

HB

177

go0157hN
Ford
4/29/88

Original sponsor: Rules/Governor

1 IN THE HOUSE

BY THE LABOR AND
COMMERCE COMMITTEE

2 SENATE CS FOR CS FOR HOUSE BILL NO. 177 (2d 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) increase the incentives to return to work; and

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

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

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

7 * Sec. 2. AS 23.30.005(h) is amended to read:

8 (h) The department shall [MAY] adopt [IDENTICAL] rules for all
9 panels, and procedures for the periodic selection, retention, and re-
10 moval of rehabilitation specialists or physicians under AS 23.30.041
11 and 23.30.025, and shall [MAY] adopt regulations to carry out the
12 provisions of this chapter. Process and procedure under this chapter
13 shall be as summary and simple as possible. The department, the board
14 or a member of it may for the purposes of this chapter subpoena wit-
15 nesses, administer or cause to be administered oaths, and may examine
16 or cause to have examined the parts of the books and records of the
17 parties to a proceeding that relate [WHICH RELATED] to questions in
18 dispute. The superior court, on application of the department, the
19 board or any members of it, shall enforce the attendance and testimony
20 of witnesses and the production and examination of books, papers, and
21 records.

22 * Sec. 3. AS 23.30.020 is amended by adding a new subsection to read:

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

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

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

1 * Sec. 4. AS 23.30.025 is amended by adding a new subsection to read:

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

6 * Sec. 5. AS 23.30.030 is amended by adding a new paragraph to read:

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

13 * Sec. 6. AS 23.30.040(b) is amended to read:

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

determine and make available to the public the applicable contribution rate for the following calendar year according to the reserve rate of the second injury fund in column B of this subsection:

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

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

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

* Sec. 8. AS 23.30.041 is repealed and reenacted to read:

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

(b) The administrator shall perform the following functions:

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

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

specialists;

1
2 (3) enforce the quality and effectiveness of reemployment
3 benefits provided for under this section;

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

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

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

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

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

20 (D) the cost of reemployment benefits;

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

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

27 (c) If an employee suffers a compensable injury that may perma-
28 nently preclude an employee's return to the employee's occupation at
29 the time of injury, the employee or employer may request an

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

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

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

- 28 (1) the employee's job at the time of injury; or
- 29 (2) other jobs that exist in the labor market that the

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

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

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

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

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

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

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

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

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

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

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

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

16 (6) the date the plan will commence;

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

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

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

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

27 (1) on the job training;

28 (2) vocational training;

29 (3) academic training;

1 (4) self-employment; or

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

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

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

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

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

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

14 (1) keep appointments;
15 (2) maintain passing grades;
16 (3) attend designated programs;
17 (4) maintain contact with the rehabilitation specialist;
18 (5) cooperate with the rehabilitation specialist in devel-
19 oping a reemployment plan and participating in activities relating to
20 reemployability on a full-time basis;

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

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

25 (o) Upon the request of either party, the administrator shall
26 decide whether the employee has not cooperated as provided under (n)
27 of this section. A hearing before the administrator shall be held
28 within 30 days after it is requested. The administrator shall issue a
29 decision within 14 days after the hearing. Within 10 days after the

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

7 (p) In this section

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

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

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

15 (A) area of residence;

16 (B) area of last employment;

17 (C) the state;

18 (D) other states;

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

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

29 (6) "rehabilitation specialist" means a person who is a

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

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

11 * Sec. 9. AS 23.30.055 is amended to read:

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

1 * Sec. 10. AS 23.30.095(a) is amended to read:

2 (a) The employer shall furnish medical, surgical, and other
3 attendants or treatment, nurse and hospital service, medicine, crutch-
4 es, and apparatus for the period which the nature of the injury or the
5 process of recovery requires, not exceeding two years from and after
6 the date of injury to the employee. However, if the condition requir-
7 ing the treatment, apparatus, or medicine is a latent one, the two-
8 year period runs from the time the employee has knowledge of the
9 nature of the employee's disability and its relationship to the em-
10 ployment and after disablement. It shall be additionally provided
11 that, if continued treatment or care or both beyond the two-year
12 period is indicated, the injured employee has the right of review by
13 the board. The board may authorize continued treatment or care or
14 both as the process of recovery may require. When medical care is
15 required, the injured employee may designate a licensed physician to
16 provide all medical and related benefits. The employee may not make
17 more than one change in the employee's choice of attending physician
18 without the written consent of the employer. Referral to a specialist
19 by the employee's attending physician is not considered a change in
20 physicians [INSIDE THE STATE TO RENDER THE CARE EXCEPT IN CASES WHERE,
21 IN THE JUDGMENT OF THE BOARD, CARE OR TREATMENT OR BOTH CAN BEST BE
22 ADMINISTERED BY THE SELECTION OF ANOTHER PHYSICIAN]. Upon procuring
23 the services of a physician, the injured employee shall give proper
24 notification of the selection to the employer within a reasonable time
25 after first being treated. Notice of a change in the attending physi-
26 cian shall be given before the change [IF FOR ANY REASON DURING THE
27 PERIOD WHEN MEDICAL CARE IS REQUIRED THE EMPLOYEE WISHES TO CHANGE TO
28 ANOTHER PHYSICIAN, THE EMPLOYEE MAY DO SO IN ACCORDANCE WITH REGU-
29 LATIONS ADOPTED BY THE BOARD].

1 * Sec. 11. AS 23.30.095(c) is amended to read:

2 (c) A claim for medical or surgical treatment, or treatment
3 requiring continuing and multiple treatments of a similar nature, is
4 not valid and enforceable against the employer unless, within 14 days
5 following treatment, the physician or health care provider giving the
6 treatment or the employee receiving it furnishes to the employer and
7 the board notice of the injury and treatment, preferably on a form
8 prescribed by the board. The board shall, however, excuse the failure
9 to furnish notice within 14 days when it finds it to be in the inter-
10 est of justice to do so, and it may, upon application by a party in
11 interest, make an award for the reasonable value of the medical or
12 surgical treatment so obtained by the employee. When a claim is made
13 for a course of treatment requiring continuing and multiple treatments
14 of a similar nature, in addition to the notice, the physician or
15 health care provider shall furnish a written treatment plan if the
16 course of treatment will require more frequent outpatient visits than
17 the standard treatment frequency for the nature and degree of the
18 injury and the type of treatments. The treatment plan must be
19 furnished to the employer and the employee within 14 days after the
20 beginning of the course of treatment. The treatment plan must include
21 objectives, modalities, frequency of treatment, and reasons for the
22 frequency of treatment. If the treatment plan is not provided as
23 required in this subsection, neither the employer nor the employee may
24 be required to pay for treatment in excess of the frequency standard
25 established in this subsection. The board shall adopt regulations
26 establishing standards for frequency of treatment.

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

28 (e) The employee shall, after an injury, at reasonable times
29 during the continuance of the disability, if requested by the employer

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

1 widower or next of kin to have a representative present to witness the
2 autopsy. If adequate notice is not given, the findings from the
3 autopsy may be suppressed on motion made to the board or to the supe-
4 rior court, as the case may be.

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

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

14 * Sec. 14. AS 23.30.095(j) is repealed and reenacted to read:

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

20 * Sec. 15. AS 23.30.095 is amended by adding a new subsection to read:

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

1 of the independent medical examiner shall be furnished to the board
2 and to the parties within 14 days after the examination is concluded.
3 The opinion of the independent medical examiner shall, in the absence
4 of clear and convincing objective evidence to the contrary, be pre-
5 sumed to be correct. A person may not seek damages from an indepen-
6 dent medical examiner caused by the rendering of an opinion or provid-
7 ing testimony under this subsection, except in the event of fraud or
8 gross incompetence.

9 * Sec. 16. AS 23.30.105(a) is amended to read:

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

25 * Sec. 17. AS 23.30.110(c) is repealed and reenacted to read:

26 (c) Before a hearing is scheduled, the party seeking a hearing
27 shall file a request for a hearing together with an affidavit stating
28 that the party has completed all necessary discovery, obtained all
29 necessary evidence, and is fully prepared for the hearing. An

1 opposing party shall have 10 days after the hearing request is filed
2 to file a response. If a party opposes the hearing request, the board
3 or a board designee shall within 30 days of the filing of the oppo-
4 sition conduct a prehearing conference and set a hearing date. If
5 opposition is not filed, a hearing shall be scheduled no later than 60
6 days after the receipt of the hearing request. The board shall give
7 each party at least 10 days' notice of the hearing, either personally
8 or by certified mail. After a hearing has been scheduled, the parties
9 may not stipulate to change the hearing date or to cancel, postpone,
10 or continue the hearing, except for good cause as determined by the
11 board. After completion of the hearing the board shall close the
12 hearing record. If a settlement agreement is reached by the parties
13 less than 14 days before the hearing, the parties shall appear at the
14 time of the scheduled hearing to state the terms of the settlement
15 agreement. Within 30 days after the hearing record closes, the board
16 shall file its decision. If the employer controverts a claim on a
17 board-prescribed controversion notice and the employee does not re-
18 quest a hearing within two years following the filing of the con-
19 troversion notice, the claim is denied.

20 * Sec. 18. AS 23.30.120 is amended by adding a new subsection to read:

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

24 * Sec. 19. AS 23.30.125 is amended by adding a new subsection to read:

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

29 * Sec. 20. AS 23.30.130(a) is amended to read:

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

13 * Sec. 21. AS 23.30.155(c) is amended to read:

14 (c) The insurer or adjuster [EMPLOYER] shall notify the board
15 and the employee on a form prescribed by the board that the payment of
16 compensation has begun or has been increased, decreased, suspended,
17 terminated, resumed, or changed in type. An initial report shall be
18 filed with the board and sent to the employee within 28 days after the
19 date of issuing the first payment of compensation. If at any time 21
20 days or more pass and no compensation payment is issued, a report
21 notifying the board and the employee of the termination or suspension
22 of compensation shall be filed with the board and sent to the employee
23 within 28 days after the date the last compensation payment was is-
24 sued. A report shall also be filed with the board and sent to the
25 employee within 28 days after the date of issuing a payment increas-
26 ing, decreasing, resuming, or changing the type of compensation paid.
27 If the [EMPLOYER FAILS TO NOTIFY THE] board and the employee are not
28 notified within the 28 days prescribed by this subsection for report-
29 ing, the insurer or adjuster [EMPLOYER] shall pay a civil penalty of

1 \$100 for the first day plus \$10 for each day thereafter that the
2 [EMPLOYER FAILED TO GIVE] notice was not given. Total penalties under
3 this subsection [SECTION] may not exceed \$1,000 for a failure to file
4 a required report. Penalties assessed under this subsection are
5 eligible for reduction under (m) of this section. A penalty assessed
6 under this subsection after penalties have been reduced under (m) of
7 this section shall be increased by 25 percent and shall bear interest
8 at the rate established under AS 45.45.010.

9 * Sec. 22. AS 23.30.155(d) is amended to read:

10 (d) If the employer controverts the right to compensation the
11 employer shall file with the board and send to the employee a notice
12 of controversion on or before the 21st day after the employer has
13 knowledge of the alleged injury or death. If the employer controverts
14 the right to compensation after payments have begun, the employer
15 shall file with the board and send to the employee a notice of con-
16 troversion within seven days after an installment of compensation pay-
17 able without an award is due. When payment of temporary disability
18 benefits is controverted solely on the grounds that another employer
19 or another insurer of the same employer may be responsible for all or
20 a portion of the benefits, the most recent employer or insurer who is
21 party to the claim and who may be liable shall make the payments dur-
22 ing the pendency of the dispute. When a final determination of liabi-
23 lity is made, any reimbursement required, including interest at the
24 statutory rate, and all costs and attorneys' fees incurred by the pre-
25 vailing employer, shall be made within 14 days of the determination.

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

27 (e) If any installment of compensation payable without an award
28 is not paid within seven days after it becomes due, as provided in (b)
29 of this section, there shall be added to the unpaid installment an

1 amount equal to 25 [20] percent of it. This additional amount shall
2 be paid at the same time as, and in addition to, the installment,
3 unless notice is filed under (d) of this section or unless the non-
4 payment is excused by the board after a showing by the employer that
5 owing to conditions over which the employer had no control the in-
6 stallment could not be paid within the period prescribed for the
7 payment.

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

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

16 * Sec. 25. AS 23.30.155(m) is repealed and reenacted to read:

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

1 the penalties assessed under (c) of this section shall be waived. If
2 during the preceding year the insurer or adjuster filed at least 97
3 percent of the reports on time, 75 percent of the penalties assessed
4 under (c) of this section shall be waived. If during the preceding
5 year the insurer or adjuster filed 95 percent of the reports on time,
6 50 percent of the penalties assessed under (c) of this section shall
7 be waived. If during the preceding year the insurer's or adjuster's
8 reports have not been filed on time at least 95 percent of the time,
9 none of the penalties assessed under (c) of this section shall be
10 waived. The penalties that are not waived are due and payable when
11 the insurer or adjuster receives notification from the commissioner
12 regarding the timeliness of the reports. If the annual report is not
13 filed by March 1 of each year, the insurer or adjuster shall pay a
14 civil penalty of \$100 for the first day the annual report is late, and
15 \$10 for each additional day the report is late. If the annual report
16 is incomplete when filed, the commissioner may impose a civil penalty
17 not to exceed \$1,000.

18 * Sec. 26. AS 23.30.155 is amended by adding new subsections to read:

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

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

27 * Sec. 27. AS 23.30.175 is repealed and reenacted to read:

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

1 may not be less than \$110. However, if the board determines that the
2 employee's spendable weekly wages are less than \$110 a week as com-
3 puted under AS 23.30.220, or less than \$154 a week in the case of an
4 employee who has furnished documentary proof of the employee's wages,
5 it shall issue an order adjusting the weekly rate of compensation to a
6 rate equal to the employee's spendable weekly wages. If the employer
7 can verify that the employee's spendable weekly wages are less than
8 \$154, the employer may adjust the weekly rate of compensation to a
9 rate equal to the employee's spendable weekly wages without an order
10 of the board. If the employee's spendable weekly wages are greater
11 than \$154, but 80 percent of the employee's spendable weekly wages is
12 less than \$154, the employee's weekly rate of compensation shall be
13 \$154. Prior payments made in excess of the adjusted rate shall be
14 deducted from the unpaid compensation in the manner the board deter-
15 mines. In any case, the employer shall pay timely compensation.

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

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

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

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

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

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

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

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

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

24 (1) area of residence;

25 (2) area of last employment;

26 (3) the state of residence; and

27 (4) the State of Alaska.

28 * Sec. 29. AS 23.30.180 is amended by adding a new subsection to read:

29 (b) Failure to achieve remunerative employability as defined in

1 AS 23.30.041(p) does not, by itself, constitute permanent total dis-
2 ability.

3 * Sec. 30. AS 23.30.185 is amended to read:

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

10 * Sec. 31. AS 23.30.190 is repealed and reenacted to read:

11 Sec. 23.30.190. COMPENSATION FOR PERMANENT PARTIAL IMPAIRMENT.
12 (a) In case of impairment partial in character but permanent in
13 quality, and not resulting in permanent total disability, the compen-
14 sation is \$135,000 multiplied by the employee's percentage of net
15 permanent impairment of the whole person. The percentage of permanent
16 impairment of the whole person is the percentage of impairment to the
17 particular body part, system, or function converted to the percentage
18 of impairment to the whole person as provided under (b) of this sec-
19 tion. The compensation is payable in a single lump sum, except as
20 otherwise provided in AS 23.30.041, but the compensation may not be
21 discounted for any present value considerations.

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

29 (c) The impairment rating determined under (a) of this section

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

6 * Sec. 32. AS 23.30.200 is amended to read:

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

16 * Sec. 33. AS 23.30.200 is amended by adding a new subsection to read:

17 (b) The wage-earning capacity of an injured employee is deter-
18 mined by the actual spendable weekly wage of the employee if the
19 actual spendable weekly wage fairly and reasonably represents the
20 wage-earning capacity of the employee. The board may, in the interest
21 of justice, fix the wage-earning capacity that is reasonable, having
22 due regard to the nature of the injury, the degree of physical impair-
23 ment, the usual employment, and other factors or circumstances in the
24 case that may affect the capacity of the employee to earn wages in a
25 disabled condition, including the effect of disability as it may
26 naturally extend into the future.

27 * Sec. 34. AS 23.30.220(a) is amended to read:

28 (a) The spendable weekly wage of an injured employee at the time
29 of an injury is the basis for computing compensation. It is the

1 employee's gross weekly earnings minus payroll tax deductions. The
2 gross weekly earnings shall be calculated as follows:

3 (1) The gross weekly earnings are computed by dividing by
4 100 the gross earnings of the employee in the two calendar years
5 immediately preceding the injury.

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

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

21 (4) If the employee is injured while performing duties as a
22 volunteer ambulance attendant, policeman, or fireman, the gross weekly
23 earnings for calculating compensation shall be the minimum gross
24 weekly earnings paid a full-time ambulance attendant, policeman, or
25 fireman employed in the political subdivision where the injury oc-
26 curred, or, if the political subdivision has no full-time ambulance
27 attendants, policemen, or firemen, at a reasonable figure previously
28 set by the political subdivision to make this determination but in no
29 case may the gross weekly earnings for calculating compensation be

1 less than the minimum wage computed on the basis of 40 hours work per
2 week.

3 * Sec. 35. AS 23.30.225 is amended by adding a new subsection to read:

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

14 * Sec. 36. AS 23.30 is amended by adding a new section to read:

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

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

26 (c) This section may not be construed to prohibit an employer
27 from requiring a prospective employee to fill out a preemployment
28 questionnaire or application regarding the person's prior health or
29 disability history as long as it is meant to either document written

1 notice for second injury fund reimbursement under AS 23.30.205(c) or
2 to determine whether the employee has the physical or mental capacity
3 to meet the documented physical or mental demands of the work.

4 * Sec. 37. AS 23.30.265(15) is amended to read:

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

21 * Sec. 38. AS 23.30.265(17) is amended to read:

22 (17) "injury" means accidental injury or death arising out
23 of and in the course of employment, and an occupational disease or
24 infection which arises naturally out of the employment or which natu-
25 rally or unavoidably results from an accidental injury; "injury" [,
26 AND] includes breakage or damage to eyeglasses, hearing aids, den-
27 tures, or any prosthetic devices which function as part of the body
28 and further includes an injury caused by the wilful act of a third
29 person directed against an employee because of the employment;

1 "injury" does not include mental injury caused by mental stress unless
2 it is established that (A) the work stress was extraordinary and
3 unusual in comparison to pressures and tensions experienced by indi-
4 viduals in a comparable work environment, and (B) the work stress was
5 the predominant cause of the mental injury; the amount of work stress
6 shall be measured by actual events rather than misperceptions by the
7 employee; a mental injury is not considered to arise out of and in
8 the course of employment if it results from a disciplinary action,
9 work evaluation, job transfer, layoff, demotion, termination or simi-
10 lar action, taken in good faith by the employer;

11 * Sec. 39. AS 23.30.265 is amended by adding a new paragraph to read:

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

21 * Sec. 40. AS 23.30.210 and 23.30.265(28) are repealed.

22 * Sec. 41. TRANSITIONAL PROVISIONS. Notwithstanding AS 23.30.040(b),
23 as amended by sec. 6 of this Act, and AS 23.30.155(m), as amended by
24 sec. 25 of this Act, on or before March 1, 1989, each employer that is
25 subject to those sections shall file a report and make the appropriate
26 contribution for all claims existing as of December 31, 1988. The period
27 covered in the report shall be from the date of the termination report or
28 the last anniversary report filed, if one has been filed, through Decem-
29 ber 31, 1988.

1 * Sec. 42. TEMPORARY RATE LIMITATION. Notwithstanding AS 21.39.030, an
2 insurer providing workers' compensation insurance in the state may not
3 increase the premium rate charged within the state for workers' compen-
4 sation insurance during the period beginning July 1, 1988, and ending
5 January 1, 1990.

6 * Sec. 43. TRANSITIONAL PROVISION. Notwithstanding AS 23.30.041(p), as
7 enacted by sec. 8 of this Act, for the period from July 1, 1988, until
8 June 30, 1989, the term "rehabilitation specialist" as used in AS 23.30.041
9 includes a person who was actively employed for at least one year before
10 June 30, 1988, in providing rehabilitation services to an injured worker
11 receiving benefits under AS 23.30.

12 * Sec. 44. APPLICABILITY. Except for secs. 6, 22, 25, 26, 38, and 42
13 of this Act, this Act applies only to injuries sustained on or after Ju-
14 ly 1, 1988.

15 * Sec. 45. Section 38 of this Act applies to injuries sustained on or
16 after the effective date of sec. 38 of this Act.

17 * Sec. 46. Section 42 of this Act is retroactive to April 25, 1988.

18 * Sec. 47. Sections 38 and 45 of this Act take effect immediately under
19 AS 01.10.070(c).

20 * Sec. 48. Sections 1 - 37, and 39 - 44 of this Act take effect July 1,
21 1988.

1 IN THE SENATE

BY THE LAROR AND
COMMERCE COMMITTEE

2 SENATE CONCURRENT RESOLUTION NO.

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 Suspending Uniform Rules 41(b), 24(c),
6 and 35 of the Alaska State Legislature
7 concerning House Bill 177.

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

9 That under Rule 54 of the Uniform Rules of the Alaska State Legisla-
10 ture the provision of Rule 41(b) of the Uniform Rules and the provisions of
11 Rule 24(c) and Rule 35, regarding changes to the title of a bill, are
12 suspended in consideration of House Bill 177, relating to the second injury
13 fund.

WORK ORDER REQUEST FORM

15-2133

14XXXXXXXX

KEYWORDS: uniform rules

ASSIGNED TO Ford

REQUEST FOR: BILL RESOLUTION RESEARCH OTHER

SUBJECT Suspend Uniform Rules for HB 177

REQUESTED FOR Sen. Kelly BY John EXT. 3822

* DELIVER TO Sen. Kelly TAKEN BY Ford

INSTRUCTIONS, EXPLANATIONS _____

Draft SCR to suspend Uniform Rules 41(b), 24(c), and 35.

Re - CSHB 177(Jud).

OBTAIN

SPECIAL DRAFTING INSTRUCTIONS ATTACHED

AUTHORIZED TO CONFER WITH _____

RETURN _____

TO REQUESTER

APPROVED: ToC Director, Legal Services

REVIEWED _____

IN 4/22/88 DUE _____

TYPED - Draft _____ DATE _____

Final _____ DATE _____

PROOFED _____ DELIVERED _____

SPECIAL INSTRUCTIONS TO TYPIST/PROOFREADER

DRAFT

FINAL

STATE OF ALASKA
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

April 21, 1988

SUBJECT: Workers' compensation (HCS CSSB 322(Jud))
TO: Senator Tim Kelly
FROM: Michael F. Ford *M. F.*
Legislative Counsel

You have asked if HCS CSSB 322(Jud) could be included within either CSHB 53(Jud) am or CSHB 177(Jud) without changing the existing titles of the house bills. The short answer is no. The title of each house bill is not broad enough to meet the bill title requirement contained in Article II, section 13 of the Alaska Constitution. There is an additional problem with CSHB 53(Jud). In that this bill deals with workplace safety laws and not workers' compensation, combining the two subjects would probably violate the single subject rule also contained in Article II, section 13 of the Alaska Constitution.

It would be possible to put the substantive provisions of HCS CSSB 322(Jud) into CSHB 177(Jud) if the Uniform Rules were suspended to allow the title of the house bill to be changed. Suspension of the Uniform Rules is governed by Uniform Rule 54, and requires a concurrent resolution approved by a two-thirds vote of each house.

Please contact me if you have further questions.

MFF:bb
b5/028

STEVE COWPER
GOVERNOR



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

21B177

March 9, 1987

The Honorable Ben Grussendorf
Speaker of the House
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Representative Grussendorf:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to the workers' compensation law regarding the second injury fund.

The bill provides that expenses incurred in the administration of the second injury fund be paid from the fund itself instead of from the general fund of the state. This approach returns to the pre-1981 method of paying fund expenses. The financial condition of the fund has improved considerably in the past two years because of the funding formula enacted in 1981. The second injury fund is now in a position to pay for its own administration without jeopardizing the integrity of the fund and without jeopardizing the payment of the benefits for which the fund was created. Since the money in the fund is held in trust (i.e., it is not "state money"), the statute may specify this use of it without violating the dedicated-fund prohibition of art. IX, sec. 7 of the Alaska Constitution. Expenditures from the second injury fund will be authorized by annual appropriation.

Given the financial integrity of the fund, I think it is proper and prudent that the fund itself bear the costs of its administration.

Sincerely,

A large, stylized handwritten signature of Steve Cowper in black ink.

Steve Cowper
Governor

cc
Offered by Pourchot
May 5, 1987

LETTER OF INTENT

CSHB 177 (Jud)

AN ACT RELATING TO THE SECOND INJURY FUND

It is the intent of the legislature that the funding source change proposed in HB 177 is to offset the amount of State General Fund monies currently being spent on administration of the Second Injury Fund. It is not to result in any increase in administrative staff or expense, nor is the expense of any other department operation to be charged against the fund.

Further, it is the intent of the legislature that in its FY 89 budget submittal the Department of Labor present the administrative costs of the Second Injury Fund as a separate component within the Workers' Compensation BRU. This will allow for proper legislative oversight of the operation of the Second Injury Fund.


Pat Pourchot

**STATE OF ALASKA. 1987 LEGISLATIVE SESSION
FISCAL NOTE**

No. 2

Bill Version: CSHB 177(Jud)
Publish Date: HOUSE 4/30/87

REQUEST: _____

Revision Date: _____

Title: "An Act relating to ... the
second injury fund"

Sponsor: Governor

Requestor: House Labor and Commerce

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
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		(123.3)	(123.3)	(123.3)	(123.3)	(123.3)
FEDERAL FUNDS						
OTHER. *		123.3	123.3	123.3	123.3	123.3
TOTAL		0	0	0	0	0

POSITIONS: * = Second Injury Fund

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

See attached

Prepared by: Maureen McClintock, Director Phone: 465-2790

Division: Workers' Compensation Date: 3/17/87

Approved by Commissioner: Jim Sampson Date: 3/17/87

Agency: Labor

Distribution (by preparer):

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

RECEIVED

MAR 19 1987

Continuation of Fiscal Note

This legislation would allow the administrative expenses of operating the Second Injury Fund to be paid from the Fund itself rather than general funds. Thus, \$123.3 of Second Injury Fund dollars would be substituted for a like amount of general funds which are currently used to administer the Second Injury program.

The fund is supported by contributions from insurers and employers based on workers' compensation payments to injured workers and by certain penalties as provided by the Workers' Compensation Act.

The fund is used to reimburse insurers and employers who employ disabled workers under circumstances specified in the Workers' Compensation Act and for some rehabilitation costs. Adequate fund revenues are available to provide for administrative costs.

Approximate costs to administer the Second Injury Fund are as follows:

Personal Services		\$92.6
Management Analyst 75% of time	\$40.5	
Hearing Officer for approximately 12% of time	7.6	
Workers' Compensation Technician 100% of time	34.5	
Pro-rata share of clerical support	10.0	
Travel		2.7
Contractual		25.8
Communications	5.0	
Data Processing	16.6	
Printing	1.0	
Copier, postage machine, etc.	2.7	
Other (training, risk management)	.5	
Supplies		<u>2.2</u>
	Total	\$123.3

**STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE**

SC5CSHB 177 (L&C)

REQUEST: _____

Bill Version: _____

Publish Date: _____

Revision Date: _____

Agency Affected: Labor

Title: "An Act relating to...the
second injury fund"

BRU: Workers' Compensation

Sponsor: Governor

Components: Workers' Compensation

Requestor: Senate Labor and Commerce

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
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		(123.3)	(123.3)	(123.3)	(123.3)	(123.3)
FEDERAL FUNDS						
OTHER. *		123.3	123.3	123.3	123.3	123.3
TOTAL		0	0	0	0	0

POSITIONS: * = Second Injury Fund

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

See attached

Prepared by: Jacquelyn McClintock, Director Phone: 465-2790

Division: Workers' Compensation Date: 5/14/87

Approved by Commissioner: Jim Sampson Date: 5/14/87

Agency: Labor

Distribution (by preparer):

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

Continuation of Fiscal Note

SCSCSHB 177 (L&C)

This legislation would allow the administrative expenses of operating the Second Injury Fund to be paid from the Fund itself rather than general funds. Thus, \$123.3 of Second Injury Fund dollars would be substituted for a like amount of general funds which are currently used to administer the Second Injury program.

The fund is supported by contributions from insurers and employers based on workers' compensation payments to injured workers and by certain penalties as provided by the Workers' Compensation Act.

The fund is used to reimburse insurers and employers who employ disabled workers under circumstances specified in the Workers' Compensation Act and for some rehabilitation costs. Adequate fund revenues are available to provide for administrative costs.

Approximate costs to administer the Second Injury Fund are as follows:

Personal Services		\$92.6
Management Analyst 75% of time	\$40.4	
Hearing Officer for approximately 15% of time	9.5	
Workers' Compensation Technician 100% of time	34.5	
Pro-rata share of clerical support	8.2	
Travel		2.7
Contractual		25.8
Communications	5.0	
Data Processing	16.6	
Printing	1.0	
Copier, postage machine, etc.	2.7	
Other (training, risk management)	.5	
Supplies		<u>2.2</u>
	Total	\$123.3

**STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE**

REQUEST: _____

Bill Version: CSHB 177 (Jud)
Publish Date: _____

Revision Date: _____
Title: "An Act relating to ... the
second injury fund"
Sponsor: Governor
Requestor: House Judiciary

Agency Affected: Labor
BRU: Workers' Compensation
Workers' Compensation
Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
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		(123.3)	(123.3)	(123.3)	(123.3)	(123.3)
FEDERAL FUNDS						
OTHER. *		123.3	123.3	123.3	123.3	123.3
TOTAL		0	0	0	0	0

POSITIONS: * = Second Injury Fund

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

See attached

Prepared by: Jacquelyn McClintock, Director Phone: 465-2790
Division: Workers' Compensation Date: 04/28/87

Approved by Commissioner: Jim Sampson Date: 04/28/87
Agency: Labor

Distribution (by preparer):

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

Continuation of Fiscal Note

CSHB 177 (Jud)

This legislation would allow the administrative expenses of operating the Second Injury Fund to be paid from the Fund itself rather than general funds. Thus, \$123.3 of Second Injury Fund dollars would be substituted for a like amount of general funds which are currently used to administer the Second Injury program.

The fund is supported by contributions from insurers and employers based on workers' compensation payments to injured workers and by certain penalties as provided by the Workers' Compensation Act.

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Pro-rata share of clerical support	8.2	
Travel		2.7
Contractual		25.8
Communications	5.0	
Data Processing	16.6	
Printing	1.0	
Copier, postage machine, etc.	2.7	
Other (training, risk management)	.5	
Supplies		<u>2.2</u>
	Total	\$123.3