [1953 ex.s. c 8 § 3; 1947 c 215 § 8; 1945 c 35 § 38; Rem. Supp. 1947 § 9998-176. Prior: 1939 c 19 § 1; 1937 c 162 § 12.]

50.08.020 Divisions established. There are hereby established in the employment security department two coordinate divisions to be known as the unemployment compensation division, and the Washington state employment service division, each of which shall be administered by a full time salaried supervisor who shall be an assistant to the commissioner and shall be appointed by him. Each division shall be responsible to the commissioner for the dispatch of its distinctive functions. Each division shall be a separate administrative unit with respect to personnel, budget, and duties, except insofar as the commissioner may find that such separation is impracticable.

It is hereby further provided that the governor in his discretion may delegate any or all of the organization, administration and functions of the said Washington state employment service division to any federal agency.

- 50.04.310 Unemployed individual.
- 50.04.320 Wages, remuneration.
- 50.04.323 Wages, remuneration—Government or private retirement pension, plan payments—Effect upon eligibility—Reduction in benefits—Exceptions.
- 50.04.330 Wages, remuneration—Retirement and disability payments excepted.
- 50.04.340 Wages, remuneration—Death benefits excepted.
- 50.04.350 Wages, remuneration—Excepted payments.
- 50.04.355 Wages, remuneration—Average annual wage—Average weekly wage—Average annual wage for contributions purposes.
- 50.04.360 Week.

Application for initial determination defined: RCW 50.20.140.

Claim for benefits defined: RCW 50.20.140.

Claim for waiting period defined: RCW 50.20.140.

50.04.020 Base year. "Base year" with respect to each individual, shall mean the first four of the last five completed calendar quarters immediately preceding the first day of the individual's benefit year. [1970 ex.s. c 2 § 1; 1945 c 35 § 3; Rem. Supp. 1945 § 9998-142. Prior: 1943 c 127 § 13; 1939 c 214 § 19; 1937 c 162 § 19.]

Effective date—1970 ex.s. c 2: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect April 5, 1970: *Provided*, That sections 3 and 8 of this 1970 amendatory act shall not take effect until January 1, 1971." [1970 1st ex.s. c 2 § 25.] This act is codified in RCW 50.04.020, 50.04.030, 50.04.320, 50.20.010, 50.20.120, 50.04.355, 50.20.150, 50.24.010, 50.29.010 through 50.29.080 and 50.29.140, 50.04.323, 50.20.030, 50.20.050, 50.20.060 and 50.20.127; sections 3 and 8 are codified in RCW 50.04.320 and 50.24.010.

50.04.030 Benefit year. "Benefit year" with respect to each individual, means the fifty-two consecutive week period beginning with the first day of the calendar week in which the individual files an application for an initial determination and thereafter the fifty-two consecutive week period beginning with the first day of the calendar week in which the individual next files an application for an initial determination after the expiration of the individual's last preceding benefit year: *Provided, however*, That the foregoing limitation shall not be deemed to preclude the establishment of a new benefit year under the laws of another state pursuant to any agreement providing for the interstate combining of employment and wages and the interstate payment of benefits nor shall this limitation be deemed to preclude the commissioner from backdating an initial application at the request of the claimant either for the convenience of the department of employment security or for any other reason deemed by the commissioner to be good cause.

An individual's benefit year shall be extended to be fifty-three weeks when at the expiration of fifty-two weeks the establishment of a new benefit year would result in the use of a quarter of wages in the new base year that had been included in the individual's prior base year.

No benefit year will be established unless it is determined that the individual earned wages in "employment" in not less than six hundred eighty hours of the individual's base year: *Provided, however*, That a benefit

it year unless the individual earned wages in "employment" during the last two quarters of the new base year or not less than six times the weekly benefit amount computed for the individual's new benefit year.

If the wages of an individual are not based upon a fixed duration of time or if the individual's wages are paid at irregular intervals or in such manner as not to extend regularly over the period of employment, the wages for any week shall be determined in such manner as the commissioner may by regulation prescribe. Such regulation shall, so far as possible, secure results reasonably similar to those which would prevail if the individual were paid his or her wages at regular intervals. [1977 ex.s. c 33 § 1; 1973 c 73 § 1; 1970 ex.s. c 2 § 1; 1949 c 214 § 1; 1945 c 35 § 4; Rem. Supp. 1949 § 9998-143. Prior: 1943 c 127 § 13; 1939 c 214 § 19; 1937 c 162 § 19.]

Effective dates—Construction—1977 ex.s. c 33: "The provisions of this 1977 amendatory act are necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions and shall take effect ninety days after adjournment sine die of the 1977 Extraordinary Session (forty-fifth legislature) of the Washington State Legislature: *Provided*, That the first paragraph of section 1 of this 1977 amendatory act shall take effect immediately and the remaining portion of section 1 of this 1977 amendatory act and all of section 2 of this 1977 amendatory act shall take effect commencing with benefit years beginning on and after October 1, 1978; section 7 of this 1977 amendatory act shall take effect commencing with benefit years beginning on and after July 3, 1977." [1977 ex.s. c 33 § 11.]

Reviser's note: The various sections of this 1977 amendatory act [1977 ex.s. c 33] referred to in the above section are codified as follows: Section 1 as RCW 50.04.030; section 2 as RCW 50.04.355; section 3 as RCW 50.12.070; section 4 as RCW 50.20.050; section 5 as RCW 50.20.060; section 6 as RCW 50.20.100; section 7 as RCW 50.20.120; section 8 as RCW 50.20.095.

Effective dates—1973 c 73: "Sections 7, 8, 10, 11, and 12 of this 1973 amendatory act are necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect immediately. Sections 1, 2, 3, 4, 5, 6, and 9 of this 1973 amendatory act shall take effect on July 1, 1973." [1973 c 73 § 13.]

Reviser's note: The effective date of sections 7, 8, 10, 11, and 12 was March 8, 1973. The effective date of sections 1, 2, 3, 4, 6 and 9 was July 1, 1973. Section 5 referred to above was vetoed.

Effective date—1970 ex.s. c 2: See note following RCW 50.04.020.

50.04.040 Benefits. "Benefits" means the compensation payable to an individual, as provided in this title, with respect to his unemployment. [1945 c 35 § 5; Rem. Supp. 1945 § 9998-144. Prior: 1943 c 127 § 13; 1941 c 253 § 14; 1939 c 219 § 19; 1937 c 162 § 19.]

50.04.050 Calendar quarter. "Calendar quarter" means the period of three consecutive calendar months ending on March 31st, June 30th, September 30th, or December 31st. [1945 c 35 § 6; Rem. Supp. 1945 § 9998-145. Prior: 1943 c 127 § 13; 1939 c 214 § 19; 1937 c 162 § 19.]

50.04.060 Commissioner. "Commissioner" means the administrative head of the state employment security department referred to in this title. [1947 c 215 § 1; 1945 c 35 § 7; Rem. Supp. 1947 § 9998-146. Prior:

Analysis of Fiscal Note

For HCS SCS SB 322(L&C)

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

1. Additional Information Requirements

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

2. Annual Cost of Living Survey

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

Assumptions:

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

HOUSE LABOR AND COMMERCE COMMITTEE

ALASKA STATE LEGISLATURE
Chairman - Representative Dave Donley

P.O. BOX Y, JUNEAU 99811
(907) 465-3892

#3

March 7, 1988

M E M O R A N D U M:

To: Members, House Labor and Commerce Committee

From: Representative Dave Donley, Chair
House Labor and Commerce Committee

Re: Proposed CS for CS SB 322 (L&C) - Workers'
Compensation Legislation

In response to testimony offered during the numerous public hearings we have hosted on workers' compensation legislation and on the basis of the work of the House Labor and Commerce subcommittee on HB 352/SB322, I've asked legal services to prepare a proposed committee substitute for your consideration with the following changes from the version of the measure that passed the Senate:

1. Include a mandated rate decrease for workers' compensation premiums of no less than 10%, effective July 1, 1988 through January 1, 1990. (Attachment #1)
2. Add intent language under Section 1 recognizing that prevention of on-the-job injuries is a primary goal of the Legislature and that the workers' compensation should include incentives for improving workplace safety.

Add a new Section mandating that insurers shall offer a rebate of not less than 5% of the annual premium costs to any employer that had no safety violations during the year covered by the premium.

3. Amend penalties under AS 23.30.075 (b) to require a mandatory fine of \$10,000 for failure to carry workers' compensation insurance, in addition to any other fines, penalties or liabilities authorized under law.
4. Amend language governing the contents of the annual report to the Division of Workers' Compensation by insurers to include the number of claims filed and the percent of claims controverted during the year for which the annual report was submitted.

Include language to require the Board (in addition to assessing any penalties under AS 23.30.155 (f), to notify the Division of Insurance when they determine that a carrier's controversions are excessive, frivolous, or designed to unfairly deny employees benefits that are due them. Upon receipt of a notice from the Board, the Division of Insurance will initiate an investigation of the carrier for violation of the unfair claims settlement act.

5. Amend (AS 23.30.180) to delete (3) and (4) so that in determining PTD, the labor market is defined as within a workers area of residence or last area of employment.
6. Amend language governing the contents of the annual report to break out the costs of legal fees to reflect the fees paid to both the plaintiff and defense attorney, including all other costs associated with litigation.
7. Amend Section 9 (AS 23.30.040(c) to read: "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 unusual and extenuating physical limitations, including when an employee suffered an injury in which the employee does not know or could not have reasonably known that they would be unable to return to their previous occupation as a result of their injury that prevent the employee from making a timely request."
8. Amend Section 11 (AS 23.30.095(a) to provide that an employers choice of physician for an IME is limited to no more than one change in choice, as is an employees right of choice under the proposed legislation.
9. Amend Section 32 (AS 23.30.220(a) (2) to delete the word "voluntary" and to change the 18 months standard on page 26, line 12 to 12 months.
10. Amend Section 41 (effective date) so that this act applies to any "stress" injury that occurred on or after the date of adoption of this bill by the Legislature.
11. Include language requiring that an IME must be in the same speciality as the treating physician unless the Board unanimously agrees, on a case by case basis, to authorize an IME by a physician who is not within the same speciality of the employees physician.
12. Amend Section 21 (AS 23.30.155(c) (page 19, line 3) to provide that penalties assessed under this subsection shall be increased by (20) 30 percent.
13. Include new language amending AS 23.30.155 (f) (governing penalties for unfair denial of claims) to increase penalties from 20 percent, under current law, to 25 percent.
14. Amend Section 29 (AS 23.30.190(b) to change "may" to "shall" on page 24, line 27.
15. Include a new section requiring that benefits paid to recipients residing in Alaska be paid by checks drawn on Alaska banks or other method of payment that is accepted as immediately redeemable by a bank in this state.

16. Amend AS 23.30.041(k) (Page 9, line 14) to read: (k) "Benefits related to the reemployment plan may not extend past two years from date of plan approval (ACCEPTANCE), at which time the benefits.....".
17. Amend Section 13 (AS 23.30.095(e) to reinstate the deleted language and to add new language so that it reads: "AUTHORIZED TO PRACTICE MEDICINE UNDER THE LAWS OF THE jurisdiction in which the physician resides (STATE IN WHICH THE EMPLOYEE MAY BE FOUND)".

In addition to the changes in the proposed CS listed above, following are proposed amendments that the Committee may wish to consider for inclusion in the final committee substitute.

1. Include a new section to allow the time period for determining the base period for unemployment compensation to begin after temporary benefits under workers' compensation have ceased if the worker is (1) eligible for unemployment compensation by having paid into the system while they were employed and (2) are "ready, willing, and able" to work but have not been able to find a job. (See attachment #2 - copy of Washington State law).

The Department of Labor has been asked to determine whether this addition will require a fiscal note for SB 322 that may result in a further referral to the House Finance Committee.

2. Add a new section to repeal and reenact AS 23.30.110(C) so that it reads as per attachment #3. The proposed language is in response to public testimony that there has been a significant increase in the amount of time between filing a case and obtaining a formal hearing before the Board. The Division response is that the time lag is caused by attorney requests for a continuance after a case has been scheduled and comes before the Board. The result is that the hearing time is wasted because another case cannot be scheduled on such short notice. The attorney response to the Divisions' response is that they have to request a hearing when they receive a case even if they aren't ready to proceed to hearing because it takes so long to get a hearing scheduled. The Divisions response to the attorney response is that it wouldn't take so long to get a hearing scheduled if they didn't have so many continuances.!

The proposed language in attachment #3 addresses this problem in a way that will not unfairly impact the employer or employee and will help the Board to manage their hearing schedule in a more responsive and efficient manner.

#3

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

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

DRAFT LETTER OF INTENT FOR
HCS CS SB 322 (L&C) - WORKERS' COMPENSATION LEGISLATION

(EXISTING LETTER OF INTENT ADOPTED BY THE SENATE)
LETTER OF INTENT FOR CS SB 322 (L&C)

With an actuarial analysis concluding that this bill will provide a two percent savings in hard costs and an unquantifiable amount of soft dollar savings, it is the intent of the Alaska State Senate that, upon passage of this bill, the Division of Insurance request new rate filing reflecting a decution in workers' compensation premiums.

PROPOSED LETTER OF INTENT FOR HCS CS SB 322 (L&C)

The legislature recognizes that the increasing costs of workers' compensation insurance is creating a great hardship on Alaska's workers, our employers, and the insurance carriers that serve our businesses.

It is the intent of the Legislature in adopting this legislation to enable a more efficient, fair, and cost effective delivery of services under Alaska's workers compensation system. To accomplish this, SB 322 demands significant concessions from employees and employers. It is the intent of the legislature in adopting this measure that each party to the workers' compensation system in Alaska, including workers, employers, and workers' compensation insurance carriers, initiate actions necessary to reduce the number of work related injuries, to assure prompt and fair compensation to injured workers, and to create incentives for prompt and fair settlement of disputes regarding workers' compensation claims.

With an acturarial analysis that concludes that this legislaton will provide at least a two percent savings in hard costs and with public testimony before this body that the measure will bring about significant soft dollar savings, it is the intent of the legislature that, upon passage of this bill, the Division of Insurance request a new rate filing reflecting a reduction from current rates in workers' compensation premiums of no less than 10 percent as of July 1, 1988 and that this rate be maintained through January 1, 1990.

STATE OF ALASKA 1988 LEGISLATIVE SESSION
FISCAL NOTE

CSSB 322 (L & C)

Revision Date: 2/22/88

REQUEST

Bill/Resolution No.: CSSB 322 (L & C)
 Title: An Act relating to worker's compensation and providing for an effective date.
 Sponsor: Senate Labor & Commerce
 Requestor: _____
 Date of Request: _____

FISCAL DETAIL

Agency Affected: Labor
 BRU: workers' compensation
 Components: workers' compensation

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES			0	0	0	0	0
TRAVEL							
CONTRACTUAL							
SUPPLIES							
EQUIPMENT							
LAND & STRUCTURES							
GRANTS, CLAIMS							
MISCELLANEOUS							
TOTAL OPERATING			0	0	0	0	0
CAPITAL							
REVENUE							


FUNDING : (Thousands of Dollars)

GENERAL FUND							
FEDERAL FUNDS							
OTHER							
TOTAL			0	0	0	0	0

POSITIONS :

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

Prepared by: John Ringstad  Phone: _____
 Division: Senate Labor & Commerce Committee Date: 2/22/88

Approved by Commissioner: _____ Date: _____
 Agency: _____

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

ALASKA STATE SENATE



SENATOR TIM KELLY
ANCHORAGE/EAGLE RIVER
CHAIRMAN

SENATOR DICK ELIASON
SITKA
VICE CHAIRMAN

LABOR AND COMMERCE COMMITTEE

MEMBERS
SENATOR BETTYE FARBENKAMP
FAIRBANKS

SENATOR RICK UENLING
ANCHORAGE

SENATOR MIKE SZYMANSKI
ANCHORAGE

LETTER OF INTENT FOR CSSB 322 (L&C)

With an actuarial analysis concluding that this bill will provide a two percent savings in hard costs and an unquantifiable amount of soft dollar savings, it is the intent of the Alaska State Senate that, upon passage of this bill, the Division of Insurance request a new rate filing reflecting a reduction in workers' compensation premiums.

Senate adopted 2/25/88

HOUSE LABOR AND COMMERCE COMMITTEE

ALASKA STATE LEGISLATURE

P.O. BOX Y, JUNEAU 99811

Chairman - Representative Dave Donley

(907) 465-3892



March 8, 1988

MEMORANDUM

To: Members, House Labor and Commerce Committee

From: Representative Dave Donley, Chair
House Labor and Commerce Committee

Re: Amendments to March 7 memorandum describing proposed
changes to CS SB 322 (L&C)

Below are listed changes to the proposed HCS CS SB 322 (L&C) described in the March 7 memorandum in your Committee file.

1. Change language in item #5 so that the amended section (AS 23.30.180) will read: (1) area of residence, (2) area of last employment, (3) area of employment within the last ten years
2. Change language in item #7 so that AS 23.30.041(c) will read: "The employee shall request an eligibility evaluation within 90 days after the employee new or should have known that they would be unable to return to their previous occupation as a result of their injury, but in no case more than 180 days after the date of the injury, unless the administrator determines the employee has unusual and extenuating physical limitations that prevent the employee from making a timely request.
3. Change language in item #11 to delete the word "unanimously".
4. Change language in #16 so that the it reads "Benefits related to the reemployment plan may nor extend past two years from the date of plan approval or acceptance, at which time the benefits.....".

#7

A M E N D M E N T

Offered in the HOUSE

By Hudson

TO: CSSB 322(L&C)

Page 29, after line 25:

Insert a new bill section to read:

"* Sec. 39. The term "rehabilitation specialist" defined in AS 23.30.-041(p) as repealed and reenacted in sec. 9 of this Act, includes a person who, by September 1, 1988, has requested the Department of Labor to determine that the person is qualified as a rehabilitation specialist and who the department determines

(1) was actively employed from at least July 1, 1987, until June 30, 1988, in providing rehabilitation services to an injured worker receiving benefits under AS 23.30; and

(2) possesses the skills necessary to meet the minimum qualifications for a rehabilitation specialist."

Renumber remaining bill sections accordingly.



Alaska State Legislature

#8

Please enter into the record my testimony to the House LABOR & Commerce Cmte
 committee name
 committee on SB 322, dated 3/18/1988
 bill/subject

I would request a hard look at the increase on workmen's Ins. over the last few years.

On a small business such as ours, employing two to three employees the cost is near to \$5000⁰⁰ per year to be paid upon receipt of policy. This cost is down 1800⁰⁰. Two years ago. Small business such as ours can't withstand this & is having me think of a all family company & do away with employees & try to go on a much smaller scale (in plain English. Insurance & Lawyers are driving the small company out of the competition of Business).

Signed: Jimmy M. Baurer
 Testifier
Baurer's Marine & Reclamation Repair
 Representing (Optional)
4256 HPR Sitka Alaska
 Address
907 747 8700
 Phone No.

HOUSE LABOR AND COMMERCE COMMITTEE

ALASKA STATE LEGISLATURE
Chairman · Representative Dave Donley

P.O. BOX Y, JUNEAU 99811
(907) 465-3892

#9

March 15, 1988

M E M O R A N D U M

To: Members, House Labor and Commerce Committee

From: Representative Dave Donley, Chair
House Labor and Commerce Committee

Re: Proposed HCS for CS SB 322 (L&C)

Following is a brief synopsis of the changes proposed in the House Labor and Commerce Committee Substitute for SB 322 - relating to workers' compensation. The changes include:

1. A mandated rate decrease for workers' compensation premiums of no less than 6%, effective July 1, 1988 through January 1, 1990. (Page 33, line 7, Section 44)
2. Additional intent language under section 1 (Page 2, line 4, paragraph (j)) regarding workplace safety with two new sections (Page 2, beginning on line 7) mandating a 10% rebate for employers in an assigned risk pool and a 5% 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.
3. Raising the mandatory fine for failure to carry workers' compensation insurance from \$1,000 to \$10,000. (Page 13, line 22)
4. Amend language governing contents of insurers annual report to the Division of Workers' Compensation to include the number of claims filed and the percent of claims controverted during the year for which the annual report was submitted. (Page 22, line 16)

Include language to require the Board to notify the Division of Insurance when they determine that a carrier's controversions are frivolous or unfairly deny employees benefits that are due them. Upon receipt of a notice from the Board, the Division of Insurance will initiate an investigation of the carrier for violation of the unfair claims settlement act. (Page 23, line 15, paragraph (o))

5. Amend language governing the contents of the annual report to break out the costs of legal fees to reflect the fees paid to both the plaintiff and defense attorney, including all other costs associated with litigation. (Page 22, line 17)
6. Amend Section 11 (AS 23.30.095(a)) to provide that an employers choice of physician for an IME is limited to no more than one

change in choice, as is an employees right of choice under the proposed legislation. (Page 16, line 6)

7. Amend Section 41 (effective date) so that this act applies to any "stress" injury that occurred on or after the date of adoption of this bill by the Legislature. (Page 33, line 21, Section 47)
8. Include language requiring that an IME must be in the same speciality as the treating physician unless the Board agrees, on a case by case basis, to authorize an IME by a physician who is not within the same speciality of the employees physician. (Page 18, line 2)
9. Amend Section 21 (AS 23.30.155(c) (Page 19, line 3) to provide that penalties assessed under this subsection (penalties for failing to file notification of changes in payment of benefits on time) shall be increased to (20) 25 percent.
10. PROPOSED AMENDMENT - The attached amendment would increase the penalty for late payment of compensation under AS 23.30.155(e) from (20) to 25%, to make this subsection consistent with other proposed changes in AS 23.30.155.
11. Include new language amending AS 23.30.155 (f) (governing penalties for unfair denial of claims) to increase penalties from (20 percent), under current law, to 25 percent. (Page 22, line 7).
12. Amend Section 29 (AS 23.30.190(b) to change "may" to "shall" on page 27, line 29.
13. Include a new section requiring that benefits paid to recipients residing in Alaska be paid by checks drawn on Alaska banks or other method of payment that is accepted as immediately redeemable by a bank in this state. (Page 23, paragraph (p))
14. Amend AS 23.30.041(k) (Page 9, line 14) to read: (k) "Benefits related to the reemployment plan may not extend past two years from date of plan approval or acceptance at which time the benefits.....". (Page 10, line 3)
15. Amend Section 13 (AS 23.30.095(e) to reinstate the deleted language and to add new language so that it reads: "AUTHORIZED TO PRACTICE MEDICINE UNDER THE LAWS OF THE jurisdiction in which the physician resides (STATE IN WHICH THE EMPLOYEE MAY BE FOUND)". (Page 16, line 4)
16. Add a new section to repeal and reenact AS 23.30.110(C) in response to public testimony that there has been a significant increase in the amount of time between filing a case and obtaining a formal hearing before the Board. (Page 19, line 2, paragraph (c))
17. Include a "grandfather" clause (Page 33, Section 45) to authorize current rehab specialists who do not have the credentials required under the bill to be able to practice for one year after adoption

of this act at which time they have to have gained the required credentials or are barred from practicing independently as a rehab specialist.

A M E N D M E N T

Offered in the HOUSE

By Donley

TO: HCS CSSB 322(L&C)

Page 22, after line 3:

Insert a new bill section to read:

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

(e) If any installment of compensation payable without an award is not paid within seven days after it becomes due, as provided in (b) of this section, there shall be added to the unpaid installment an amount equal to 25 [20] percent of it. 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."

Renumber the following bill sections accordingly.

Page 33, line 1:

Delete "27"

Insert "28"

Page 33, line 18:

Delete "27, 28, 40, and 44"

Insert "28, 29, 41, and 45"

Page 33, line 21:

Delete "40"

Insert "41"

Page 33, line 22:

Delete "40"

Insert "41"

Page 33, line 23:

Delete "40 and 47"

Insert "41 and 48"

Page 33, line 25:

Delete "39, and 41 - 46"

Insert "40, and 42 - 47"