

SB

322

(FILE 1-DRAFTS)

561-1944

BY THE LABOR AND
COMMERCE COMMITTEE

1 IN THE HOUSE

2

HOUSE BILL NO. 352

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, and
11 predictable delivery of indemnity and medical benefits to injured workers
12 at a reasonable cost to the employers who are subject to the provisions of
13 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 if supported by any evidence.

21 (c) It is the intent of the legislature in amending AS 23.30.175

22 regarding benefits payable to recipients not residing in the state to

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

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

27 (3) remove obstacles to the utilization of vocational rehabili-
28 tation that may be brought about by the payment of workers' compensation
29 benefits at the high levels provided by the Alaska workers' compensation

1 law to individuals residing in localities with living costs lower than
2 those in Alaska.

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

4 (h) The department ^{SHALL} [may] adopt identical rules for all panels, and
5 procedures for the periodic selection, retention, and removal of
6 rehabilitation specialists or physicians under AS 23.30.041 and 23.-
7 30.095, and ^{SHALL} [may] adopt regulations to carry out the provisions of this
8 chapter. Process and procedure under this chapter shall be as summary
9 and simple as possible. The department, the board or a member of it
10 may for the purposes of this chapter subpoena witnesses, administer or
11 cause to be administered oaths, and may examine or cause to have
12 examined the parts of the books and records of the parties to a pro-
13 ceeding that relate [WHICH RELATED] to questions in dispute. The
14 superior court, on application of the department, the board or any
15 members of it, shall enforce the attendance and testimony of witnesses
16 and the production and examination of books, papers, and records.

17 * Sec. 3. AS 23.30.005 is amended by adding a new subsection to read:

18 (m) If a regulation adopted by the department and approved by a
19 majority of the full board is determined to be invalid by the state
20 supreme court, the department shall immediately adopt new regulations
21 that conform to the department's statutory authority as interpreted by
22 the court. *NEW SUBSECTION NOT ADDED*

23 * Sec. 4. AS 23.30.020 is amended by adding a new subsection to read:

24 (b) An employee who knowingly makes a false statement as to the
25 employee's physical condition on an employment application or preem-
26 ployment questionnaire may not receive benefits under this chapter if
27 (1) the employer relied upon the false representation and
28 this reliance was a substantial factor in the hiring; and
29 (2) there was a causal connection between the false

1 representation and the injury to the employee.

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

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

22	Column A	Column B	
23	Second Injury Fund	Reserve Rate	
24	Contribution Rate	At Least	But Less Than
25	(Percent)	(Percent)	(Percent)
26	6	0	50
27	5	50	75
28	4	75	100
29	3	100	125

1	2	125	150
2	1	150	175
3	0	175	

4 * Sec. 6. AS 23.30.041 is repealed and reenacted to read:

5 Sec. 23.30.041. REHABILITATION OF INJURED WORKERS. (a) The
6 board shall select and employ a reemployment services administrator.
7 The board may authorize the reemployment services administrator to
8 select and employ additional staff. The reemployment services admin-
9 istrator is in the partially exempt service under AS 39.25.120.

10 (b) The reemployment services administrator shall perform the
11 following functions:

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

14 (2) recommend regulations for adoption by the board that
15 establish performance and reporting criteria for rehabilitation spe-
16 cialists;

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

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

22 (5) submit to the department, on or before January 1 of
23 each year, a report of reemployment benefits provided under this
24 section for the previous fiscal year; the report must include a gen-
25 eral section and sections related to each rehabilitation specialist
26 used under this section; the report must also include for each section
27 a statistical summary of all rehabilitation cases, including

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

1 (B) the estimated and actual time of each rehabilita-
2 tion plan;

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

6 (D) the cost of reemployment services;

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

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

13 (c) If an employee suffers a compensable injury that may perma-
14 nently preclude an employee's return to the employee's occupation at
15 the time of injury, the employee or employer may request an eligibil-
16 ity evaluation for reemployment benefits. The reemployment services
17 administrator shall, on a rotating basis, select a rehabilitation
18 specialist from the list maintained under (b)(6) of this section to
19 perform the eligibility evaluation.

20 (d) Except as provided in (e) of this section, an employee shall
21 be eligible for benefits under this section upon the employee's writ-
22 ten request and by having a physician predict that the employee will
23 have permanent physical capacities that are less than the physical
24 demands of the employee's job as described in the United States
25 Department of Labor's "Selected Characteristics of Occupations Defined
26 in the Dictionary of Occupational Titles" for

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

28 (2) other jobs that exist in the labor market that the
29 employee has held within 10 years before the injury or that the

*THINGS CONSIDERED S/WAGE
BEEN WORKED*

1 employee has held following the injury, for a period long enough to
2 obtain the skills to compete in the labor market, according to specif-
3 ic vocational preparation codes as described in the dictionary of
4 occupational titles.

book

5 (e) An employee is not eligible for reemployment benefits if

6
6

6 (1) the employer offers employment within the employee's
7 predicted post-injury physical capacities at a wage equivalent to at
8 least 60 percent of the worker's gross hourly wages at the time of
9 injury and the employer prepares the employee to be employable in
10 other jobs that exist in the labor market; or

11 (2) the employee has been previously rehabilitated in a
12 former workers' compensation claim and returned to work in the same or
13 similar occupation in terms of physical demands.

**
DESIGN
YES*

*DO THE EMPLOYEE WORK AT THE
TIME OF THE PLANS RECOVERY OR*

14 (f) When an employee is found eligible for reemployment benefits
15 and desires to use these benefits, the employee shall select a re-
16 habilitation specialist who shall provide a complete reemployment
17 services plan. If the employer disagrees with the employee's choice
18 of rehabilitation specialist to develop the plan and the disagreement
19 cannot be resolved, then the reemployment services administrator shall
20 assign a rehabilitation specialist. The employer and employee each
21 have one right of refusal of a rehabilitation specialist. The reem-
22 ployment plan must include the following:

(3) P. 4

- 23 (1) an occupational goal in the labor market;
- 24 (2) a plan to acquire the occupational skills to be employ-
25 able;
- 26 (3) the cost estimate of the reemployment plan, including
27 provider fees; the amount of tuition, books, tools, and supplies;
28 transportation; temporary lodging; or job modification devices;
- 29 (4) the estimated length of time that the plan will take;

1 (5) the date the plan will commence; and
2 (6) the time of medical stability as predicted by the
3 physician. ESTIMATED

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

- 7 (1) on the job training;
- 8 (2) vocational training;
- 9 (3) academic training;
- 10 (4) self-employment; or
- 11 (5) a combination of (1) - (4) of this subsection.

12 (h) The employee, rehabilitation specialist, and the employer
13 shall sign the reemployment services plan. * INSURANCE

14 (i) After the injured worker has elected to participate in reem-
15 ployment benefits, noncooperation by the worker shall result in the
16 termination of reemployment benefits on the date of noncooperation.

17 Noncooperation means failure to — INSURE REASONABLY

- 18 (1) keep appointments;
- 19 (2) maintain average grades;
- 20 (3) attend designated programs;
- 21 (4) maintain contact with the rehabilitation specialist;
- 22 (5) cooperate with the rehabilitation specialist in devel-
23 oping a reemployment plan and participating in activities relating to
24 reemployability on a full-time basis;
- 25 (6) comply with the employee's responsibilities outlined in
26 the reemployment plan; or
- 27 (7) participate in any planned reemployment activity as
28 determined by the reemployment services administrator. * INSURANCE P. 7

29 (j) Reemployment benefits are subject to the following time

7

? with no limit in REEMPLOYMENT

INSURANCE
REVIEW OR
RECOURSE SECTION

1 limits:

2 (1) benefits related to the reemployment plan may not
3 extend past two years from date of plan acceptance at which time the
4 benefits expire, except at the discretion of the employer;

5 (2) election of the eligibility evaluation by the employee
6 for reemployment benefits must occur within 60 days of the employer's
7 notice of injury unless the reemployment services administrator deter-
8 mines that unusual and extenuating physical limitations of the em-
9 ployee preclude the employee from making a timely request;

10 (3) the determination of the employee's eligibility for
11 reemployment benefits shall occur no later than 30 days following the
12 date of evaluation referral, except under circumstances that are
13 determined to be unusual and extenuating by the reemployment services
14 administrator, who may grant up to an additional 30 days;

15 (4) within 10 days after the employee has been determined
16 eligible for reemployment benefits, the employee and employer shall
17 select a rehabilitation specialist to deliver reemployment services;

18 (5) a reemployment plan must be formulated and approved by
19 the parties within 90 days of the determinatio. of eligibility;

20 (6) the reemployment plan shall be initiated when the
21 employee is considered physically able to engage in the plan by the
22 employee's physician;

23 (7) if the employer and employee fail to agree on a reem-
24 ployment plan, either party may submit a reemployment plan for ap-
25 proval to the reemployment services administrator; the reemployment
26 services administrator shall approve or deny a plan within 14 days
27 after the plan is submitted; within 10 days of the decision, either
28 party may seek review of the decision by requesting a hearing under
29 AS 23.30.110; the board shall uphold the decision of the administrator

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1 unless evidence is submitted supporting an allegation of abuse of
2 discretion on the part of the administrator; the board shall render a
3 decision within 30 days after completion of the hearing.

4 (k) The cost of the reemployment plan incurred under this sec-
5 tion shall be the responsibility of the employer, but may not exceed
6 \$10,000. If an employee reaches medical stability before completion
7 of the plan, temporary total disability benefits shall cease and
8 permanent impairment benefits shall then be paid at the employee's
9 temporary total disability rate. If the employee's permanent impair-
10 ment benefits are exhausted before the completion or termination of
11 the reemployment plan, the employer shall provide wages equal to 60
12 percent of the employee's spendable weekly wages but not to exceed
13 \$525, until the completion or termination of the plan. A permanent
14 impairment benefit remaining unpaid upon the completion or termination
15 of the plan shall be paid to the employee in a single lump sum. The
16 fees of the rehabilitation specialist or rehabilitation professional
17 shall be paid by the employer and may not be included in determining
18 the cost of the reemployment plan.

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

10

25 (m) In this section
26 (1) "employability" means possessing the ability but not
27 necessarily the opportunity to engage in employment that is consistent
28 with the employee's physical status imposed by the compensable injury
29 or disease;

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(2) "labor market"

means a geographical area that offers

2

employment opportunities in the following priority:

3

(A) area of residence;

4

(B) area of last employment;

5

(C) the state;

6

(D) other states; *'WHERE EMPLOYEE LIVES'*

7

(3) "physical capacities" means objective and measurable

8

physical traits such as ability to lift and carry, walk, stand or sit,

9

push, pull, climb, balance, stoop, kneel, crouch, crawl, reach,

10

handle, finger, feel, talk, hear or see;

11

(4) "physical demands" means the physical requirements of

12

the job such as strength, including positions such as standing, walk-

13

ing, sitting, and movement of objects such as lifting, carrying,

14

pushing, pulling, climbing, balancing, stooping, kneeling, crouching,

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crawling, reaching, handling, fingering, feeling, talking, hearing, or

16

seeing;

17

(5) "reemployment benefits" means eligibility determina-

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tion, plan development, and plan cost not exceeding \$10,000, exclusive

19

of provider fees;

12

20

(6) "rehabilitation specialist"

means a person who is a

21

certified ^C insurance ^I rehabilitation ^R specialist ^R or a person who has

22

equivalent or better qualifications as determined under regulations

23

adopted by the department;

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(7) "remunerative employability"

means having the skills

25

that allow a worker to be compensated with wages or other earnings

26

equivalent to at least 60 percent of the worker's gross hourly wages

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at the time of injury; if the employment is outside the state, the

28

stated 60 percent shall be adjusted to account for the difference

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between the applicable state average weekly wage and the Alaska

1 average weekly wage.

2 * Sec. 7. AS 23.30.055 is amended to read:

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

14
21 * Sec. 8. AS 23.30.095(a) is amended to read:

22 (a) The employer shall furnish medical, surgical, and other
23 attendance or treatment, nurse and hospital service, medicine,
24 crutches, and apparatus for the period which the nature of the injury
25 or the process of recovery requires, not exceeding two years from and
26 after the date of injury to the employee. However, if the condition
27 requiring the treatment, apparatus, or medicine is a latent one, the
28 two- year period runs from the time the employee has knowledge of the
29 nature of the employee's disability and its relationship to the

1 employment and after disablement. It shall be additionally provided
2 that, if continued treatment or care or both beyond the two-year
3 period is indicated, the injured employee has the right of review by
4 the board. The board may authorize continued treatment or care or
5 both as the process of recovery may require. When medical care is
6 required, the injured employee may designate a licensed physician
7 inside the state where the employee resides to render the care. The

8 employee may not make more than one change in the employee's choice of
9 attending physician without the written consent of the employer.

10 Referral to a specialist by the employee's attending physician is not
11 considered a change in physicians [EXCEPT IN CASES WHERE, IN THE
12 JUDGMENT OF THE BOARD, CARE OR TREATMENT OR BOTH CAN BEST BE ADMINIS-
13 TERED BY THE SELECTION OF ANOTHER PHYSICIAN]. Upon procuring the
14 services of a physician, the injured employee shall give proper noti-
15 fication of the selection to the employer within a reasonable time
16 after first being treated. Notice of a change in the attending physi-
17 cian shall be given before the change [IF FOR ANY REASON DURING THE
18 PERIOD WHEN MEDICAL CARE IS REQUIRED THE EMPLOYEE WISHES TO CHANGE TO
19 ANOTHER PHYSICIAN, THE EMPLOYEE MAY DO SO IN ACCORDANCE WITH REGU-
20 LATIONS ADOPTED BY THE BOARD].

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

22 (c) A claim for medical or surgical treatment is not valid and
23 enforceable against the employer unless, within 14 days following
24 treatment, the physician giving the treatment or the employee re-
25 ceiving it furnishes to the employer and the board notice of the
26 injury and treatment, preferably on a form prescribed by the board.
27 The board shall, however, excuse the failure to furnish notice within
28 14 days when it finds it to be in the interest of justice to do so,
29 and it may, upon application by a party in interest, make an award for

(15) X
1 in SPECIALTY
ALSO
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CAN PLAN
BE MODIFIED
ALONG THE WAY
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1 the reasonable value of the medical or surgical treatment so obtained

2 by the employee. A claim for a course of treatment requiring con-

3 tinuing and multiple treatments of a similar nature is not valid

4 unless the treatments are carried out under a written treatment plan

5 prescribed before the commencement^{SUCH} of treatment, completed and signed

6 by the attending physician, and mailed to the employer within one week

7 of the beginning of treatment. The treatment plan must include objec-

8 tives, modalities, and frequency of treatment. The initial treatment

9 plan may not include more than 20 visits in the first 60 days. If

10 more than 20 visits are required within the first 60 days, or more

11 than four visits a month after the first 60 days, the physician shall

12 document the need for services in excess of the guidelines in the

13 written treatment plan.

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

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

or surgeon of the employer's choice [AUTHORIZED TO PRACTICE MEDICINE

UNDER THE LAWS OF THE STATE IN WHICH THE EMPLOYEE MAY BE FOUND], furnished and paid for by the employer. An examination requested by the employer not less than 14 days after injury, and every 30 days thereafter, shall be presumed to be reasonable, and the employee shall submit to the examination without further request or order by the board.

* Facts relative to the injury or claim communicated to or otherwise learned by a physician or surgeon who may have attended or examined the employee, or who may have been present at an examination are not privileged, either in the hearings provided for in this chapter or an action to recover damages against an employer who is subject to the compensation provisions of this chapter. If an employee

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S/DOCTOR SHOPPING
BY EMPLOYER
INSURANCE CO.
BE LIMITED
TOO

* INSERT "WHEN MEDICALLY APPROPRIATE, THE IME PHYSICIAN SHOULD USE ALREADY EXISTING DIAGNOSTIC DATA TO MAKE HIS DETERMINATION."

○

18

1 refuses to submit to an [ANY] examination provided for in this sec-
 2 tion, the employee's rights to compensation shall be suspended until
 3 the obstruction or refusal ceases, and the employee's compensation
 4 during the period of suspension may, in the discretion of the board or
 5 the court determining an action brought for the recovery of damages
 6 under this chapter, be forfeited. The board in any case of death may
 7 require an autopsy at the expense of the party requesting the autopsy.
 8 An autopsy may not be held without notice first being given to the
 9 widow or widower or next of kin if they reside in the state or their
 10 whereabouts can be reasonably ascertained, of the time and place of
 11 the autopsy and reasonable time and opportunity given the widow or
 12 widower or next of kin to have a representative present to witness the
 13 autopsy. If adequate notice is not given, the findings from the
 14 autopsy may be suppressed on motion made to the board or to the supe-
 15 rior court, as the case may be.

16 * Sec. 11. AS 23.30.095(f) is amended to read:

17 (f) All fees and other charges for medical treatment or service
 18 [ARE LIMITED TO THE CHARGES THAT PREVAIL IN THE SAME COMMUNITY FOR
 19 SIMILAR TREATMENT OF INJURED PERSONS OF LIKE STANDARD OF LIVING AND]
 20 shall be subject to regulation by the board but may not exceed usual,

19

21 customary, and reasonable fees for the treatment or service in the
 22 community in which it is rendered, as determined by the board.

23.30.030
 MAKES THIS
 REDUNDANT

23 * Sec. 12. AS 23.30.095(j) is repealed and reenacted to read:

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

" IN NO EVENT SHALL
 THE INJURED WORKER BE
 RESPONSIBLE FOR ANY FEES
 IN EXCESS OF
 THOSE DETER-
 MINED BY
 THE BOARD."

20

29 * Sec. 13. AS 23.30.095 is amended by adding a new subsection to read:

* INSERT " THE ABILITY TO ENTER A RE-EMPLOYMENT SERVICES PLAN, "

1 (k) In the event of a medical dispute regarding determinations
2 of causation, medical stability, degree of impairment, functional
3 capacity, the amount and efficacy of the continuance of or necessity
4 of treatment,* or compensability between the employee's attending
5 physician and the employer's independent medical evaluation, a second
6 independent medical evaluation shall be conducted by a physician or
7 physicians selected by the board from a list established and main-
8 tained by the board. The cost of the examination and medical report
9 shall be paid by the employer. The report of the independent medical
10 examiner shall be furnished to the board and to the parties within 14
11 days after the examination is concluded. The opinion of the indepen-
12 dent medical examiner shall, in the absence of clear and convincing
13 objective evidence to the contrary, be presumed to be correct. A
14 person may not seek damages from an independent medical examiner
15 caused by the rendering of an opinion or providing testimony under
16 this subsection, except in the event of fraud. ^{INSERT "OR GROSS NEGLIGENCE"}

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

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

1 in the case of latent defects pertinent to and causing compensable
2 disability, the injured employee has full right to claim as shall be
3 determined by the board, time limitations notwithstanding.

4 * Sec. 15. AS 23.30.120 is amended by adding a new subsection to read:

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

8 * Sec. 16. AS 23.30.125 is amended by adding a new subsection to read:

9 (f) Subject to an employer's or employee's burden of proof, a
10 finding of fact made by the board as a part of a compensation order is
11 conclusive if supported by any evidence.

12 * Sec. 17. AS 23.30.130(a) is amended to read:

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

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

26 (c) The employer shall notify the board and the employee on a
27 form prescribed by the board that the payment of compensation has
28 begun or has been increased, decreased, suspended, terminated, re-
29 sumed, or changed in type. An initial report shall be filed with the

1 board and sent to the employee within 28 days after the date of issu-
2 ing the first payment of compensation. If at any time 21 days or more
3 pass and no compensation payment is issued, a report notifying the
4 board and the employee of the termination or suspension of compen-
5 sation shall be filed with the board and sent to the employee within
6 28 days after the date the last compensation payment was issued. A
7 report shall also be filed with the board and sent to the employee
8 within 28 days after the date of issuing a payment increasing, de-
9 creasing, resuming, or changing the type of compensation paid. If the
10 [employer fails to notify the] board and the employee within the 28 days
11 prescribed by this subsection for reporting, the [employer] shall pay a
12 civil penalty of \$100 for the first day plus \$10 for each day there-
13 after that the [employer failed to give] notice. Total penalties under
14 this subsection [SECTION] may not exceed \$1,000 for a failure to file
15 a required report. Penalties assessed under this subsection are
16 eligible for reduction under (m) of this section.

17 * Sec. 19. AS 23.30.155(d) is amended to read:

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

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

6 * Sec. 20. AS 23.30.155(m) is repealed and reenacted to read:

7 (m) ⁽¹⁾ By March 1 of each year the ^{COMMISSIONER OF LABOR & INDUSTRY RELATIONS} employer shall file a verified
8 annual report on a form prescribed by the board stating the total
9 amount of all compensation by type, medical, and related benefits,
10 vocational rehabilitation expenses, legal fees, and penalties paid on
11 all claims during the preceding calendar year. ⁽²⁾ If the annual report
12 is timely and complete when received by the board and provides accu-
13 rate information about each category of payments, the commissioner
14 shall review the timeliness of the employer's reports filed under (c)
15 of this section. If the ^{COMMISSIONER OF LABOR & INDUSTRY RELATIONS} employer filed at least 99 percent of the
16 reports on time, the penalties assessed under (c) of this section
17 shall be waived. If the employer filed at least 97 percent of the
18 reports on time, 75 percent of the penalties assessed under (c) of
19 this section shall be waived. If the employer filed 95 percent of the
20 reports on time, 50 percent of the penalties assessed under (c) of
21 this section shall be waived. If the employer's reports have not been
22 filed on time at least 95 percent of the time, none of the penalties
23 assessed under (c) of this section shall be waived. The penalties
24 that are not waived are due and payable ^{WITHIN 28 DAYS AFTER THE} when the employer receives ^{COMMISSIONER OF}
25 notification from the commissio^{ER} regarding the timeliness of the ^{LABOR & INDUSTRY RELATIONS} reports. ^{THE RESULTS OF} ^{PENALTIES DUE.}

26 ^{WAS NOT PARAGRAPHS ON P. 10} 27 * Sec. 21. 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 [for a recipient residing in the

* INSERT "IF THE EMPLOYER CAN VERIFY THAT THE EMPLOYEE'S SPENDABLE WEEKLY WAGE IS LESS THAN \$154, THE EMPLOYER CAN PAY THE LESSER AMOUNT WITHOUT BOARD ORDER."

1 state] may not exceed \$700 and initially may not be less than \$110.
2 However, if the board determines that the employee's spendable weekly
3 wages are less than \$110 a week as computed under AS 23.30.220, or
4 less than \$154 a week in the case of an employee who has furnished
5 documentary proof of the employee's wages, it shall issue an order
6 adjusting the weekly rate of compensation to a rate equal to the
7 employee's spendable weekly wages.* If the employee's spendable weekly
8 wages are greater than \$154, but 80 percent of the employee's spend-
9 able weekly wages is less than \$154, the employee's weekly rate of
10 compensation shall be \$154. Prior payments made in excess of the
11 adjusted rate shall be deducted from the unpaid compensation in the
12 manner the board determines. In any case, the employer shall pay
13 timely compensation.

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

17 (1) the weekly rate of compensation shall be calculated by
18 multiplying the recipient's weekly compensation rate calculated under
19 AS 23.30.180, 23.30.185, 23.30.190, 23.30.200, or 23.30.215, by the
20 ratio of the cost of living^{INDEX} of the [locality]^{STATE} in which the recipient
21 resides to the cost of living^{INDEX} of the [state]^{ALASKA}

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

25 (3) if the [^{GROSS}average] weekly [^{EARNINGS}wage] of the recipient and the
26 resulting compensation rate is determined under AS 23.30.220(a)(2),
27 the calculation required by this subsection applies only to the por-
28 tion of the recipient's weekly compensation rate attributable to wages
29 earned in the state;

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COST OF LIVING AREAS
VS. IN STATES
US

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

4 (c) The board shall provide by regulation for the determination
5 of living costs for ^{ALASKA} [the state] and other ^{STATES} [localities] in which recipients
6 reside and for the annual redetermination of these costs.

7 * Sec. 22. AS 23.30.180 is amended to read:

8 Sec. 23.30.180. PERMANENT TOTAL DISABILITY. In case of total
9 disability adjudged to be permanent 80 percent of the injured em-
10 ployee's spendable weekly wages shall be paid to the employee during
11 the continuance of the total disability. Loss of both hands, or both
12 arms, or both feet, or both legs, or both eyes, or of any two of them,
13 in the absence of conclusive proof to the contrary, constitutes perma-
14 nent total disability. In all other cases permanent total disability
15 is determined in accordance with the facts. In making this determina-

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16 tion the market for the employee's services shall be
17 (1) area of residence;
18 (2) area of last employment; and
19 (3) the state* OF ALASKA OR THE STATE OF RESIDENCE.

20 * Sec. 23. AS 23.30.180 is mended by adding a new subsection to read:

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21 (b) Failure to achieve remunerative employability as defined in
22 AS 23.30.041(m)(7) does not, by itself, constitute permanent total
23 disability.

24 * Sec. 24. AS 23.30.185 is amended to read:

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

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occurring after the date of medical stability. Temporary total disability benefits may not be paid for more than two years regardless of continuance of the disability.

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* Sec. 25. AS 23.30.190 is repealed and reenacted to read:

Sec. 23.30.190. COMPENSATION FOR PERMANENT PARTIAL IMPAIRMENT.

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(a) In case of impairment partial in character but permanent in quality, and not resulting in permanent total disability, the compensation is \$240,000 multiplied by the employee's percentage of net permanent impairment of the whole person, and payable in a single lump sum, except as otherwise provided in AS 23.30.041, but the compensation may not be discounted for any present value considerations. Net permanent impairment is to be determined by multiplying the employee's actual degree of permanent impairment by the appropriate adjustment factor, as follows:

Degree of Actual Impairment	Adjustment Factor
0 - 5 percent	0
6 - 10 percent	0.2
11 - 15 percent	0.4
16 - 20 percent	0.6
21 - 25 percent	0.7
26 - 30 percent	0.8
31 percent and greater	1.0

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(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 may adopt and use a supplemental ^{RECOGNIZED} schedule only for injuries that cannot be rated by the use of American Medical Association guidelines.]

* "IF AN INJURY CANNOT BE RATED BY USE OF THE AMERICAN MEDICAL ASSOCIATION GUIDES, THE MANUAL FOR ORTHOPEDIC SURGEONS MAY BE USED."

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

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

10 * Sec. 26. AS 23.30.200 is amended to read:

11 Sec. 23.30.200. TEMPORARY PARTIAL DISABILITY. In case of tempo-
12 rary partial disability resulting in decrease of earning capacity the
13 compensation shall be 80 percent of the difference between the injured
14 employee's spendable week'y wages before the injury and the wage-
15 earning capacity of the employee after the injury in the same or
16 another employment, to be paid during the continuance of the disabili-
17 ty, but not to be paid for more than two [FIVE] years. Temporary
18 partial disability benefits may not be paid for a period of disability
19 occurring after the date of medical stability, unless otherwise pro-
20 vided under AS 23.30.041.

21 * Sec. 27. AS 23.30.200 is amended by adding a new subsection to read:

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

1 disabled condition, including the effect of disability as it may
2 naturally extend into the future.

3 * Sec. 28. AS 23.30.220(a) is amended to read:

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

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

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

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

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

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

7 * Sec. 29. AS 23.30.225 is amended by adding a new subsection to read:

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

18 * Sec. 30. AS 23.30 is amended by adding a new section to read:

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

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

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

8 * Sec. 31. AS 23.30.265(15) is amended to read:

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

25 * Sec. 32. AS 23.30.265(17) is amended to read:

26 (17) "injury" means accidental injury or death arising out
27 of and in the course of employment, and an occupational disease or
28 infection which arises naturally out of the employment or which natu-
29 rally or unavoidably results from an accidental injury; "injury" [,

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

15 * Sec. 33. AS 23.30.265 is amended by adding a new paragraph to read:

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

25 * Sec. 34. AS 23.30.210 is repealed.

26 * Sec. 35. TRANSITIONAL PROVISIONS. Notwithstanding AS 23.30.040(b),
27 as amended by sec. 5 of this Act, and AS 23.30.155(m), as amended by sec.
28 20 of this Act, on or before March 1, 1989, each employer that is subject
29 to those sections shall file a report and make the appropriate contribution

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1 for all claims existing as of December 31, 1988. The period covered in the
2 report shall be from the date of the termination report or the last an-
3 niversary report filed, if one has been filed, through December 31, 1988.

4 * Sec. 36. APPLICABILITY.* This Act applies only to injuries sustained
5 on or after July 1, 1988.

6 * Sec. 37. This Act takes effect July 1, 1988.

* INSERT " EXCEPT FOR SECTIONS 5, 18, 20 AND 21, "

5-1514B
Ford
2/22/88

Original sponsor: Labor and Commerce
Committee

1 IN THE SENATE

BY THE LABOR AND
COMMERCE COMMITTEE

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

5 (h) The department shall [MAY] adopt [IDENTICAL] rules for all
6 panels, and procedures for the periodic selection, retention, and re-
7 moval of rehabilitation specialists or physicians under AS 23.30.041
8 and 23.30.095, and shall [MAY] adopt regulations to carry out the
9 provisions of this chapter. Process and procedure under this chapter
10 shall be as summary and simple as possible. The department, the board
11 or a member of it may for the purposes of this chapter subpoena wit-
12 nesses, administer or cause to be administered oaths, and may examine
13 or cause to have examined the parts of the books and records of the
14 parties to a proceeding that relate [WHICH RELATED] to questions in
15 dispute. The superior court, on application of the department, the
16 board or any members of it, shall enforce the attendance and testimony
17 of witnesses and the production and examination of books, papers, and
18 records.

19 * Sec. 3. AS 23.30.005 is amended by adding a new subsection to read:

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

24 * Sec. 4. AS 23.30.020 is amended by adding a new subsection to read:

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

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

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

3 * Sec. 5. AS 23.30.025 is amended by adding a new subsection to read:

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

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

9 (8) The premium paid for the insurance may be paid semi-
10 annually, if requested by the insured. The insurer shall include this
11 provision in the insurance policy in a manner that clearly informs the
12 insured of the provision.

13 * Sec. 7. 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	Column B	
Second Injury Fund Contribution Rate (Percent)	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. 8. AS 23.30.040(h) is amended to read:

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

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

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

(b) The administrator shall perform the following functions:

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

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

1 specialists;

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
10 general section, sections related to each rehabilitation specialist
11 employed 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 unusual and extenuating physical limitations
5 that prevent the employee from making a timely request. The adminis-
6 trator shall, on a rotating and geographic basis, select a rehabilita-
7 tion specialist from the list maintained under (b)(6) of this section
8 to 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; and
- 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 dictionary of occupational titles.

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

7 (1) the employer offers employment within the employee's
 8 predicted post-injury physical capacities at a wage equivalent to at
 9 least the state minimum wage under AS 23.10.065 or 60 percent of the
 10 worker's gross hourly wages at the time of injury, whichever is great-
 11 er, of injury and the employment prepares the employee to be employ-
 12 able in other jobs that exist in the labor market;

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

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

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

29 (h) Within 90 days after the rehabilitation specialist's

1 selection under (g) of this section, the reemployment plan must be
2 formulated and approved. The reemployment plan must include at least
3 the following:

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

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

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

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

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

15 (6) the date the plan will commence;

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

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

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

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

26 (1) on the job training;

27 (2) vocational training;

28 (3) academic training;

29 (4) self-employment; or

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

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

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

28 (l) The cost of the reemployment plan incurred under this sec-
29 tion shall be the responsibility of the employer, shall be paid on an

1 expense incurred basis, and may not exceed \$10,000.

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

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

12 (1) keep appointments;

13 (2) maintain passing grades;

14 (3) attend designated programs;

15 (4) maintain contact with the rehabilitation specialist;

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

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

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

23 (o) Upon the request of either party, the administrator shall
24 decide whether the employee has not cooperated as provided under (n)
25 of this section. A hearing before the administrator shall be held
26 within 30 days after it is requested. The administrator shall issue a
27 decision within 14 days after the hearing. Within 10 days after the
28 administrator files the decision, either party may seek review of the
29 decision by requesting a hearing under AS 23.30.110; the board shall

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

5 (p) In this section

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

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

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

13 (A) area of residence;

14 (B) area of last employment;

15 (C) the state;

16 (D) other states;

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

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

27 (6) "rehabilitation specialist" means a person who is a
28 certified insurance rehabilitation specialist, a certified rehabilita-
29 tion counselor, or a person who has equivalent or better

1 qualifications as determined under regulations adopted by the depart-
2 ment;

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

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

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

29 * Sec. 11. AS 23.30.095(a) is amended to read:

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

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

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

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

23 (e) The employee shall, after an injury, at reasonable times
24 during the continuance of the disability, if requested by the employer
25 or when ordered by the board, submit to an examination by a physician
26 or surgeon of the employer's choice [AUTHORIZED TO PRACTICE MEDICINE
27 UNDER THE LAWS OF THE STATE IN WHICH THE EMPLOYEE MAY BE FOUND],
28 furnished and paid for by the employer. An examination requested by
29 the employer not less than 14 days after injury, and every 60 days

1 thereafter, shall be presumed to be reasonable, and the employee shall
2 submit to the examination without further request or order by the
3 board. Unless medically appropriate, the physician shall use existing
4 diagnostic data to complete the examination. Facts relative to the
5 injury or claim communicated to or otherwise learned by a physician or
6 surgeon who may have attended or examined the employee, or who may
7 have been present at an examination are not privileged, either in the
8 hearings provided for in this chapter or an action to recover damages
9 against an employer who is subject to the compensation provisions of
10 this chapter. If an employee refuses to submit to an [ANY] examina-
11 tion provided for in this section, the employee's rights to compensa-
12 tion shall be suspended until the obstruction or refusal ceases, and
13 the employee's compensation during the period of suspension may, in
14 the discretion of the board or the court determining an action brought
15 for the recovery of damages under this chapter, be forfeited. The
16 board in any case of death may require an autopsy at the expense of
17 the party requesting the autopsy. An autopsy may not be held without
18 notice first being given to the widow or widower or next of kin if
19 they reside in the state or their whereabouts can be reasonably ascer-
20 tained, of the time and place of the autopsy and reasonable time and
21 opportunity given the widow or widower or next of kin to have a repre-
22 sentative present to witness the autopsy. If adequate notice is not
23 given, the findings from the autopsy may be suppressed on motion made
24 to the board or to the superior court, as the case may be.

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

26 (f) All fees and other charges for medical treatment or service
27 [ARE LIMITED TO THE CHARGES THAT PREVAIL IN THE SAME COMMUNITY FOR
28 SIMILAR TREATMENT OF INJURED PERSONS OF LIKE STANDARD OF LIVING AND]
29 shall be subject to regulation by the board but may not exceed usual.

1 customary, and reasonable fees for the treatment or service in the
2 community in which it is rendered, as determined by the board. An
3 employee may not be required to pay a fee or charge for medical treat-
4 ment or service.

5 * Sec. 15. AS 23.30.095(j) is repealed and reenacted to read:

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

11 * Sec. 16. AS 23.30.095 is amended by adding a new subsection to read:

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

29 * Sec. 17. AS 23.30.105(a) is amended to read:

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

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

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

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

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

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

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

1 year after the date of the last payment of compensation benefits under
2 AS 23.30.180, 23.30.185, 23.30.190, 23.30.200, or 23.30.215, whether
3 or not a compensation order has been issued, or before one year after
4 the rejection of a claim, review a compensation case under [IN ACCOR-
5 DANCE WITH] the procedure prescribed in respect of claims in AS 23.-
6 30.110. Under [IN ACCORDANCE WITH] AS 23.30.110 the board may issue a
7 new compensation order which terminates, continues, reinstates, in-
8 creases, or decreases the compensation, or award compensation.

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

10 (c) The insurer or adjuster [EMPLOYER] shall notify the board
11 and the employee on a form prescribed by the board that the payment of
12 compensation has begun or has been increased, decreased, suspended,
13 terminated, resumed, or changed in type. An initial report shall be
14 filed with the board and sent to the employee within 28 days after the
15 date of issuing the first payment of compensation. If at any time 21
16 days or more pass and no compensation payment is issued, a report
17 notifying the board and the employee of the termination or suspension
18 of compensation shall be filed with the board and sent to the employee
19 within 28 days after the date the last compensation payment was is-
20 sued. A report shall also be filed with the board and sent to the
21 employee within 28 days after the date of issuing a payment increas-
22 ing, decreasing, resuming, or changing the type of compensation paid.
23 If the [EMPLOYER FAILS TO NOTIFY THE] board and the employee are not
24 notified within the 28 days prescribed by this subsection for report-
25 ing, the insurer or adjuster [EMPLOYER] shall pay a civil penalty of
26 \$100 for the first day plus \$10 for each day thereafter that the
27 [EMPLOYER FAILED TO GIVE] notice was not given. Total penalties under
28 this subsection [SECTION] may not exceed \$1,000 for a failure to file
29 a required report. Penalties assessed under this subsection are

1 eligible for reduction under (m) of this section. A penalty assessed
2 under this subsection after penalties have been reduced under (m) of
3 this section shall be increased by 20 percent and shall bear interest
4 at the rate established under AS 45.45.010.

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

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

23 * Sec. 23. AS 23.30.155(m) is repealed and reenacted to read:

24 (m) On or before March 1 of each year the insurer or adjuster
25 shall file a verified annual report on a form prescribed by the board
26 stating the total amount of all compensation by type, medical, and
27 related benefits, vocational rehabilitation expenses, legal fees, and
28 penalties paid on all claims during the preceding calendar year. If
29 the annual report is timely and complete when received by the board

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

21 * Sec. 24. AS 23.30.155 is amended by adding a new subsection to read:
 22 (n) If the employer is self-insured, the requirements of (c) and
 23 (m) of this section apply to the employer.

24 * Sec. 25. AS 23.30.175 is repealed and reenacted to read:
 25 Sec. 23.30.175. RATES OF COMPENSATION. (a) The weekly rate of
 26 compensation for disability or death may not exceed \$700 and initially
 27 may not be less than \$110. However, if the board determines that the
 28 employee's spendable weekly wages are less than \$110 a week as com-
 29 puted under AS 23.30.220, or less than \$154 a week in the case of an

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

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

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

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

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

29 (4) application of this subsection may not reduce the

1 weekly compensation rate to less than \$154 a week, except as provided
2 in (a) of this section.

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

7 * Sec. 26. AS 23.30.180 is amended to read:

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

21 (1) area of residence;

22 (2) area of last employment;

23 (3) the state of residence; and

24 (4) the state of Alaska.

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

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

29 * Sec. 28. AS 23.30.185 is amended to read:

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

9 * Sec. 29. AS 23.30.190 is repealed and reenacted to read:

10 Sec. 23.30.190. COMPENSATION FOR PERMANENT PARTIAL IMPAIRMENT.

11 (a) In case of impairment partial in character but permanent in
 12 quality, and not resulting in permanent total disability, the compen-
 13 sation is \$240,000 multiplied by the employee's percentage of net
 14 permanent impairment of the whole person, and payable in a single lump
 15 sum, except as otherwise provided in AS 23.30.041, but the compensa-
 16 tion may not be discounted for any present value considerations. The
 17 percentage of net permanent impairment shall be determined by multi-
 18 plying the employee's actual degree of permanent impairment by the
 19 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
12	0.366
13	0.399

1	14	0.432
2	15	0.465
3	16	0.495
4	17	0.540
5	18	0.585
6	19	0.630
7	20	0.675
8	21	0.680
9	22	0.688
10	23	0.696
11	24	0.704
12	25	0.712
13	26	0.740
14	27	0.765
15	28	0.790
16	29	0.815
17	30	0.840
18	31	0.880
19	32	0.910
20	33	0.940
21	34	0.970
22	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 may adopt a supplementary recognized schedule for injuries that cannot be rated by use of the American Medical Association Guides.

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

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

10 * Sec. 30. AS 23.30.200 is amended to read:

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

20 * Sec. 31. AS 23.30.200 is amended by adding a new subsection to read:

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

1 naturally extend into the future.

2 * Sec. 32. AS 23.30.220(a) is amended to read:

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

7 (1) The gross weekly earnings are computed by dividing by
8 100 the gross earnings of the employee in the two calendar years
9 immediately preceding the injury.

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

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

24 (4) If the employee is injured while performing duties as a
25 volunteer ambulance attendant, policeman, or fireman, the gross weekly
26 earnings for calculating compensation shall be the minimum gross
27 weekly earnings paid a full-time ambulance attendant, policeman, or
28 fireman employed in the political subdivision where the injury oc-
29 curred, or, if the political subdivision has no full-time ambulance

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

6 * Sec. 33. AS 23.30.225 is amended by adding a new subsection to read:

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

17 * Sec. 34. AS 23.30 is amended by adding a new section to read:

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

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

29 (c) This section may not be construed to prohibit an employer

1 from requiring a prospective employee to fill out a preemployment
2 questionnaire or application regarding the person's prior health or
3 disability history as long as it is meant to either document written
4 notice for second injury fund reimbursement under AS 23.30.205(c) or
5 to determine whether the employee has the physical or mental capacity
6 to meet the documented physical or mental demands of the work.

7 * Sec. 35. AS 23.30.265(15) is amended to read:

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

24 * Sec. 36. AS 23.30.265(17) is amended to read:

25 (17) "injury" means accidental injury or death arising out
26 of and in the course of employment, and an occupational disease or
27 infection which arises naturally out of the employment or which natu-
28 rally or unavoidably results from an accidental injury; "injury" [,
29 AND] includes breakage or damage to eyeglasses, hearing aids,

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

14 * Sec. 37. AS 23.30.265 is amended by adding a new paragraph to read:

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

24 * Sec. 38. AS 23.30.210 is repealed.

25 * Sec. 39. TRANSITIONAL PROVISIONS. Notwithstanding AS 23.30.040(b),
26 as amended by sec. 7 of this Act, and AS 23.30.155(m), as amended by
27 sec. 23 of this Act, on or before March 1, 1989, each employer that is
28 subject to those sections shall file a report and make the appropriate
29 contribution for all claims existing as of December 31, 1988. The period

1 covered in the report shall be from the date of the termination report or
2 the last anniversary report filed, if one has been filed, through Decem-
3 ber 31, 1988.

4 * Sec. 40. APPLICABILITY. Except for secs. 7, 21, 23, and 24 of this
5 Act, this Act applies only to injuries sustained on or after July 1, 1988.

6 * Sec. 41. This Act takes effect July 1, 1988.
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Original sponsor: Labor and Commerce
Committee

BY THE LABOR AND
COMMERCE COMMITTEE

IN THE SENATE

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

IN THE LEGISLATURE OF THE STATE OF ALASKA

FIFTEENTH LEGISLATURE - SECOND SESSION

A BILL

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

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

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

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

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

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

(2) reduce disincentives to return to work; and

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

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

5 (h) The department shall [MAY] adopt [IDENTICAL] rules for all
6 panels, and procedures for the periodic selection, retention, and re-
7 moval of rehabilitation specialists or physicians under AS 23.30.041
8 and 23.30.095, and shall [MAY] adopt regulations to carry out the
9 provisions of this chapter. Process and procedure under this chapter
10 shall be as summary and simple as possible. The department, the board
11 or a member of it may for the purposes of this chapter subpoena wit-
12 nesses, administer or cause to be administered oaths, and may examine
13 or cause to have examined the parts of the books and records of the
14 parties to a proceeding that relate [WHICH RELATED] to questions in
15 dispute. The superior court, on application of the department, the
16 board or any members of it, shall enforce the attendance and testimony
17 of witnesses and the production and examination of books, papers, and
18 records.

19 * Sec. 3. AS 23.30.005 is amended by adding a new subsection to read:

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

24 * Sec. 4. AS 23.30.020 is amended by adding a new subsection to read:

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

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

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

3 * Sec. 5. AS 23.30.025 is amended by adding a new subsection to read:

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

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

9 (8) The premium paid for the insurance may be paid semi-
10 annually, if requested by the insured. The insurer shall include this
11 provision in the insurance policy in a manner that clearly informs the
12 insured of the provision.

13 * Sec. 7. 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

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

4	Column A	Column B	
5	Second Injury Fund	Reserve Rate	
6	Contribution Rate	At Least	But Less Than
7	(Percent)	(Percent)	(Percent)
8	6	0	50
9	5	50	75
10	4	75	100
11	3	100	125
12	2	125	150
13	1	150	175
14	0	175	

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

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

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

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

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

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

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

1 specialists;

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
10 general section, sections related to each rehabilitation specialist
11 employed 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 unusual and extenuating physical limitations
5 that prevent the employee from making a timely request. The adminis-
6 trator shall, on a rotating and geographic basis, select a rehabilita-
7 tion specialist from the list maintained under (b)(6) of this section
8 to 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; and

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 dictionary of occupational titles.

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

7 (1) the employer offers employment within the employee's
8 predicted post-injury physical capacities at a wage equivalent to at
9 least the state minimum wage under AS 23.10.065 or 60 percent of the
10 worker's gross hourly wages at the time of injury, whichever is great-
11 er, of injury and the employment prepares the employee to be employ-
12 able in other jobs that exist in the labor market;

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

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

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

29 (h) Within 90 days after the rehabilitation specialist's

1 selection under (g) of this section, the reemployment plan must be
2 formulated and approved. The reemployment plan must include at least
3 the following:

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

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

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

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

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

15 (6) the date the plan will commence;

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

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

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

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

26 (1) on the job training;

27 (2) vocational training;

28 (3) academic training;

29 (4) self-employment; or

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

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

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

28 (l) The cost of the reemployment plan incurred under this sec-
29 tion shall be the responsibility of the employer, shall be paid on an

1 expense incurred basis, and may not exceed \$10,000.

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

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

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

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

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

23 (o) Upon the request of either party, the administrator shall
24 decide whether the employee has not cooperated as provided under (n)
25 of this section. A hearing before the administrator shall be held
26 within 30 days after it is requested. The administrator shall issue a
27 decision within 14 days after the hearing. Within 10 days after the
28 administrator files the decision, either party may seek review of the
29 decision by requesting a hearing under AS 23.30.110; the board shall

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

5 (p) In this section

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

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

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

13 (A) area of residence;

14 (B) area of last employment;

15 (C) the state;

16 (D) other states;

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

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

27 (6) "rehabilitation specialist" means a person who is a
28 certified insurance rehabilitation specialist, a certified rehabilita-
29 tion counselor, or a person who has equivalent or better

1 qualifications as determined under regulations adopted by the depart-
2 ment;

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

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

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

29 * Sec. 11. AS 23.30.095(a) is amended to read:

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

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

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

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

23 (e) The employee shall, after an injury, at reasonable times
24 during the continuance of the disability, if requested by the employer
25 or when ordered by the board, submit to an examination by a physician
26 or surgeon of the employer's choice [AUTHORIZED TO PRACTICE MEDICINE
27 UNDER THE LAWS OF THE STATE IN WHICH THE EMPLOYEE MAY BE FOUND],
28 furnished and paid for by the employer. An examination requested by
29 the employer not less than 14 days after injury, and every 60 days

1 thereafter, shall be presumed to be reasonable, and the employee shall
2 submit to the examination without further request or order by the
3 board. Unless medically appropriate, the physician shall use existing
4 diagnostic data to complete the examination. Facts relative to the
5 injury or claim communicated to or otherwise learned by a physician or
6 surgeon who may have attended or examined the employee, or who may
7 have been present at an examination are not privileged, either in the
8 hearings provided for in this chapter or an action to recover damages
9 against an employer who is subject to the compensation provisions of
10 this chapter. If an employee refuses to submit to an [ANY] examina-
11 tion provided for in this section, the employee's rights to compensa-
12 tion shall be suspended until the obstruction or refusal ceases, and
13 the employee's compensation during the period of suspension may, in
14 the discretion of the board or the court determining an action brought
15 for the recovery of damages under this chapter, be forfeited. The
16 board in any case of death may require an autopsy at the expense of
17 the party requesting the autopsy. An autopsy may not be held without
18 notice first being given to the widow or widower or next of kin if
19 they reside in the state or their whereabouts can be reasonably ascer-
20 tained, of the time and place of the autopsy and reasonable time and
21 opportunity given the widow or widower or next of kin to have a repre-
22 sentative present to witness the autopsy. If adequate notice is not
23 given, the findings from the autopsy may be suppressed on motion made
24 to the board or to the superior court, as the case may be.

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

26 (f) All fees and other charges for medical treatment or service
27 [ARE LIMITED TO THE CHARGES THAT PREVAIL IN THE SAME COMMUNITY FOR
28 SIMILAR TREATMENT OF INJURED PERSONS OF LIKE STANDARD OF LIVING AND]
29 shall be subject to regulation by the board but may not exceed usual.

5-1514B
Ford
2/22/88

Original sponsor: Labor and Commerce
Committee

BY THE LABOR AND
COMMERCE COMMITTEE

1 IN THE SENATE

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

5 (h) The department shall [MAY] adopt [IDENTICAL] rules for all
6 panels, and procedures for the periodic selection, retention, and re-
7 moval of rehabilitation specialists or physicians under AS 23.30.041
8 and 23.30.095, and shall [MAY] adopt regulations to carry out the
9 provisions of this chapter. Process and procedure under this chapter
10 shall be as summary and simple as possible. The department, the board
11 or a member of it may for the purposes of this chapter subpoena wit-
12 nesses, administer or cause to be administered oaths, and may examine
13 or cause to have examined the parts of the books and records of the
14 parties to a proceeding that relate [WHICH RELATED] to questions in
15 dispute. The superior court, on application of the department, the
16 board or any members of it, shall enforce the attendance and testimony
17 of witnesses and the production and examination of books, papers, and
18 records.

19 * Sec. 3. AS 23.30.005 is amended by adding a new subsection to read:

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

24 * Sec. 4. AS 23.30.020 is amended by adding a new subsection to read:

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

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

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

3 * Sec. 5. AS 23.30.025 is amended by adding a new subsection to read:

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

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

9 (8) The premium paid for the insurance may be paid semi-
10 annually, if requested by the insured. The insurer shall include this
11 provision in the insurance policy in a manner that clearly informs the
12 insured of the provision.

13 * Sec. 7. 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. 8. AS 23.30.040(h) is amended to read:

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

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

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

(b) The administrator shall perform the following functions:

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

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

1 specialists;

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
10 general section, sections related to each rehabilitation specialist
11 employed 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 unusual and extenuating physical limitations
5 that prevent the employee from making a timely request. The adminis-
6 trator shall, on a rotating and geographic basis, select a rehabilita-
7 tion specialist from the list maintained under (b)(6) of this section
8 to 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; and
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 dictionary of occupational titles.

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

7 (1) the employer offers employment within the employee's
8 predicted post-injury physical capacities at a wage equivalent to at
9 least the state minimum wage under AS 23.10.065 or 60 percent of the
10 worker's gross hourly wages at the time of injury, whichever is great-
11 er, of injury and the employment prepares the employee to be employ-
12 able in other jobs that exist in the labor market;

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

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

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

29 (h) Within 90 days after the rehabilitation specialist's

1 selection under (g) of this section, the reemployment plan must be
2 formulated and approved. The reemployment plan must include at least
3 the following:

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

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

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

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

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

15 (6) the date the plan will commence;

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

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

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

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

26 (1) on the job training;

27 (2) vocational training;

28 (3) academic training;

29 (4) self-employment; or

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

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

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

28 (l) The cost of the reemployment plan incurred under this sec-
29 tion shall be the responsibility of the employer, shall be paid on an

1 expense incurred basis and may not exceed \$10,000.

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

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

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

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

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

23 (o) Upon the request of either party, the administrator shall
24 decide whether the employee has not cooperated as provided under (n)
25 of this section. A hearing before the administrator shall be held
26 within 30 days after it is requested. The administrator shall issue a
27 decision within 14 days after the hearing. Within 10 days after the
28 administrator files the decision, either party may seek review of the
29 decision by requesting a hearing under AS 23.30.110; the board shall

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

5 (p) In this section

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

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

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

13 (A) area of residence;

14 (B) area of last employment;

15 (C) the state;

16 (D) other states;

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

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

27 (6) "rehabilitation specialist" means a person who is a
28 certified insurance rehabilitation specialist, a certified rehabilita-
29 tion counselor, or a person who has equivalent or better

1 qualifications as determined under regulations adopted by the depart-
2 ment;

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

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

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

29 * Sec. 11. AS 23.30.095(a) is amended to read:

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

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

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

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

23 (e) The employee shall, after an injury, at reasonable times
24 during the continuance of the disability, if requested by the employer
25 or when ordered by the board, submit to an examination by a physician
26 or surgeon of the employer's choice [AUTHORIZED TO PRACTICE MEDICINE
27 UNDER THE LAWS OF THE STATE IN WHICH THE EMPLOYEE MAY BE FOUND],
28 furnished and paid for by the employer. An examination requested by
29 the employer not less than 14 days after injury, and every 60 days

1 thereafter, shall be presumed to be reasonable, and the employee shall
2 submit to the examination without further request or order by the
3 board. Unless medically appropriate, the physician shall use existing
4 diagnostic data to complete the examination. Facts relative to the
5 injury or claim communicated to or otherwise learned by a physician or
6 surgeon who may have attended or examined the employee, or who may
7 have been present at an examination are not privileged, either in the
8 hearings provided for in this chapter or an action to recover damages
9 against an employer who is subject to the compensation provisions of
10 this chapter. If an employee refuses to submit to an [ANY] examina-
11 tion provided for in this section, the employee's rights to compensa-
12 tion shall be suspended until the obstruction or refusal ceases, and
13 the employee's compensation during the period of suspension may, in
14 the discretion of the board or the court determining an action brought
15 for the recovery of damages under this chapter, be forfeited. The
16 board in any case of death may require an autopsy at the expense of
17 the party requesting the autopsy. An autopsy may not be held without
18 notice first being given to the widow or widower or next of kin if
19 they reside in the state or their whereabouts can be reasonably ascer-
20 tained, of the time and place of the autopsy and reasonable time and
21 opportunity given the widow or widower or next of kin to have a repre-
22 sentative present to witness the autopsy. If adequate notice is not
23 given, the findings from the autopsy may be suppressed on motion made
24 to the board or to the superior court, as the case may be.

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

26 (f) All fees and other charges for medical treatment or service
27 [ARE LIMITED TO THE CHARGES THAT PREVAIL IN THE SAME COMMUNITY FOR
28 SIMILAR TREATMENT OF INJURED PERSONS OF LIKE STANDARD OF LIVING AND]
29 shall be subject to regulation by the board but may not exceed usual.

1 customary, and reasonable fees for the treatment or service in the
2 community in which it is rendered, as determined by the board. An
3 employee may not be required to pay a fee or charge for medical treat-
4 ment or service.

5 * Sec. 15. AS 23.30.095(j) is repealed and reenacted to read:

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

11 * Sec. 16. AS 23.30.095 is amended by adding a new subsection to read:

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

29 * Sec. 17. AS 23.30.105(a) is amended to read:

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

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

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

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

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

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

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

1 year after the date of the last payment of compensation benefits under
2 AS 23.30.180, 23.30.185, 23.30.190, 23.30.200, or 23.30.215, whether
3 or not a compensation order has been issued, or before one year after
4 the rejection of a claim, review a compensation case under [IN ACCOR-
5 DANCE WITH] the procedure prescribed in respect of claims in AS 23.-
6 30.110. Under [IN ACCORDANCE WITH] AS 23.30.110 the board may issue a
7 new compensation order which terminates, continues, reinstates, in-
8 creases, or decreases the compensation, or award compensation.

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

10 (c) The insurer or adjuster [EMPLOYER] shall notify the board
11 and the employee on a form prescribed by the board that the payment of
12 compensation has begun or has been increased, decreased, suspended,
13 terminated, resumed, or changed in type. An initial report shall be
14 filed with the board and sent to the employee within 28 days after the
15 date of issuing the first payment of compensation. If at any time 21
16 days or more pass and no compensation payment is issued, a report
17 notifying the board and the employee of the termination or suspension
18 of compensation shall be filed with the board and sent to the employee
19 within 28 days after the date the last compensation payment was is-
20 sued. A report shall also be filed with the board and sent to the
21 employee within 28 days after the date of issuing a payment increas-
22 ing, decreasing, resuming, or changing the type of compensation paid.
23 If the [EMPLOYER FAILS TO NOTIFY THE] board and the employee are not
24 notified within the 28 days prescribed by this subsection for report-
25 ing, the insurer or adjuster [EMPLOYER] shall pay a civil penalty of
26 \$100 for the first day plus \$10 for each day thereafter that the
27 [EMPLOYER FAILED TO GIVE] notice was not given. Total penalties under
28 this subsection [SECTION] may not exceed \$1,000 for a failure to file
29 a required report. Penalties assessed under this subsection are

1 eligible for reduction under (m) of this section. A penalty assessed
2 under this subsection after penalties have been reduced under (m) of
3 this section shall be increased by 20 percent and shall bear interest
4 at the rate established under AS 45.45.010.

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

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

23 * Sec. 23. AS 23.30.155(m) is repealed and reenacted to read:

24 (m) On or before March 1 of each year the insurer or adjuster
25 shall file a verified annual report on a form prescribed by the board
26 stating the total amount of all compensation by type, medical, and
27 related benefits, vocational rehabilitation expenses, legal fees, and
28 penalties paid on all claims during the preceding calendar year. If
29 the annual report is timely and complete when received by the board

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

21 * Sec. 24. AS 23.30.155 is amended by adding a new subsection to read:

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

24 * Sec. 25. AS 23.30.175 is repealed and reenacted to read:

25 Sec. 23.30.175. RATES OF COMPENSATION. (a) The weekly rate of
26 compensation for disability or death may not exceed \$700 and initially
27 may not be less than \$110. However, if the board determines that the
28 employee's spendable weekly wages are less than \$110 a week as com-
29 puted under AS 23.30.220, or less than \$154 a week in the case of an

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

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

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

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

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

29 (4) application of this subsection may not reduce the

1 weekly compensation rate to less than \$154 a week, except as provided
2 in (a) of this section.

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

7 * Sec. 26. AS 23.30.180 is amended to read:

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

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

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

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

29 * Sec. 28. AS 23.30.185 is amended to read:

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

9 * Sec. 29. AS 23.30.190 is repealed and reenacted to read:

10 Sec. 23.30.190. COMPENSATION FOR PERMANENT PARTIAL IMPAIRMENT.

11 (a) In case of impairment partial in character but permanent in
 12 quality, and not resulting in permanent total disability, the compen-
 13 sation is \$240,000 multiplied by the employee's percentage of net
 14 permanent impairment of the whole person, and payable in a single lump
 15 sum, except as otherwise provided in AS 23.30.041, but the compensa-
 16 tion may not be discounted for any present value considerations. The
 17 percentage of net permanent impairment shall be determined by multi-
 18 plying the employee's actual degree of permanent impairment by the
 19 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
12	0.366
13	0.399

1	14	0.432
2	15	0.465
3	16	0.495
4	17	0.540
5	18	0.585
6	19	0.630
7	20	0.675
8	21	0.680
9	22	0.688
10	23	0.696
11	24	0.704
12	25	0.712
13	26	0.740
14	27	0.765
15	28	0.790
16	29	0.815
17	30	0.840
18	31	0.880
19	32	0.910
20	33	0.940
21	34	0.970
22	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 may adopt a supplementary recognized schedule for injuries that cannot be rated by use of the American Medical Association Guides.

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

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

10 * Sec. 30. AS 23.30.200 is amended to read:

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

20 * Sec. 31. AS 23.30.200 is amended by adding a new subsection to read:

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

1 naturally extend into the future.

2 * Sec. 32. AS 23.30.220(a) is amended to read:

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

7 (1) The gross weekly earnings are computed by dividing by
8 100 the gross earnings of the employee in the two calendar years
9 immediately preceding the injury.

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

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

24 (4) If the employee is injured while performing duties as a
25 volunteer ambulance attendant, policeman, or fireman, the gross weekly
26 earnings for calculating compensation shall be the minimum gross
27 weekly earnings paid a full-time ambulance attendant, policeman, or
28 fireman employed in the political subdivision where the injury oc-
29 curred, or, if the political subdivision has no full-time ambulance

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

6 * Sec. 33. AS 23.30.225 is amended by adding a new subsection to read:

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

17 * Sec. 34. AS 23.30 is amended by adding a new section to read:

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

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

29 (c) This section may not be construed to prohibit an employer

1 from requiring a prospective employee to fill out a preemployment
2 questionnaire or application regarding the person's prior health or
3 disability history as long as it is meant to either document written
4 notice for second injury fund reimbursement under AS 23.30.205(c) or
5 to determine whether the employee has the physical or mental capacity
6 to meet the documented physical or mental demands of the work.

7 * Sec. 35. AS 23.30.265(15) is amended to read:

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

24 * Sec. 36. AS 23.30.265(17) is amended to read:

25 (17) "injury" means accidental injury or death arising out
26 of and in the course of employment, and an occupational disease or
27 infection which arises naturally out of the employment or which natu-
28 rally or unavoidably results from an accidental injury; "injury" [,
29 AND] includes breakage or damage to eyeglasses, hearing aids,

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

14 * Sec. 37. AS 23.30.265 is amended by adding a new paragraph to read:

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

24 * Sec. 38. AS 23.30.210 is repealed.

25 * Sec. 39. TRANSITIONAL PROVISIONS. Notwithstanding AS 23.30.040(b),
26 as amended by sec. 7 of this Act, and AS 23.30.155(m), as amended by
27 sec. 23 of this Act, on or before March 1, 1989, each employer that is
28 subject to those sections shall file a report and make the appropriate
29 contribution for all claims existing as of December 31, 1988. The period

1 covered in the report shall be from the date of the termination report or
2 the last anniversary report filed, if one has been filed, through Decem-
3 ber 31, 1988.

4 * Sec. 40. APPLICABILITY. Except for secs. 7, 21, 23, and 24 of this
5 Act, this Act applies only to injuries sustained on or after July 1, 1988.

6 * Sec. 41. This Act takes effect July 1, 1988.
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Original sponsor: Labor and Commerce
Committee

BY THE LABOR AND
COMMERCE COMMITTEE

IN THE SENATE

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

IN THE LEGISLATURE OF THE STATE OF ALASKA

FIFTEENTH LEGISLATURE - SECOND SESSION

A BILL

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

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

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

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

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

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

(2) reduce disincentives to return to work; and

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

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

5 (h) The department shall [MAY] adopt [IDENTICAL] rules for all
6 panels, and procedures for the periodic selection, retention, and re-
7 moval of rehabilitation specialists or physicians under AS 23.30.041
8 and 23.30.095, and shall [MAY] adopt regulations to carry out the
9 provisions of this chapter. Process and procedure under this chapter
10 shall be as summary and simple as possible. The department, the board
11 or a member of it may for the purposes of this chapter subpoena wit-
12 nesses, administer or cause to be administered oaths, and may examine
13 or cause to have examined the parts of the books and records of the
14 parties to a proceeding that relate [WHICH RELATED] to questions in
15 dispute. The superior court, on application of the department, the
16 board or any members of it, shall enforce the attendance and testimony
17 of witnesses and the production and examination of books, papers, and
18 records.

19 * Sec. 3. AS 23.30.005 is amended by adding a new subsection to read:

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

24 * Sec. 4. AS 23.30.020 is amended by adding a new subsection to read:

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

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

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

3 * Sec. 5. AS 23.30.025 is amended by adding a new subsection to read:

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

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

9 (8) The premium paid for the insurance may be paid semi-
10 annually, if requested by the insured. The insurer shall include this
11 provision in the insurance policy in a manner that clearly informs the
12 insured of the provision.

13 * Sec. 7. 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
5	50	75
4	75	100
3	100	125
2	125	150
1	150	175
0	175	

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

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

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

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

(b) The administrator shall perform the following functions:

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

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

1 specialists;

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
10 general section, sections related to each rehabilitation specialist
11 employed 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 unusual and extenuating physical limitations
5 that prevent the employee from making a timely request. The adminis-
6 trator shall, on a rotating and geographic basis, select a rehabilita-
7 tion specialist from the list maintained under (b)(6) of this section
8 to 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; and
- 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 dictionary of occupational titles.

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

7 (1) the employer offers employment within the employee's
8 predicted post-injury physical capacities at a wage equivalent to at
9 least the state minimum wage under AS 23.10.065 or 60 percent of the
10 worker's gross hourly wages at the time of injury, whichever is great-
11 er, of injury and the employment prepares the employee to be employ-
12 able in other jobs that exist in the labor market;

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

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

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

29 (h) Within 90 days after the rehabilitation specialist's

1 selection under (g) of this section, the reemployment plan must be
2 formulated and approved. The reemployment plan must include at least
3 the following:

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

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

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

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

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

15 (6) the date the plan will commence;

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

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

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

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

26 (1) on the job training;

27 (2) vocational training;

28 (3) academic training;

29 (4) self-employment; or

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

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

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

28 (l) The cost of the reemployment plan incurred under this sec-
29 tion shall be the responsibility of the employer, shall be paid on an

1 expense incurred basis, and may not exceed \$10,000.

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

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

12 (1) keep appointments;

13 (2) maintain passing grades;

14 (3) attend designated programs;

15 (4) maintain contact with the rehabilitation specialist;

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

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

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

23 (o) Upon the request of either party, the administrator shall
24 decide whether the employee has not cooperated as provided under (n)
25 of this section. A hearing before the administrator shall be held
26 within 30 days after it is requested. The administrator shall issue a
27 decision within 14 days after the hearing. Within 10 days after the
28 administrator files the decision, either party may seek review of the
29 decision by requesting a hearing under AS 23.30.110; the board shall

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

5 (p) In this section

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

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

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

13 (A) area of residence;

14 (B) area of last employment;

15 (C) the state;

16 (D) other states;

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

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

27 (6) "rehabilitation specialist" means a person who is a
28 certified insurance rehabilitation specialist, a certified rehabilita-
29 tion counselor, or a person who has equivalent or better

1 qualifications as determined under regulations adopted by the depart-
2 ment;

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

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

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

29 * Sec. 11. AS 23.30.095(a) is amended to read:

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

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

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

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

23 (e) The employee shall, after an injury, at reasonable times
24 during the continuance of the disability, if requested by the employer
25 or when ordered by the board, submit to an examination by a physician
26 or surgeon of the employer's choice [AUTHORIZED TO PRACTICE MEDICINE
27 UNDER THE LAWS OF THE STATE IN WHICH THE EMPLOYEE MAY BE FOUND],
28 furnished and paid for by the employer. An examination requested by
29 the employer not less than 14 days after injury, and every 60 days

1 thereafter, shall be presumed to be reasonable, and the employee shall
2 submit to the examination without further request or order by the
3 board. Unless medically appropriate, the physician shall use existing
4 diagnostic data to complete the examination. Facts relative to the
5 injury or claim communicated to or otherwise learned by a physician or
6 surgeon who may have attended or examined the employee, or who may
7 have been present at an examination are not privileged, either in the
8 hearings provided for in this chapter or an action to recover damages
9 against an employer who is subject to the compensation provisions of
10 this chapter. If an employee refuses to submit to an [ANY] examina-
11 tion provided for in this section, the employee's rights to compensa-
12 tion shall be suspended until the obstruction or refusal ceases, and
13 the employee's compensation during the period of suspension may, in
14 the discretion of the board or the court determining an action brought
15 for the recovery of damages under this chapter, be forfeited. The
16 board in any case of death may require an autopsy at the expense of
17 the party requesting the autopsy. An autopsy may not be held without
18 notice first being given to the widow or widower or next of kin if
19 they reside in the state or their whereabouts can be reasonably ascer-
20 tained, of the time and place of the autopsy and reasonable time and
21 opportunity given the widow or widower or next of kin to have a repre-
22 sentative present to witness the autopsy. If adequate notice is not
23 given, the findings from the autopsy may be suppressed on motion made
24 to the board or to the superior court, as the case may be.

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

26 (f) All fees and other charges for medical treatment or service
27 [ARE LIMITED TO THE CHARGES THAT PREVAIL IN THE SAME COMMUNITY FOR
28 SIMILAR TREATMENT OF INJURED PERSONS OF LIKE STANDARD OF LIVING AND]
29 shall be subject to regulation by the board but may not exceed usual.

1 customary, and reasonable fees for the treatment or service in the
2 community in which it is rendered, as determined by the board. An
3 employee may not be required to pay a fee or charge for medical treat-
4 ment or service.

5 * Sec. 15. AS 23.30.095(j) is repealed and reenacted to read:

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

11 * Sec. 16. AS 23.30.095 is amended by adding a new subsection to read:

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

29 * Sec. 17. AS 23.30.105(a) is amended to read:

1 (a) The right to compensation for disability under this chapter
2 is barred unless a claim for it is filed within two years after the
3 employee has knowledge of the nature of the employee's disability and
4 its relation to the employment and after disablement. However, the
5 maximum time for filing the claim in any event other than arising out
6 of an occupational disease shall be four years from the date of in-
7 jury, and the right to compensation for death is barred unless a claim
8 therefor is filed within one year after the death, except that if
9 payment of compensation has been made without an award on account of
10 the injury or death, a claim may be filed within two years after the
11 date of the last payment ^{P.T.D.} ^{T.T.D.} of benefits under AS 23.30.180, 23.30.185,
12 23.30.190, 23.30.200, or 23.30.215. It is additionally provided that,
13 in the case of latent defects pertinent to and causing compensable
14 disability, the injured employee has full right to claim as shall be
15 determined by the board, time limitations notwithstanding.

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

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

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

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

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

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

1 year after the date of the last payment of compensation benefits under
2 AS 23.30.180, 23.30.185, 23.30.190, 23.30.200, or 23.30.215, whether
3 or not a compensation order has been issued, or before one year after
4 the rejection of a claim, review a compensation case under [IN ACCOR-
5 DANCE WITH] the procedure prescribed in respect of claims in AS 23.-
6 30.110. Under [IN ACCORDANCE WITH] AS 23.30.110 the board may issue a
7 new compensation order which terminates, continues, reinstates, in-
8 creases, or decreases the compensation, or award compensation.

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

10 (c) The insurer or adjuster [EMPLOYER] shall notify the board
11 and the employee on a form prescribed by the board that the payment of
12 compensation has begun or has been increased, decreased, suspended,
13 terminated, resumed, or changed in type. An initial report shall be
14 filed with the board and sent to the employee within 28 days after the
15 date of issuing the first payment of compensation. If at any time 21
16 days or more pass and no compensation payment is issued, a report
17 notifying the board and the employee of the termination or suspension
18 of compensation shall be filed with the board and sent to the employee
19 within 28 days after the date the last compensation payment was is-
20 sued. A report shall also be filed with the board and sent to the
21 employee within 28 days after the date of issuing a payment increas-
22 ing, decreasing, resuming, or changing the type of compensation paid.
23 If the [EMPLOYER FAILS TO NOTIFY THE] board and the employee are not
24 notified within the 28 days prescribed by this subsection for report-
25 ing, the insurer or adjuster [EMPLOYER] shall pay a civil penalty of
26 \$100 for the first day plus \$10 for each day thereafter that the
27 [EMPLOYER FAILED TO GIVE] notice was not given. Total penalties under
28 this subsection [SECTION] may not exceed \$1,000 for a failure to file
29 a required report. Penalties assessed under this subsection are

1 eligible for reduction under (m) of this section. A penalty assessed
2 under this subsection after penalties have been reduced under (m) of
3 this section shall be increased by 20 percent and shall bear interest
4 at the rate established under AS 45.45.010.

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

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

23 * Sec. 23. AS 23.30.155(m) is repealed and reenacted to read:

24 (m) On or before March 1 of each year the insurer or adjuster
25 shall file a verified annual report on a form prescribed by the board
26 stating the total amount of all compensation by type, medical, and
27 related benefits, vocational rehabilitation expenses, legal fees, and
28 penalties paid on all claims during the preceding calendar year. If
29 the annual report is timely and complete when received by the board

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

21 * Sec. 24. AS 23.30.155 is amended by adding a new subsection to read:

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

24 * Sec. 25. AS 23.30.175 is repealed and reenacted to read:

25 Sec. 23.30.175. RATES OF COMPENSATION. (a) The weekly rate of
26 compensation for disability or death may not exceed \$700 and initially
27 may not be less than \$110. However, if the board determines that the
28 employee's spendable weekly wages are less than \$110 a week as com-
29 puted under AS 23.30.220, or less than \$154 a week in the case of an

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

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

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

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

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

29 (4) application of this subsection may not reduce the

1 weekly compensation rate to less than \$154 a week, except as provided
2 in (a) of this section.

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

6 * Sec. 26. AS 23.30.180 is amended to read:

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

20 (1) area of residence;

21 (2) area of last employment;

22 (3) the state of residence; and

23 (4) the state of Alaska.

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

25 (b) Failure to achieve remunerative employability as defined in
26 AS 23.30.041(m)(7) does not, by itself, constitute permanent total
27 disability.

28 * Sec. 28. AS 23.30.185 is amended to read:

29 Sec. 23.30.185. COMPENSATION FOR TEMPORARY TOTAL DISABILITY. In

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

8 * Sec. 29. AS 23.30.190 is repealed and reenacted to read:

9 Sec. 23.30.190. COMPENSATION FOR PERMANENT PARTIAL IMPAIRMENT.

10 (a) In case of impairment partial in character but permanent in
11 quality, and not resulting in permanent total disability, the compen-
12 sation is \$240,000 multiplied by the employee's percentage of net
13 permanent impairment of the whole person, and payable in a single lump
14 sum, except as otherwise provided in AS 23.30.041, but the compensa-
15 tion may not be discounted for any present value considerations. The
16 percentage of net permanent impairment shall be determined by
17 multiplying the employee's actual degree of permanent impairment by
18 the 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
12	0.366
13	0.399
14	0.432

1	15	0.465
2	16	0.495
3	17	0.540
4	18	0.585
5	19	0.630
6	20	0.675
7	21	0.680
8	22	0.688
9	23	0.696
10	24	0.704
11	25	0.712
12	26	0.740
13	27	0.765
14	28	0.790
15	29	0.815
16	30	0.840
17	31	0.880
18	32	0.910
19	33	0.940
20	34	0.970
21	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 may adopt a supplementary recognized schedule for injuries that cannot be rated by use of the American Medical Association Guides.

(c) An employee with an actual permanent impairment as

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

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

9 * Sec. 30. AS 23.30.200 is amended to read:

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

19 * Sec. 31. AS 23.30.200 is amended by adding a new subsection to read:

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

1 * Sec. 32. AS 23.30.220(a) is amended to read:

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

6 (1) The gross weekly earnings are computed by dividing by
7 100 the gross earnings of the employee in the two calendar years
8 immediately preceding the injury.

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

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

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

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

5 * Sec. 33. AS 23.30.225 is amended by adding a new subsection to read:

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

16 * Sec. 34. AS 23.30 is amended by adding a new section to read:

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

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

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

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

6 * Sec. 35. AS 23.30.265(15) is amended to read:

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

23 * Sec. 36. AS 23.30.265(17) is amended to read:

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

1 and further includes an injury caused by the wilful act of a third
2 person directed against an employee because of the employment; "in-
3 jury" does not include mental injury caused by mental stress unless it
4 is established that (A) the work stress was extraordinary and unusual
5 in comparison to pressures and tensions experienced by individuals in
6 a comparable work environment, and (B) the work stress was the predom-
7 inant cause of the mental injury; the amount of work stress shall be
8 measured by actual events rather than misperceptions by the employee;
9 a mental injury is not considered to arise out of and in the course of
10 employment if it results from a disciplinary action, work evaluation,
11 job transfer, layoff, demotion, termination or similar action, taken
12 in good faith by the employer;

13 * Sec. 37. AS 23.30.265 is amended by adding a new paragraph to read:

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

23 * Sec. 38. AS 23.30.210 is repealed.

24 * Sec. 39. TRANSITIONAL PROVISIONS. Notwithstanding AS 23.30.040(b),
25 as amended by sec. 7 of this Act, and AS 23.30.155(m), as amended by
26 sec. 23 of this Act, on or before March 1, 1989, each employer that is
27 subject to those sections shall file a report and make the appropriate
28 contribution for all claims existing as of December 31, 1988. The period
29 covered in the report shall be from the date of the termination report or

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the last anniversary report filed, if one has been filed, through December 31, 1988.

* Sec. 40. APPLICABILITY. Except for secs. 7, 21, 23, and 24 of this Act, this Act applies only to injuries sustained on or after July 1, 1988.

* Sec. 41. This Act takes effect July 1, 1988.

Original sponsor: Labor and Commerce
Committee

1 IN THE SENATE

BY THE LABOR AND
COMMERCE COMMITTEE

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

5 (h) The department ~~shall~~ [MAY] adopt ~~[IDENTICAL]~~ rules for all
6 panels, and procedures for the periodic selection, retention, and re-
7 moval of rehabilitation specialists or physicians under AS 23.30.041
8 and 23.30.095, and ~~shall~~ [MAY] adopt regulations to carry out the
9 provisions of this chapter. Process and procedure under this chapter
10 shall be as summary and simple as possible. The department, the board
11 or a member of it may for the purposes of this chapter subpoena wit-
12 nesses, administer or cause to be administered oaths, and may examine
13 or cause to have examined the parts of the books and records of the
14 parties to a proceeding that relate [WHICH RELATED] to questions in
15 dispute. The superior court, on application of the department, the
16 board or any members of it, shall enforce the attendance and testimony
17 of witnesses and the production and examination of books, papers, and
18 records.

19 * Sec. 3. AS 23.30.005 is amended by adding a new subsection to read:

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

24 * Sec. 4. AS 23.30.020 is amended by adding a new subsection to read:

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

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

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

3 * Sec. 5. AS 23.30.025 is amended by adding a new subsection to read:

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

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

9 (8) The premium paid for the insurance may be paid semi-
10 annually, if requested by the insured. The insurer shall include this
11 provision in the insurance policy in a manner that clearly informs the
12 insured of the provision.

13 * Sec. 7. 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		Column B	
Second Injury Fund		Reserve Rate	
Contribution Rate		At Least	But Less Than
(Percent)		(Percent)	(Percent)
6		0	50
5		50	75
4		75	100
3		100	125
2		125	150
1		150	175
0		175	

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

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

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

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

(b) The administrator shall perform the following functions:

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

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

1 specialists;

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
10 general section, sections related to each rehabilitation specialist
11 employed 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 unusual and extenuating physical limitations
5 that prevent the employee from making a timely request. The adminis-
6 trator shall, on a rotating and geographic basis, select a rehabilita-
7 tion specialist from the list maintained under (b)(6) of this section
8 to 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; and
- 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 dictionary of occupational titles.

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

7 (1) the employer offers employment within the employee's
8 predicted post-injury physical capacities at a wage equivalent to at
9 least the state minimum wage under AS 23.10.065 or 60 percent of the
10 worker's gross hourly wages at the time of injury, whichever is great-
11 er, of injury and the employment prepares the employee to be employ-
12 able in other jobs that exist in the labor market;

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

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

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

29 (h) Within 90 days after the rehabilitation specialist's

1 selection under (g) of this section, the reemployment plan must be
2 formulated and approved. The reemployment plan must include at least
3 the following:

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

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

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

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

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

15 (6) the date the plan will commence;

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

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

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

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

26 (1) on the job training;

27 (2) vocational training;

28 (3) academic training;

29 (4) self-employment; or

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

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

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

28 (l) The cost of the reemployment plan incurred under this sec-
29 tion shall be the responsibility of the employer, shall be paid on an

1 expense incurred basis, and may not exceed \$10,000.

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

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

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

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

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

23 (o) Upon the request of either party, the administrator shall
24 decide whether the employee has not cooperated as provided under (n)
25 of this section. A hearing before the administrator shall be held
26 within 30 days after it is requested. The administrator shall issue a
27 decision within 14 days after the hearing. Within 10 days after the
28 administrator files the decision, either party may seek review of the
29 decision by requesting a hearing under AS 23.30.110; the board shall

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

5 (p) In this section

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

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

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

- 13 (A) area of residence;
14 (B) area of last employment;
15 (C) the state;
16 (D) other states;

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

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

27 (6) "rehabilitation specialist" means a person who is a
28 certified insurance rehabilitation specialist, a certified rehabilita-
29 tion counselor, or a person who has equivalent or better

1 qualifications as determined under regulations adopted by the depart-
2 ment;

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

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

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

29 * Sec. 11. AS 23.30.095(a) is amended to read:

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

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

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

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

23 (e) The employee shall, after an injury, at reasonable times
24 during the continuance of the disability, if requested by the employer
25 or when ordered by the board, submit to an examination by a physician
26 or surgeon of the employer's choice [AUTHORIZED TO PRACTICE MEDICINE
27 UNDER THE LAWS OF THE STATE IN WHICH THE EMPLOYEE MAY BE FOUND],
28 furnished and paid for by the employer. An examination requested by
29 the employer not less than 14 days after injury, and every 60 days

1 thereafter, shall be presumed to be reasonable, and the employee shall
2 submit to the examination without further request or order by the
3 board. Unless medically appropriate, the physician shall use existing
4 diagnostic data to complete the examination. Facts relative to the
5 injury or claim communicated to or otherwise learned by a physician or
6 surgeon who may have attended or examined the employee, or who may
7 have been present at an examination are not privileged, either in the
8 hearings provided for in this chapter or an action to recover damages
9 against an employer who is subject to the compensation provisions of
10 this chapter. If an employee refuses to submit to an [ANY] examina-
11 tion provided for in this section, the employee's rights to compensa-
12 tion shall be suspended until the obstruction or refusal ceases, and
13 the employee's compensation during the period of suspension may, in
14 the discretion of the board or the court determining an action brought
15 for the recovery of damages under this chapter, be forfeited. The
16 board in any case of death may require an autopsy at the expense of
17 the party requesting the autopsy. An autopsy may not be held without
18 notice first being given to the widow or widower or next of kin if
19 they reside in the state or their whereabouts can be reasonably ascer-
20 tained, of the time and place of the autopsy and reasonable time and
21 opportunity given the widow or widower or next of kin to have a repre-
22 sentative present to witness the autopsy. If adequate notice is not
23 given, the findings from the autopsy may be suppressed on motion made
24 to the board or to the superior court, as the case may be.

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

26 (f) All fees and other charges for medical treatment or service
27 [ARE LIMITED TO THE CHARGES THAT PREVAIL IN THE SAME COMMUNITY FOR
28 SIMILAR TREATMENT OF INJURED PERSONS OF LIKE STANDARD OF LIVING AND]
29 shall be subject to regulation by the board but may not exceed usual.

1 customary, and reasonable fees for the treatment or service in the
2 community in which it is rendered, as determined by the board. An
3 employee may not be required to pay a fee or charge for medical treat-
4 ment or service unless required by the board.

5 * Sec. 15. AS 23.30.095(j) is repealed and reenacted to read:

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

11 * Sec. 16. AS 23.30.095 is amended by adding a new subsection to read:

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

29 * Sec. 17. AS 23.30.105(a) is amended to read:

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

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

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

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

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

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

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

1 year after the date of the last payment of compensation benefits under
2 AS 23.30.180, 23.30.185, 23.30.190, 23.30.200, or 23.30.215, whether
3 or not a compensation order has been issued, or before one year after
4 the rejection of a claim, review a compensation case under [IN ACCOR-
5 DANCE WITH] the procedure prescribed in respect of claims in AS 23.-
6 30.110. Under [IN ACCORDANCE WITH] AS 23.30.110 the board may issue a
7 new compensation order which terminates, continues, reinstates, in-
8 creases, or decreases the compensation, or award compensation.

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

9 (c) The insurer or adjuster [EMPLOYER] shall notify the board
10 and the employee on a form prescribed by the board that the payment of
11 compensation has begun or has been increased, decreased, suspended,
12 terminated, resumed, or changed in type. An initial report shall be
13 filed with the board and sent to the employee within 28 days after the
14 date of issuing the first payment of compensation. If at any time 21
15 days or more pass and no compensation payment is issued, a report
16 notifying the board and the employee of the termination or suspension
17 of compensation shall be filed with the board and sent to the employee
18 within 28 days after the date the last compensation payment was is-
19 sued. A report shall also be filed with the board and sent to the
20 employee within 28 days after the date of issuing a payment increas-
21 ing, decreasing, resuming, or changing the type of compensation paid.
22 If the [EMPLOYER FAILS TO NOTIFY THE] board and the employee are not
23 notified within the 28 days prescribed by this subsection for report-
24 ing, the insurer or adjuster [EMPLOYER] shall pay a civil penalty of
25 \$100 for the first day plus \$10 for each day thereafter that the
26 [EMPLOYER FAILED TO GIVE] notice was not given. Total penalties under
27 this subsection [SECTION] may not exceed \$1,000 for a failure to file
28 a required report. Penalties assessed under this subsection are
29

1 eligible for reduction under (l) of this section. A penalty assessed
2 under ~~of its subsection after~~ penalties have been reduced under (m) of
3 this section shall be increased by 20 percent and shall bear interest
4 at the rate established under AS 45.45.010.

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

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

23 * Sec. 23. AS 23.30.155(m) is repealed and reenacted to read:

24 (m) On or before March 1 of each year the insurer or adjuster
25 shall file a verified annual report on a form prescribed by the board
26 stating the total amount of all compensation by type, medical, and
27 related benefits, vocational rehabilitation expenses, legal fees, and
28 penalties paid on all claims during the preceding calendar year. If
29 the annual report is timely and complete when received by the board

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

21 * Sec. 24. AS 23.30.155 is amended by adding a new subsection to read:

22 (n) If the employer is self-insured, the requirements of (c) and

23 (m) of this section apply to the employer.

24 * Sec. 25. AS 23.30.175 is repealed and reenacted to read:

25 Sec. 23.30.175. RATES OF COMPENSATION. (a) The weekly rate of
26 compensation for disability or death may not exceed \$700 and initially
27 may not be less than \$110. However, if the board determines that the
28 employee's spendable weekly wages are less than \$110 a week as com-
29 puted under AS 23.30.220, or less than \$154 a week in the case of an

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

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

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

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

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

29 (4) application of this subsection may not reduce the

1 weekly compensation rate to less than \$154 a week, except as provided
2 in (a) of this section.

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

6 * Sec. 26. AS 23.30.180 is amended to read:

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

20 (1) area of residence;

21 (2) area of last employment;

22 (3) the state of residence; and

23 (4) the state of Alaska.

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

25 (b) Failure to achieve remunerative employability as defined in
26 AS 23.30.041(m)(7) does not, by itself, constitute permanent total
27 disability.

28 * Sec. 28. AS 23.30.185 is amended to read:

29 Sec. 23.30.185. COMPENSATION FOR TEMPORARY TOTAL DISABILITY. In

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

8 * Sec. 29. AS 23.30.190 is repealed and reenacted to read:

9 Sec. 23.30.190. COMPENSATION FOR PERMANENT PARTIAL IMPAIRMENT.

10 (a) In case of impairment partial in character but permanent in
11 quality, and not resulting in permanent total disability, the compen-
12 sation is \$240,000 multiplied by the employee's percentage of net
13 permanent impairment of the whole person, and payable in a single lump
14 sum, except as otherwise provided in AS 23.30.041, but the compensa-
15 tion may not be discounted for any present value considerations. The
16 percentage of net permanent impairment shall be determined by
17 multiplying the employee's actual degree of permanent impairment by
18 the 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
12	0.366
13	0.399
14	0.432

1	15	0.465
2	16	0.495
3	17	0.540
4	18	0.585
5	19	0.630
6	20	0.675
7	21	0.680
8	22	0.688
9	23	0.696
10	24	0.704
11	25	0.712
12	26	0.740
13	27	0.765
14	28	0.790
15	29	0.815
16	30	0.840
17	31	0.880
18	32	0.910
19	33	0.940
20	34	0.970
21	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 may adopt a supplementary ~~recognized~~ schedule for injuries that cannot be rated by use of the American Medical Association Guides.

(c) An employee with an actual permanent impairment as

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

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

9 * Sec. 30. AS 23.30.200 is amended to read:

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

19 * Sec. 31. AS 23.30.200 is amended by adding a new subsection to read:

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

1 * Sec. 32. AS 23.30.220(a) is amended to read:

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

6 (1) The gross weekly earnings are computed by dividing by
7 100 the gross earnings of the employee in the two calendar years
8 immediately preceding the injury.

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

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

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

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

5 * Sec. 33. AS 23.30.225 is amended by adding a new subsection to read:

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

16 * Sec. 34. AS 23.30 is amended by adding a new section to read:

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

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

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

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

6 * Sec. 35. AS 23.30.265(15) is amended to read:

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

23 * Sec. 36. AS 23.30.265(17) is amended to read:

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

1 and further includes an injury caused by the wilful act of a third
2 person directed against an employee because of the employment; "in-
3 jury" does not include mental injury caused by mental stress unless it
4 is established that (A) the work stress was extraordinary and unusual
5 in comparison to pressures and tensions experienced by individuals in
6 a comparable work environment, and (B) the work stress was the predom-
7 inant cause of the mental injury; the amount of work stress shall be
8 measured by actual events rather than misperceptions by the employee;
9 a mental injury is not considered to arise out of and in the course of
10 employment if it results from a disciplinary action, work evaluation,
11 job transfer, layoff, demotion, termination or similar action, taken
12 in good faith by the employer;

13 * Sec. 37. AS 23.30.265 is amended by adding a new paragraph to read:

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

23 * Sec. 38. AS 23.30.210 is repealed.

24 * Sec. 39. TRANSITIONAL PROVISIONS. Notwithstanding AS 23.30.040(b),
25 as amended by sec. 7 of this Act, and AS 23.30.155(m), as amended by
26 sec. 23 of this Act, on or before March 1, 1989, each employer that is
27 subject to those sections shall file a report and make the appropriate
28 contribution for all claims existing as of December 31, 1988. The period
29 covered in the report shall be from the date of the termination report or

1 the last anniversary report filed, if one has been filed, through Decem-
2 ber 31, 1988.

3 * Sec. 40. APPLICABILITY. Except for secs. 7, 21, 23, and 24 of this
4 Act, this Act applies only to injuries sustained on or after July 1, 1988.

5 * Sec. 41. This Act takes effect July 1, 1988.
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Original sponsor: Labor and Commerce
Committee

IN THE SENATE

BY THE LABOR AND
COMMERCE COMMITTEE

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

2 IN THE LEGISLATURE OF THE STATE OF ALASKA

3 FIFTEENTH LEGISLATURE - SECOND SESSION

4 A BILL

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

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

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

13 (b) The legislature declares that the workers' compensation laws must
14 not be construed by the courts in favor of any party. It is the specific
15 intent of the legislature that workers' compensation cases be decided on
16 their merits, except when otherwise provided by statute. It is also the
17 intent of the legislature that the board possess the greatest possible
18 authority in the exercise of its fact finding responsibilities and that the
19 board's decisions be conclusive if supported by substantial evidence.

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

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

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

26 (3) remove obstacles to the utilization of vocational rehabili-
27 tation that may be brought about by the payment of workers' compensation
28 benefits at the high levels provided by the Alaska workers' compensation
29

1 law to individuals residing in localities with living costs lower than
2 those in Alaska.

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

4 (h) The department ~~shall~~ [MAY] adopt [identical] rules for all
5 panels, and procedures for the periodic selection, retention, and re-
6 moval of rehabilitation specialists or physicians under AS 23.30.041
7 and 23.30.095, and ~~shall~~ [MAY] adopt regulations to carry out the
8 provisions of this chapter. Process and procedure under this chapter
9 shall be as summary and simple as possible. The department, the board
10 or a member of it may for the purposes of this chapter subpoena wit-
11 nesses, administer or cause to be administered oaths, and may examine
12 or cause to have examined the parts of the books and records of the
13 parties to a proceeding that relate [WHICH RELATED] to questions in
14 dispute. The superior court, on application of the department, the
15 board or any members of it, shall enforce the attendance and testimony
16 of witnesses and the production and examination of books, papers, and
17 records.

18 * Sec. 3. AS 23.30.005 is amended by adding a new subsection to read:

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

23 * Sec. 4. AS 23.30.020 is amended by adding a new subsection to read:

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

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

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

1 representation and the injury to the employee.

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

3 (8) The premium paid for the insurance may be paid semi-
4 annually, if requested by the insured. The insurer shall include this
5 provision in the insurance policy in a manner that clearly informs the
6 insured of the provision.

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

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

27	Column A	Column B
28	Second Injury Fund	Reserve Rate
29	Contribution Rate	At Least But Less Than

	(Percent)	(Percent)	(Percent)
1	6	0	50
2	5	50	75
3	4	75	100
4	3	100	125
5	2	125	150
6	1	150	175
7	0	175	

* Sec. 7. AS 23.30.041 is repealed and reenacted to read:

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

(b) The administrator shall perform the following functions:

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

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

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

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

(5) submit to the department, on or before January 1 of each year, a report of reemployment benefits provided under this section for the previous fiscal year; the report must include a statistical summary of all rehabilitation cases, including

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

3 (B) the estimated and actual time of each rehabilita-
4 tion plan;

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

8 (D) the cost of reemployment benefits;

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

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

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

26 (d) Within 30 days after the referral by the administrator, the
27 rehabilitation specialist shall perform the eligibility evaluation and
28 issue a report of findings. The administrator may grant up to an
29 additional 30 days for performance of the eligibility evaluation upon

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

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

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

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

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

(1) the employer offers employment within the employee's predicted post-injury physical capacities at a wage equivalent to at least 60 percent of the worker's gross hourly wages at the time of injury and the employment prepares the employee to be employable in other jobs that exist in the labor market;

(2) the employee has been previously rehabilitated in a

1 former workers' compensation claim and returned to work in the same or
2 similar occupation in terms of physical demands required of the em-
3 ployee at the time of the previous injury; or

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

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

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

- 20 (1) an occupational goal in the labor market;
- 21 (2) a plan to acquire the occupational skills to be employ-
22 able;
- 23 (3) the cost estimate of the reemployment plan, including
24 provider fees; the amount of tuition, books, tools, and supplies;
25 transportation; temporary lodging; or job modification devices;
- 26 (4) the estimated length of time that the plan will take;
- 27 (5) the date the plan will commence; and
- 28 (6) the estimated time of medical stability as predicted by
29 the physician.

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

- 4 (1) on the job training;
- 5 (2) vocational training;
- 6 (3) academic training;
- 7 (4) self-employment; or
- 8 (5) a combination of (1) - (4) of this subsection.

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

20 (k) Benefits related to the reemployment plan may not extend
21 past two years from date of plan acceptance, at which time the bene-
22 fits expire. If an employee reaches medical stability before com-
23 pletion of the plan, temporary total disability benefits shall cease
24 and permanent impairment benefits shall then be paid at the employee's
25 temporary total disability rate. If the employee's permanent impair-
26 ment benefits are exhausted before the completion or termination of
27 the reemployment plan, the employer shall provide wages equal to 60
28 percent of the employee's spendable weekly wages but not to exceed
29 \$525, until the completion or termination of the plan. A permanent

1 impairment benefit remaining unpaid upon the completion or termination
2 of the plan shall be paid to the employee in a single lump sum. The
3 fees of the rehabilitation specialist or rehabilitation professional
4 shall be paid by the employer and may not be included in determining
5 the cost of the reemployment plan.

6 (l) The cost of the reemployment plan incurred under this sec-
7 tion shall be the responsibility of the employer, ^{SINCE THE TIME OF THE} but may not exceed
8 \$10,000. ^{EXPIRE: NOVEMBER 1975, 1976}

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

15 (n) After the employee has elected to participate in reemploy-
16 ment benefits, if the employer believes the employee has not coop-
17 erated the employer may terminate reemployment benefits on the date of
18 noncooperation. Noncooperation means ~~unreasonable~~ failure to

19 (1) keep appointments;
20 (2) maintain ~~passing~~ grades;
21 (3) attend designated programs;
22 (4) maintain contact with the rehabilitation specialist;
23 (5) cooperate with the rehabilitation specialist in devel-
24 oping a reemployment plan and participating in activities relating to
25 reemployability on a full-time basis;

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

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

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

12 (p) In this section

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

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

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

- 20 (A) area of residence;
- 21 (B) area of last employment;
- 22 (C) the state;
- 23 (D) other states;

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

28 (5) "physical demands" means the physical requirements of
29 the job such as strength, including positions such as standing,

1 walking, sitting, and movement of objects such as lifting, carrying,
2 pushing, pulling, climbing, balancing, stooping, kneeling, crouching,
3 crawling, reaching, handling, fingering, feeling, talking, hearing, or
4 seeing;

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

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

16 * Sec. 8. AS 23.30.055 is amended to read:

17 Sec. 23.30.055. EXCLUSIVENESS OF LIABILITY. The liability of an
18 employer prescribed in AS 23.30.045 is exclusive and in place of all
19 other liability of the employer and any fellow employee to the em-
20 ployee, the employee's legal representative, husband or wife, parents,
21 dependents, next of kin, and anyone otherwise entitled to recover
22 damages from the employer or fellow employee at law or in admiralty on
23 account of the injury or death. The liability of the employer is
24 exclusive even if the employee's claim is barred under AS 23.30.-
25 020(b). However, if an employer fails to secure payment of compen-
26 sation as required by this chapter, an injured employee or the em-
27 ployee's legal representative in case death results from the injury
28 may elect to claim compensation under this chapter, or to maintain an
29 action against the employer at law or in admiralty for damages on

1 account of the injury or death. In that action the defendant may not
2 plead as a defense that the injury was caused by the negligence of a
3 fellow servant, or that the employee assumed the risk of the employ-
4 ment, or that the injury was due to the contributory negligence of the
5 employee.

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

7 (a) The employer shall furnish medical, surgical, and other
8 (attendance) 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. 10. 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. 11. 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 STATE IN WHICH THE EMPLOYEE MAY BE FOUND],
5 furnished and paid for by the employer. An examination requested by
6 the employer not less than 14 days after injury, and every 30 days
7 thereafter, shall be presumed to be reasonable, and the employee shall
8 submit to the examination without further request or order by the
9 board. Unless medically necessary, the physician shall use existing
10 diagnostic data to complete the examination. Facts relative to the
11 injury or claim communicated to or otherwise learned by a physician or
12 surgeon who may have attended or examined the employee, or who may
13 have been present at an examination are not privileged, either in the
14 hearings provided for in this chapter or an action to recover damages
15 against an employer who is subject to the compensation provisions of
16 this chapter. If an employee refuses to submit to an [ANY] examina-
17 tion provided for in this section, the employee's rights to compensa-
18 tion shall be suspended until the obstruction or refusal ceases, and
19 the employee's compensation during the period of suspension may, in
20 the discretion of the board or the court determining an action brought
21 for the recovery of damages under this chapter, be forfeited. The
22 board in any case of death may require an autopsy at the expense of
23 the party requesting the autopsy. An autopsy may not be held without
24 notice first being given to the widow or widower or next of kin if
25 they reside in the state or their whereabouts can be reasonably ascer-
26 tained, of the time and place of the autopsy and reasonable time and
27 opportunity given the widow or widower or next of kin to have a repre-
28 sentative present to witness the autopsy. If adequate notice is not
29 given, the findings from the autopsy may be suppressed on motion made

to the board or to the superior court, as the case may be.

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

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

* Sec. 13. AS 23.30.095(j) is repealed and reenacted to read:

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

* Sec. 14. AS 23.30.095 is amended by adding a new subsection to read:

(k) In the event of a medical dispute regarding determinations of causation, medical stability, ~~ability to enter a reemployment plan,~~ degree of impairment, functional capacity, the amount and efficacy of the continuance of or necessity of treatment, or compensability between the employee's attending physician and the employer's independent medical evaluation, a second independent medical evaluation shall be conducted by a physician or physicians selected by the board from a list established and maintained by the board. The cost of the examination and medical report shall be paid by the employer. The report of the independent medical examiner shall be furnished to the board and to the parties within 14 days after the examination is concluded. The opinion of the independent medical examiner shall, in the absence of clear and convincing objective evidence to the contrary, be presumed to be correct. A person may not seek damages from an

1 independent medical examiner caused by the rendering of an opinion or
2 providing testimony under this subsection, except in the event of
3 fraud or gross incompetence.

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

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

20 * Sec. 16. 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. 17. 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 if supported by substantial evidence.

28 * Sec. 18. AS 23.30.130(a) is amended to read:

29 (a) Upon its own initiative, or upon the application of any

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

12 * Sec. 19. AS 23.30.155(c) is amended to read:

13 (c) The insurer or adjuster [EMPLOYER] shall notify the board
14 and the employee on a form prescribed by the board that the payment of
15 compensation has begun or has been increased, decreased, suspended,
16 terminated, resumed, or changed in type. An initial report shall be
17 filed with the board and sent to the employee within 28 days after the
18 date of issuing the first payment of compensation. If at any time 21
19 days or more pass and no compensation payment is issued, a report
20 notifying the board and the employee of the termination or suspension
21 of compensation shall be filed with the board and sent to the employee
22 within 28 days after the date the last compensation payment was is-
23 sued. A report shall also be filed with the board and sent to the
24 employee within 28 days after the date of issuing a payment increas-
25 ing, decreasing, resuming, or changing the type of compensation paid.
26 If the [EMPLOYER FAILS TO NOTIFY THE] board and the employee are not
27 notified within the 28 days prescribed by this subsection for report-
28 ing, the insurer or adjuster [EMPLOYER] shall pay a civil penalty of
29 \$100 for the first day plus \$10 for each day thereafter that the

1 [EMPLOYER FAILED TO GIVE] notice was not given. Total penalties under
2 this subsection [SECTION] may not exceed \$1,000 for a failure to file
3 a required report. Penalties assessed under this subsection are
4 eligible for reduction under (m) of this section. A penalty assessed
5 under this subsection after penalties have been reduced under (m) of
6 this section shall be increased by 20 percent and shall bear interest
7 at the rate established under AS 45.45.010.

8 * Sec. 20. AS 23.30.155(d) is amended to read:

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

26 * Sec. 21. AS 23.30.155(m) is repealed and reenacted to read:

27 (m) On or before March 1 of each year the insurer or adjuster
28 shall file a verified annual report on a form prescribed by the board
29 stating the total amount of all compensation by type, medical, and

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

22 * Sec. 22. AS 23.30.155 is amended by adding a new subsection to read:

23 (n) If the employer is self-insured, the requirements of (c) and

24 (m) of this section apply to the employer.

25 * Sec. 23. AS 23.30.175 is repealed and reenacted to read:

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

1 computed under AS 23.30.220, or less than \$154 a week in the case of
2 an employee who has furnished documentary proof of the employee's
3 wages, it shall issue an order adjusting the weekly rate of compen-
4 sation to a rate equal to the employee's spendable weekly wages. If
5 the employer can verify that the employee's spendable weekly wages are
6 less than \$154, the employer may adjust the weekly rate of compen-
7 sation to a rate equal to the employee's spendable weekly wages with-
8 out an order of the board. If the employee's spendable weekly wages
9 are greater than \$154, but 80 percent of the employee's spendable
10 weekly wages is less than \$154, the employee's weekly rate of compen-
11 sation shall be \$154. Prior payments made in excess of the adjusted
12 rate shall be deducted from the unpaid compensation in the manner the
13 board determines. In any case, the employer shall pay timely compen-
14 sation.

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 index of the state in which the recipient
22 resides to the cost of living index of 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 of living costs for ~~this~~ state and other ~~states~~ in which recipients
7 reside and for the annual redetermination of these costs.

8 * Sec. 24. AS 23.30.180 is amended to read:

9 Sec. 23.30.180. PERMANENT TOTAL DISABILITY. In case of total
10 disability adjudged to be permanent 80 percent of the injured em-
11 ployee's spendable weekly wages shall be paid to the employee during
12 the continuance of the total disability. Loss of both hands, or both
13 arms, or both feet, or both legs, or both eyes, or of any two of them,
14 in the absence of conclusive proof to the contrary, constitutes perma-
15 nent total disability. In all other cases permanent total disability
16 is determined in accordance with the facts. In making this determina-
17 tion the market for the employee's services shall be

18 (1) area of residence;

19 (2) area of last employment;

20 (3) the state of residence; and

21 (4) the state of Alaska.

22 * Sec. 25. AS 23.30.180 is amended by adding a new subsection to read:

23 (b) Failure to achieve remunerative employability as defined in
24 AS 23.30.041(m)(7) does not, by itself, constitute permanent total
25 disability.

26 * Sec. 26. AS 23.30.185 is amended to read:

27 Sec. 23.30.185. COMPENSATION FOR TEMPORARY TOTAL DISABILITY. In
28 case of disability total in character but temporary in quality, 80
29 percent of the injured employee's spendable weekly wages shall be paid

1 to the employee during the continuance of the disability. Temporary
2 total disability benefits may not be paid for any period of disability
3 occurring after the date of medical stability. Temporary total dis-
4 ability benefits may not be paid for more than two years regardless of
5 continuance of the disability.

6 * Sec. 27. AS 23.30.190 is repealed and reenacted to read:

7 Sec. 23.30.190. COMPENSATION FOR PERMANENT PARTIAL IMPAIRMENT.

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

Degree of Actual Impairment	Adjustment Factor
0 - 5 percent	0
6 - 10 percent	0.2
11 - 15 percent	0.4
16 - 20 percent	0.6
21 - 25 percent	0.7
26 - 30 percent	0.8
31 percent and greater	1.0

25 (b) All determinations of the existence and degree of permanent
26 impairment shall be made strictly and solely under the whole person
27 determination as set out in the

28 (1) American Medical Association Guides to the Evaluation
29 of Permanent Impairment, except that an impairment rating may not be

rounded to the next five percent;

1 (2) Manual for Orthopedic Surgeons, for injuries that
2 cannot be rated by the use of American Medical Association guidelines;
3 or

4 (3) a supplementary recognized schedule, for injuries that
5 cannot be rated under (1) or (2) of this subsection.
6

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

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

16 * Sec. 28. AS 23.30.200 is amended to read:

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

26 * Sec. 29. AS 23.30.200 is amended by adding a new subsection to read:

27 (b) The wage-earning capacity of an injured employee is deter-
28 mined by the actual spendable weekly wage of the employee if the
29 actual spendable weekly wage fairly and reasonably represents the

1 wage-earning capacity of the employee. The board may, in the interest
2 of justice, fix the wage-earning capacity that is reasonable, having
3 due regard to the nature of the injury, the degree of physical impair-
4 ment, the usual employment, and other factors or circumstances in the
5 case that may affect the capacity of the employee to earn wages in a
6 disabled condition, including the effect of disability as it may
7 naturally extend into the future.

8 * Sec. 30. AS 23.30.220(a) is amended to read:

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

13 (1) The gross weekly earnings are computed by dividing by
14 100 the gross earnings of the employee in the two calendar years
15 immediately preceding the injury.

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

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

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

12 * Sec. 31. AS 23.30.225 is amended by adding a new subsection to read:

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

23 * Sec. 32. AS 23.30 is amended by adding a new section to read:

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

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

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

13 * Sec. 33. AS 23.30.265(15) is amended to read:

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

1 * Sec. 34. AS 23.30.265(17) is amended to read:

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

20 * Sec. 35. AS 23.30.265 is amended by adding a new paragraph to read:

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

1 * Sec. 36. AS 23.30.210 is repealed.

2 * Sec. 37. TRANSITIONAL PROVISIONS. Notwithstanding AS 23.30.040(b),
3 as amended by sec. 6 of this Act, and AS 23.30.155(m), as amended by
4 sec. 21 of this Act, on or before March 1, 1989, each employer that is
5 subject to those sections shall file a report and make the appropriate
6 contribution for all claims existing as of December 31, 1988. The period
7 covered in the report shall be from the date of the termination report
8 or the last anniversary report filed, if one has been filed, through
9 December 31, 1988.

10 * Sec. 38. APPLICABILITY. Except for secs. 6, 19, 21, and 22 of this
11 Act, this Act applies only to injuries sustained on or after July 1, 1988.

12 * Sec. 39. This Act takes effect July 1, 1988.
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WHO SETS DATE CLASSIFICATION

5-1514B ✓
Ford
2/15/88

SEVERABILITY CLAUSE

EFFECTIVE DATE BY SECTION

BIANNUAL PMT

Original sponsor: Labor and Commerce
Committee

1 IN THE SENATE

BY THE LABOR AND
COMMERCE COMMITTEE

2 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 if supported by substantial evidence.

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

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

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

27 (3) remove obstacles to the utilization of vocational rehabili-
28 tation that may be brought about by the payment of workers' compensation
29 benefits at the high levels provided by the Alaska workers' compensation

1 law to individuals residing in localities with living costs lower than
2 those in Alaska.

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

4 (h) The department ~~shall~~ [MAY] adopt identical rules for all
5 panels, and procedures for the periodic selection, retention, and re-
6 moval of rehabilitation specialists or physicians under AS 23.30.041
7 and 23.30.095, and ~~shall~~ [MAY] adopt regulations to carry out the
8 provisions of this chapter. Process and procedure under this chapter
9 shall be as summary and simple as possible. The department, the board
10 or a member of it may for the purposes of this chapter subpoena wit-
11 nesses, administer or cause to be administered oaths, and may examine
12 or cause to have examined the parts of the books and records of the
13 parties to a proceeding that relate [WHICH RELATED] to questions in
14 dispute. The superior court, on application of the department, the
15 board or any members of it, shall enforce the attendance and testimony
16 of witnesses and the production and examination of books, papers, and
17 records.

18 * Sec. 3. AS 23.30.005 is amended by adding a new subsection to read:

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

24 * Sec. 4. AS 23.30.020 is amended by adding a new subsection to read:

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

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

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

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

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

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

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

5 * Sec. 6. AS 23.30.041 is repealed and reenacted to read:

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

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

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

14 (2) recommend regulations for adoption by the board that
15 establish performance and reporting criteria for rehabilitation spe-
16 cialists;

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

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

22 (5) submit to the department, on or before January 1 of
23 each year, a report of reemployment benefits provided under this
24 section for the previous fiscal year; * the report must include a sta-
25 tistical summary of all rehabilitation cases, including

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

28 (B) the estimated and actual time of each rehabilita-
29 tion plan;

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

4 (D) the cost of reemployment benefits;

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

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

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

22 (d) Within 30 days after the referral by the administrator, the
23 rehabilitation specialist shall perform the eligibility evaluation and
24 issue a report of findings. The administrator may grant up to an
25 additional 30 days for performance of the eligibility evaluation upon
26 notification of unusual and extenuating circumstances and the re-
27 habilitation specialist's request. Within 14 days after receipt of
28 the report from the rehabilitation specialist, the administrator shall
29 notify the parties of the employee's eligibility for reemployment

1 preparation benefits. Within 10 days after the decision, either party
2 may seek review of the decision by requesting a hearing under AS 23.-
3 30.110. The hearing shall be held within 30 days after it is re-
4 quested. The board shall uphold the decision of the administrator
5 except for abuse of discretion on the administrator's part.

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

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

13 (2) other jobs that exist in the labor market that the
14 employee has held ~~or received training for~~ within 10 years before the
15 injury or that the employee has held following the injury for a period
16 long enough to obtain the skills to compete in the labor market,
17 according to specific vocational preparation codes as described in the
18 dictionary of occupational titles.

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

20 (1) the employer offers employment within the employee's
21 predicted post-injury physical capacities at a wage equivalent to at
22 least 60 percent of the worker's gross hourly wages ~~at~~ the time of
23 injury and the employment prepares the employee to be employable in
24 other jobs that exist in the labor market;

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

29 (3) ~~at the time of medical stability no permanent~~

1 impairment is identified or expected.

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

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

- 16 (1) an occupational goal in the labor market;
- 17 (2) a plan to acquire the occupational skills to be employ-
18 able;
- 19 (3) the cost estimate of the reemployment plan, including
20 provider fees; the amount of tuition, books, tools, and supplies;
21 transportation; temporary lodging; or job modification devices;
- 22 (4) the estimated length of time that the plan will take;
- 23 (5) the date the plan will commence; and
- 24 (6) the ~~estimated~~ time of medical stability as predicted by
25 the physician.

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

- 29 (1) on the job training;

- 1 (2) vocational training;
- 2 (3) academic training;
- 3 (4) self-employment; or
- 4 (5) a combination of (1) - (4) of this subsection.

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

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

1 the cost of the reemployment plan.

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

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

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

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

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

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

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

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

8 (p) In this section

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

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

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

- 16 (A) area of residence;
- 17 (B) area of last employment;
- 18 (C) the state;
- 19 (D) other states;

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

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

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

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

12 * Sec. 7. AS 23.30.055 is amended to read:

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

1 employee.

2 * Sec. 8. AS 23.30.095(a) is amended to read:

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

1 REGULATIONS ADOPTED BY THE BOARD].

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

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

24 * Sec. 10. AS 23.30.095(e) is amended to read:

25 (e) The employee shall, after an injury, at reasonable times
26 during the continuance of the disability, if requested by the employer
27 or when ordered by the board, submit to an examination by a physician
28 or surgeon of the employer's choice [AUTHORIZED TO PRACTICE MEDICINE
29 UNDER THE LAWS OF THE STATE IN WHICH THE EMPLOYEE MAY BE FOUND],

1 furnished and paid for by the employer. An examination requested by
 2 the employer not less than 14 days after injury, and every 30 days
 3 thereafter, shall be presumed to be reasonable, and the employee shall
 4 submit to the examination without further request or order by the
 5 board. ^{APPROPRIATE} Unless medically necessary, the physician shall use existing
 6 diagnostic data to complete the examination. Facts relative to the
 7 injury or claim communicated to or otherwise learned by a physician or
 8 surgeon who may have attended or examined the employee, or who may
 9 have been present at an examination are not privileged, either in the
 10 hearings provided for in this chapter or an action to recover damages
 11 against an employer who is subject to the compensation provisions of
 12 this chapter. If an employee refuses to submit to an [ANY] examina-
 13 tion provided for in this section, the employee's rights to compensa-
 14 tion shall be suspended until the obstruction or refusal ceases, and
 15 the employee's compensation during the period of suspension may, in
 16 the discretion of the board or the court determining an action brought
 17 for the recovery of damages under this chapter, be forfeited. The
 18 board in any case of death may require an autopsy at the expense of
 19 the party requesting the autopsy. An autopsy may not be held without
 20 notice first being given to the widow or widower or next of kin if
 21 they reside in the state or their whereabouts can be reasonably ascer-
 22 tained, of the time and place of the autopsy and reasonable time and
 23 opportunity given the widow or widower or next of kin to have a repre-
 24 sentative present to witness the autopsy. If adequate notice is not
 25 given, the findings from the autopsy may be suppressed on motion made
 26 to the board or to the superior court, as the case may be.

27 * Sec. 11. AS 23.30.095(f) is amended to read:

28 (f) All fees and other charges for medical treatment or service
 29 [ARE LIMITED TO THE CHARGES THAT PREVAIL IN THE SAME COMMUNITY FOR

1 SIMILAR TREATMENT OF INJURED PERSONS OF LIKE STANDARD OF LIVING AND]
2 shall be subject to regulation by the board but may not exceed usual,
3 customary, and reasonable fees for the treatment or service in the
4 community in which it is rendered, as determined by the board. *

5 * Sec. 12. AS 23.30.095(j) is repealed and reenacted to read:

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

11 * Sec. 13. AS 23.30.095 is amended by adding a new subsection to read:

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

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

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

16 * Sec. 15. AS 23.30.120 is amended by adding a new subsection to read:

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

20 * Sec. 16. AS 23.30.125 is amended by adding a new subsection to read:

21 (f) Subject to an employer's or employee's burden of proof, a
22 finding of fact made by the board as a part of a compensation order is
23 conclusive if supported by substantial evidence.

24 * Sec. 17. AS 23.30.130(a) is amended to read:

25 (a) Upon its own initiative, or upon the application of any
26 party in interest on the ground of a change in conditions, including,
27 for the purposes of AS 23.30.175, a change in residence, or because of
28 a mistake in its determination of a fact, the board may, before one
29 year after the date of the last payment of compensation benefits under

1 AS 23.30.180, 23.30.185, 23.30.190, 23.30.200, or 23.30.215, whether
2 or not a compensation order has been issued, or before one year after
3 the rejection of a claim, review a compensation case under [IN ACCOR-
4 DANCE WITH] the procedure prescribed in respect of claims in AS 23.-
5 30.110. Under [IN ACCORDANCE WITH] AS 23.30.110 the board may issue a
6 new compensation order which terminates, continues, reinstates, in-
7 creases, or decreases the compensation, or award compensation.

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

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

1 under this subsection after penalties have been reduced under (m) of
2 this section shall be increased by 20 percent and shall bear interest
3 at the rate established under AS 45.45.010.

4 * Sec. 19. AS 23.30.155(d) is amended to read:

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

22 * Sec. 20. AS 23.30.155(m) is repealed and reenacted to read:

23 (m) On or before March 1 of each year the insurer or adjuster
24 shall file a verified annual report on a form prescribed by the board
25 stating the total amount of all compensation by type, medical, and
26 related benefits, vocational rehabilitation expenses, legal fees, and
27 penalties paid on all claims during the preceding calendar year. If
28 the annual report is timely and complete when received by the board
29 and provides accurate information about each category of payments, the

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

18 * Sec. 21. AS 23.30.155 is amended by adding a new subsection to read:

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

21 * Sec. 22. AS 23.30.175 is repealed and reenacted to read:

22 Sec. 23.30.175. RATES OF COMPENSATION. (a) The weekly rate of
23 compensation for disability or death may not exceed \$700 and initially
24 may not be less than \$110. However, if the board determines that the
25 employee's spendable weekly wages are less than \$110 a week as
26 computed under AS 23.30.220, or less than \$154 a week in the case of
27 an employee who has furnished documentary proof of the employee's
28 wages, it shall issue an order adjusting the weekly rate of compensation
29 to a rate equal to the employee's spendable weekly wages.

1 If the employer can verify that the employee's spendable weekly wages
2 are less than \$154, the employer may adjust the weekly rate of compen-
3 sation to a rate equal to the employee's spendable weekly wages with-
4 out an order of the board. If the employee's spendable weekly wages
5 are greater than \$154, but 80 percent of the employee's spendable
6 weekly wages is less than \$154, the employee's weekly rate of compen-
7 sation shall be \$154. Prior payments made in excess of the adjusted
8 rate shall be deducted from the unpaid compensation in the manner the
9 board determines. In any case, the employer shall pay timely compen-
10 sation.

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

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

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

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

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

1 (c) The board shall provide by regulation for the determination
2 of living costs for ~~this~~ state and other ~~states~~ in which recipients
3 reside and for the annual redetermination of these costs.

4 * Sec. 23. AS 23.30.180 is amended to read:

5 Sec. 23.30.180. PERMANENT TOTAL DISABILITY. In case of total
6 disability adjudged to be permanent 80 percent of the injured em-
7 ployee's spendable weekly wages shall be paid to the employee during
8 the continuance of the total disability. * Loss of both hands, or both
9 arms, or both feet, or both legs, or both eyes, or of any two of them,
10 in the absence of conclusive proof to the contrary, constitutes perma-
11 nent total disability. In all other cases permanent total disability
12 is determined in accordance with the facts. In making this determina-
13 tion the market for the employee's services shall be

14 (1) area of residence;

15 (2) area of last employment;

16 (3) the state of residence; and

17 (4) the state of Alaska.

18 * Sec. 24. AS 23.30.180 is amended by adding a new subsection to read:

19 (b) Failure to achieve remunerative employability as defined in
20 AS 23.30.041(m)(7) does not, by itself, constitute permanent total
21 disability.

22 * Sec. 25. AS 23.30.185 is amended to read:

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

continuance of the disability.

* Sec. 26. AS 23.30.190 is repealed and reenacted to read:

Sec. 23.30.190. COMPENSATION FOR PERMANENT PARTIAL IMPAIRMENT.

(a) In case of impairment partial in character but permanent in quality, and not resulting in permanent total disability, the compensation is \$240,000 multiplied by the employee's percentage of net permanent impairment of the whole person, and payable in a single lump sum, except as otherwise provided in AS 23.30.041, but the compensation may not be discounted for any present value considerations. Net permanent impairment is to be determined by multiplying the employee's actual degree of permanent impairment by the appropriate adjustment factor, as follows:

Degree of Actual Impairment	Adjustment Factor
0 - 5 percent	0
6 - 10 percent	0.2
11 - 15 percent	0.4
16 - 20 percent	0.6
21 - 25 percent	0.7
26 - 30 percent	0.3
31 percent and greater	1.0

(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

(1) American Medical Association Guides to the Evaluation of Permanent Impairment, except that an impairment rating may not be rounded to the next five percent;

(2) Manual for Orthopedic Surgeons, for injuries that cannot be rated by the use of American Medical Association guidelines;

or

1 (3) a supplementary recognized schedule, for injuries that
2 cannot be rated under (1) or (2) of this subsection.

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. 27. 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. 28. 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. 29. 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 gross weekly earnings at the time of injury.

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

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

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

8 * Sec. 30. AS 23.30.225 is amended by adding a new subsection to read:

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

19 * Sec. 31. AS 23.30 is amended by adding a new section to read:

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

26 (b) This section may not be construed to prevent an employer
27 from basing hiring, promotion, or retention policies or practices on
28 considerations of the employee's safety practices or the employee's
29 physical and mental abilities; nor may this section be construed so as

1 to create employment rights not otherwise in existence.

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

9 * Sec. 32. AS 23.30.265(15) is amended to read:

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

26 * Sec. 33. AS 23.30.265(17) is amended to read:

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

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

16 * Sec. 34. AS 23.30.265 is amended by adding a new paragraph to read:

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

26 * Sec. 35. AS 23.30.210 is repealed.

27 * Sec. 36. TRANSITIONAL PROVISIONS. Notwithstanding AS 23.30.040(b),
28 as amended by sec. 5 of this Act, and AS 23.30.155(m), as amended by sec.
29 20 of this Act, on or before March 1, 1989, each employer that is subject

1 to those sections shall file a report and make the appropriate contribution
2 for all claims existing as of December 31, 1988. The period covered in the
3 report shall be from the date of the termination report or the last an-
4 niversary report filed, if one has been filed, through December 31, 1988.

5 * Sec. 37. APPLICABILITY. Except for secs. 5, 18, 20, and 22 of this
6 Act applies only to injuries sustained on or after July 1, 1988.

7 * Sec. 38. This Act takes effect July 1, 1988.
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5-1514B ✓
Ford
2/11/88

Original sponsor: Labor and Commerce
Committee

1 IN THE SENATE

BY THE LABOR AND
COMMERCE COMMITTEE

2 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 if supported by substantial evidence.

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

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

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

27 (3) remove obstacles to the utilization of vocational rehabili-
28 tation that may be brought about by the payment of workers' compensation
29 benefits at the high levels provided by the Alaska workers' compensation

1 law to individuals residing in localities with living costs lower than
2 those in Alaska.

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

4 (h) The department shall [MAY] adopt identical rules for all
5 panels, and procedures for the periodic selection, retention, and re-
6 moval of rehabilitation specialists or physicians under AS 23.30.041
7 and 23.30.095, and shall [MAY] adopt regulations to carry out the
8 provisions of this chapter. Process and procedure under this chapter
9 shall be as summary and simple as possible. The department, the board
10 or a member of it may for the purposes of this chapter subpoena wit-
11 nesses, administer or cause to be administered oaths, and may examine
12 or cause to have examined the parts of the books and records of the
13 parties to a proceeding that relate [WHICH RELATED] to questions in
14 dispute. The superior court, on application of the department, the
15 board or any members of it, shall enforce the attendance and testimony
16 of witnesses and the production and examination of books, papers, and
17 records.

18 * Sec. 3. AS 23.30.005 is amended by adding a new subsection to read:

19 (m) If a regulation adopted by the department and approved by a
20 majority of the full board is determined to be invalid by the state
21 supreme court, the department ^{MAY} [shall immediately] adopt new regulations
22 that conform to the department's statutory authority as interpreted by
23 the court.

24 * Sec. 4. AS 23.30.020 is amended by adding a new subsection to read:

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

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

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

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

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

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

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

5 * Sec. 6. AS 23.30.041 is repealed and reenacted to read:

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

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

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

14 (2) recommend regulations for adoption by the board that
15 establish performance and reporting criteria for rehabilitation spe-
16 cialists;

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

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

22 (5) submit to the department, on or before January 1 of
23 each year, a report of reemployment benefits provided under this
24 section for the previous fiscal year; the report must include a sta-
25 tistical summary of all rehabilitation cases, including

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

28 (B) the estimated and actual time of each rehabilita-
29 tion plan;

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

4 (D) the cost of reemployment benefits;

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

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

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

22 (d) Within 30 days after the referral by the administrator, the
23 rehabilitation specialist shall perform the eligibility evaluation and
24 issue a report of findings. The administrator may grant up to an
25 additional 30 days for performance of the eligibility evaluation upon
26 notification of unusual and extenuating circumstances and the re-
27 habilitation specialist's request. Within 14 days after receipt of
28 the report from the rehabilitation specialist, the administrator shall
29 notify the parties of the employee's eligibility for reemployment

1 preparation benefits. Within 10 days after the decision, either party
2 may seek review of the decision by requesting a hearing under AS 23.-
3 30.110. The hearing shall be held within 30 days after it is re-
4 quired. The board shall uphold the decision of the administrator
5 except for abuse of discretion on the administrator's part.

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

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

13 (2) other jobs that exist in the labor market that the
14 employee has held or received training for within 10 years before the
15 injury or that the employee has held following the injury for a period
16 long enough to obtain the skills to compete in the labor market,
17 according to specific vocational preparation codes as described in the
18 dictionary of occupational titles.

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

20 (1) the employer offers employment within the employee's
21 predicted post-injury physical capacities at a wage equivalent to at
22 least 60 percent of the worker's gross hourly wages at the time of
23 injury and the employment prepares the employee to be employable in
24 other jobs that exist in the labor market;

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

29 (3) at the time of medical stability no permanent

1 impairment is identified or expected.

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

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

- 16 (1) an occupational goal in the labor market;
- 17 (2) a plan to acquire the occupational skills to be employ-
18 able;
- 19 (3) the cost estimate of the reemployment plan, including
20 provider fees; the amount of tuition, books, tools, and supplies;
21 transportation; temporary lodging; or job modification devices;
- 22 (4) the estimated length of time that the plan will take;
- 23 (5) the date the plan will commence; and
- 24 (6) the estimated time of medical stability as predicted by
25 the physician.

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

- 29 (1) on the job training;

- 1 (2) vocational training;
2 (3) academic training;
3 (4) self-employment; or
4 (5) a combination of (1) - (4) of this subsection.

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

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

1 the cost of the reemployment plan.

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

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

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

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

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

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

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

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

8 (p) In this section

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

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

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

16 (A) area of residence;

17 (B) area of last employment;

18 (C) the state;

19 (D) other states;

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

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

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

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

12 * Sec. 7. AS 23.30.055 is amended to read:

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

1 employee.

2 * Sec. 8. AS 23.30.095(a) is amended to read:

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

1 REGULATIONS ADOPTED BY THE BOARD].

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

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

24 * Sec. 10. AS 23.30.095(e) is amended to read:

25 (e) The employee shall, after an injury, at reasonable times
26 during the continuance of the disability, if requested by the employer
27 or when ordered by the board, submit to an examination by a physician
28 or surgeon of the employer's choice [AUTHORIZED TO PRACTICE MEDICINE
29 UNDER THE LAWS OF THE STATE IN WHICH THE EMPLOYEE MAY BE FOUND],

1 furnished and paid for by the employer. An examination requested by
2 the employer not less than 14 days after injury, and every 30 days
3 thereafter, shall be presumed to be reasonable, and the employee shall
4 submit to the examination without further request or order by the
5 board. Unless medically necessary, the physician shall use existing
6 diagnostic data to complete the examination. Facts relative to the
7 injury or claim communicated to or otherwise learned by a physician or
8 surgeon who may have attended or examined the employee, or who may
9 have been present at an examination are not privileged, either in the
10 hearings provided for in this chapter or an action to recover damages
11 against an employer who is subject to the compensation provisions of
12 this chapter. If an employee refuses to submit to an [ANY] examina-
13 tion provided for in this section, the employee's rights to compensa-
14 tion shall be suspended until the obstruction or refusal ceases, and
15 the employee's compensation during the period of suspension may, in
16 the discretion of the board or the court determining an action brought
17 for the recovery of damages under this chapter, be forfeited. The
18 board in any case of death may require an autopsy at the expense of
19 the party requesting the autopsy. An autopsy may not be held without
20 notice first being given to the widow or widower or next of kin if
21 they reside in the state or their whereabouts can be reasonably ascer-
22 tained, of the time and place of the autopsy and reasonable time and
23 opportunity given the widow or widower or next of kin to have a repre-
24 sentative present to witness the autopsy. If adequate notice is not
25 given, the findings from the autopsy may be suppressed on motion made
26 to the board or to the superior court, as the case may be.

27 * Sec. 11. AS 23.30.095(f) is amended to read:

28 (f) All fees and other charges for medical treatment or service
29 [ARE LIMITED TO THE CHARGES THAT PREVAIL IN THE SAME COMMUNITY FOR

1 SIMILAR TREATMENT OF INJURED PERSONS OF LIKE STANDARD OF LIVING AND]
2 shall be subject to regulation by the board but may not exceed usual,
3 customary, and reasonable fees for the treatment or service in the
4 community in which it is rendered, as determined by the board.

5 * Sec. 12. AS 23.30.095(j) is repealed and reenacted to read:

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

11 * Sec. 13. AS 23.30.095 is amended by adding a new subsection to read:

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

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

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

16 * Sec. 15. AS 23.30.120 is amended by adding a new subsection to read:

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

20 * Sec. 16. AS 23.30.125 is amended by adding a new subsection to read:

21 (f) Subject to an employer's or employee's burden of proof, a
22 finding of fact made by the board as a part of a compensation order is
23 conclusive if supported by substantial evidence.

24 * Sec. 17. AS 23.30.130(a) is amended to read:

25 (a) Upon its own initiative, or upon the application of any
26 party in interest on the ground of a change in conditions, including,
27 for the purposes of AS 23.30.175, a change in residence, or because of
28 a mistake in its determination of a fact, the board may, before one
29 year after the date of the last payment of compensation benefits under

1 AS 23.30.180, 23.30.185, 23.30.190, 23.30.200, or 23.30.215, whether
2 or not a compensation order has been issued, or before one year after
3 the rejection of a claim, review a compensation case under [IN ACCOR-
4 DANCE WITH] the procedure prescribed in respect of claims in AS 23.-
5 30.110. Under [IN ACCORDANCE WITH] AS 23.30.110 the board may issue a
6 new compensation order which terminates, continues, reinstates, in-
7 creases, or decreases the compensation, or award compensation.

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

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

1 under this subsection after penalties have been reduced under (m) of
2 this section shall be increased by 20 percent and shall bear interest
3 at the rate established under AS 45.45.010.

4 * Sec. 19. AS 23.30.155(d) is amended to read:

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

22 * Sec. 20. AS 23.30.155(m) is repealed and reenacted to read:

23 (m) On or before March 1 of each year the insurer or adjuster
24 shall file a verified annual report on a form prescribed by the board
25 stating the total amount of all compensation by type, medical, and
26 related benefits, vocational rehabilitation expenses, legal fees, and
27 penalties paid on all claims during the preceding calendar year. If
28 the annual report is timely and complete when received by the board
29 and provides accurate information about each category of payments, the

1 commissioner shall review the timeliness of the insurer's or adjuster's reports filed during the preceding year under (c) of this section. If the insurer or adjuster filed at least 99 percent of the reports on time, the penalties assessed under (c) of this section shall be waived. If the insurer or adjuster filed at least 97 percent of the reports on time, 75 percent of the penalties assessed under (c) of this section shall be waived. If the insurer or adjuster filed 95 percent of the reports on time, 50 percent of the penalties assessed under (c) of this section shall be waived. If the insurer's or adjuster's reports have not been filed on time at least 95 percent of the time, none of the penalties assessed under (c) of this section shall be waived. The penalties that are not waived are due and payable when the insurer or adjuster receives notification from the commissioner regarding the timeliness of the reports. If the annual report is not filed by March 1 of each year, the insurer or adjuster shall pay a civil penalty of \$100 for the first day the annual report is late, and \$10 for each additional day the report is late.

18 * Sec. 21. AS 23.30.155 is amended by adding a new subsection to read:

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

21 * Sec. 22. AS 23.30.175 is repealed and reenacted to read:

22 Sec. 23.30.175. RATES OF COMPENSATION. (a) The weekly rate of
23 compensation for disability or death for a recipient may not exceed
24 \$700 and initially may not be less than \$110. However, if the board
25 determines that the employee's spendable weekly wages are less than
26 \$110 a week as computed under AS 23.30.220, or less than \$154 a week
27 in the case of an employee who has furnished documentary proof of the
28 employee's wages, it shall issue an order adjusting the weekly rate of
29 compensation to a rate equal to the employee's spendable weekly wages.

1 If the employer can verify that the employee's spendable weekly wages
2 are less than \$154, the employer may adjust the weekly rate of compen-
3 sation to a rate equal to the employee's spendable weekly wages with-
4 out an order of the board. If the employee's spendable weekly wages
5 are greater than \$154, but 80 percent of the employee's spendable
6 weekly wages is less than \$154, the employee's weekly rate of compen-
7 sation shall be \$154. Prior payments made in excess of the adjusted
8 rate shall be deducted from the unpaid compensation in the manner the
9 board determines. In any case, the employer shall pay timely compen-
10 sation.

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

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

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

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

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

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

4 * Sec. 23. AS 23.30.180 is amended to read:

5 Sec. 23.30.180. PERMANENT TOTAL DISABILITY. In case of total
6 disability adjudged to be permanent 80 percent of the injured em-
7 ployee's spendable weekly wages shall be paid to the employee during
8 the continuance of the total disability. Loss of both hands, or both
9 arms, or both feet, or both legs, or both eyes, or of any two of them,
10 in the absence of conclusive proof to the contrary, constitutes perma-
11 nent total disability. In all other cases permanent total disability
12 is determined in accordance with the facts. In making this determina-
13 tion the market for the employee's services shall be

14 (1) area of residence;

15 (2) area of last employment; and

16 (3) the state of residence.

17 * Sec. 24. AS 23.30.180 is amended by adding a new subsection to read:

18 (b) Failure to achieve remunerative employability as defined in
19 AS 23.30.041(m)(7) does not, by itself, constitute permanent total
20 disability.

21 * Sec. 25. AS 23.30.185 is amended to read:

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

* Sec. 26. AS 23.30.190 is repealed and reenacted to read:

Sec. 23.30.190. COMPENSATION FOR PERMANENT PARTIAL IMPAIRMENT.

(a) In case of impairment partial in character but permanent in quality, and not resulting in permanent total disability, the compensation is \$240,000 multiplied by the employee's percentage of net permanent impairment of the whole person, and payable in a single lump sum, except as otherwise provided in AS 23.30.041, but the compensation may not be discounted for any present value considerations. Net permanent impairment is to be determined by multiplying the employee's actual degree of permanent impairment by the appropriate adjustment factor, as follows:

Degree of Actual Impairment	Adjustment Factor
0 - 5 percent	0
6 - 10 percent	0.2
11 - 15 percent	0.4
16 - 20 percent	0.6
21 - 25 percent	0.7
26 - 30 percent	0.8
31 percent and greater	1.0

(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 may use the Manual for Orthopedic Surgeons for injuries that cannot be rated by the use of American Medical Association guidelines. *ADD FINAL SENTENCE OF 23.30.190(b)*

(c) An employee with an actual permanent impairment as determined under (b) of this section may not receive less than \$250 for the impairment.

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

7 * Sec. 27. AS 23.30.200 is amended to read:

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

17 * Sec. 28. AS 23.30.200 is amended by adding a new subsection to read:

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

28 * Sec. 29. AS 23.30.220(a) is amended to read:

29 (a) The spendable weekly wage of an injured employee at the time

1 of an injury is the basis for computing compensation. It is the
2 employee's gross weekly earnings minus payroll tax deductions. The
3 gross weekly earnings shall be calculated as follows:

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

7 (2) If the employee had no earnings during the two calendar
8 years preceding the injury or was voluntarily absent from the labor
9 market for 18 months or more of the two calendar years preceding the
10 injury [THE BOARD DETERMINES THAT THE GROSS WEEKLY EARNINGS AT THE
11 TIME OF THE INJURY CANNOT BE FAIRLY CALCULATED UNDER (1) OF THIS
12 SUBSECTION], the board shall [MAY] determine the employee's gross
13 weekly earnings for calculating compensation by considering the nature
14 of the employee's work and work history, but compensation may not
15 exceed the employee's gross weekly earnings at the time of 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. 30. 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. 31. 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. 32. 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. 33. 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. 34. 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. 35. AS 23.30.210 is repealed.

22 * Sec. 36. TRANSITIONAL PROVISIONS. Notwithstanding AS 23.30.040(b),
23 as amended by sec. 5 of this Act, and AS 23.30.155(m), as amended by sec.
24 20 of this Act, on or before March 1, 1989, each employer that is subject
25 to those sections shall file a report and make the appropriate contribution
26 for all claims existing as of December 31, 1988. The period covered in the
27 report shall be from the date of the termination report or the last an-
28 niversary report filed, if one has been filed, through December 31, 1988.

29 * Sec. 37. APPLICABILITY. Except for secs. 5, 18, 20, and 22 of this

1 Act applies only to injuries sustained on or after July 1, 1988.

2 * Sec. 38. This Act takes effect July 1, 1988.

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WORK ORDER REQUEST FORM

KEYWORDS: workers' compensation

ASSIGNED TO Ford

REQUEST FOR: BILL RESOLUTION RESEARCH OTHER

SUBJECT workers' compensation

REQUESTED FOR San. Deliv BY Marie EXT. 301

* DELIVER TO San. Deliv TAKEN BY Ford

INSTRUCTIONS, EXPLANATIONS Workers' compensation draft per attached letters.

OBTAIN

SPECIAL DRAFTING INSTRUCTIONS ATTACHED

AUTHORIZED TO CONFER WITH _____

RETURN _____

_____ TO REQUESTER

APPROVED: _____ Director, Legal Services

_____ Director, Research

REVIEWED _____

SPECIAL INSTRUCTIONS TO TYPIST/PROOFREADER

IN 1/10/77 DUE 1/10/77

TYPED - Draft _____ DATE _____

Final _____ DATE _____

PROOFED _____ DELIVERED _____

DRAFT

FINAL