

SB

322

(FILE 2 - DRAFTS)

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Ford  
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Original sponsor: Labor and Commerce  
Committee

1 IN THE SENATE

BY THE CONFERENCE COMMITTEE

2 CONFERENCE CS FOR SENATE BILL NO. 322

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

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

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

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

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

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

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

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

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

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

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

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

12 (1) the state has failed to impose the punishment authorized  
13 under AS 23.30.075(b) against those employers who fail to obtain workers'  
14 compensation insurance or to qualify as a self-insurer; and

15 (2) there is a lack of specific data from the division of work-  
16 ers' compensation and division of insurance to adequately assess the effi-  
17 ciency and costs of the workers' compensation system.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) The administrator shall perform the following functions:

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

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

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

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

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

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

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

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

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

12 (D) the cost of reemployment benefits;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

28 (2) an inventory of the employee's technical skills, phys-  
29 ical and intellectual capacities, academic achievement, emotional

1 condition and family support;

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

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

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

8 (6) the date the plan will commence;

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

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

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

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

19 (1) on the job training;

20 (2) vocational training;

21 (3) academic training;

22 (4) self-employment; or

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

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

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

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

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

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

1 and location.

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

6 (1) keep appointments;

7 (2) maintain passing grades;

8 (3) attend designated programs;

9 (4) maintain contact with the rehabilitation specialist;

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

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

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

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

28 (p) In this section

29 (1) "administrator" means the reemployment benefits

1 administrator under AS 23.30.041(a);

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 23.30.190. COMPENSATION FOR PERMANENT PARTIAL IMPAIRMENT.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 court in a private civil action.

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

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

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

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

not be considered;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

WORK DRAFT

WORK DRAFT

WORK DRAFT

5-1514N  
Ford  
4/22/88

Original sponsor: Labor and Commerce  
Committee

1  
2  
3 IN THE LEGISLATURE OF THE STATE OF ALASKA  
4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) The administrator shall perform the following functions:

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

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

specialists;

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

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

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

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

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

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

20 (D) the cost of reemployment benefits;

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

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

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

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

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

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

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

29 (2) other jobs that exist in the labor market that the

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

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

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

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

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

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

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

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

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

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

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

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

16 (6) the date the plan will commence;

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

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

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

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

27 (1) on the job training;

28 (2) vocational training;

29 (3) academic training;

1 (4) self-employment; or

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

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

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

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

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

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

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

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

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

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

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

7 (p) In this section

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

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

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

15 (A) area of residence;

16 (B) area of last employment;

17 (C) the state;

18 (D) other states;

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

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

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

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

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

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

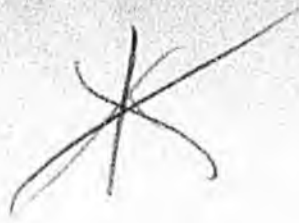
12 Sec. 23.30.055. EXCLUSIVENESS OF LIABILITY. The liability of an  
13 employer prescribed in AS 23.30.045 is exclusive and in place of all  
14 other liability of the employer and any fellow employee to the em-  
15 ployee, the employee's legal representative, husband or wife, parents,  
16 dependents,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

1 \* Sec. 10. AS 23.30.075(b) is amended to read:

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

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

18 (a) The employer shall furnish medical, surgical, and other  
19 attendants or treatment, nurse and hospital service, medicine, crutch-  
20 es, and apparatus for the period which the nature of the injury or the  
21 process of recovery requires, not exceeding two years from and after  
22 the date of injury to the employee. However, if the condition requir-  
23 ing the treatment, apparatus, or medicine is a latent one, the two-  
24 year period runs from the time the employee has knowledge of the  
25 nature of the employee's disability and its relationship to the em-  
26 ployment and after disablement. It shall be additionally provided  
27 that, if continued treatment or care or both beyond the two-year  
28 period is indicated, the injured employee has the right of review by  
29 the board. The board may authorize continued treatment or care or



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

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

(c) A claim for medical or surgical treatment is not valid and enforceable against the employer unless, within 14 days following treatment, the physician giving the treatment or the employee receiving it furnishes to the employer and the board notice of the injury and treatment, preferably on a form prescribed by the board. The board shall, however, excuse the failure to furnish notice within 14 days when it finds it to be in the interest of justice to do so, and it may, upon application by a party in interest, make an award for the reasonable value of the medical or surgical treatment so obtained by the employee. A claim for a course of treatment requiring continuing and multiple treatments of a similar nature is not valid unless the treatments are carried out under a written treatment plan

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1 prescribed before the commencement of the course of treatment, com-  
2 pleted and signed by the attending physician, and mailed to the em-  
3 ployer within one week of the beginning of treatment. The treatment  
4 plan must include objectives, modalities, and frequency of treatment.  
5 The initial treatment plan may not include more than 20 visits in the  
6 first 60 days. If more than 20 visits are required within the first  
7 60 days, or more than four visits a month after the first 60 days, the  
8 physician shall document the need for services in excess of the guide-  
9 lines in the written treatment plan.

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

11 (e) The employee shall, after an injury, at reasonable times  
12 during the continuance of the disability, if requested by the employer  
13 or when ordered by the board, submit to an examination by a physician  
14 or surgeon of the employer's choice [AUTHORIZED TO PRACTICE MEDICINE  
15 UNDER THE LAWS OF THE STATE IN WHICH THE EMPLOYEE MAY BE FOUND],  
16 furnished and paid for by the employer. The employer may not make  
17 more than one change in the employer's choice of a physician or sur-  
18 geon without the written consent of the employee. Referral to a  
19 specialist by the employer's physician is not considered a change in  
20 physicians. An examination requested by the employer not less than 14  
21 days after injury, and every 60 days thereafter, shall be presumed to  
22 be reasonable, and the employee shall submit to the examination with-  
23 out further request or order by the board. Unless medically appropri-  
24 ate, the physician shall use existing diagnostic data to complete the  
25 examination. Facts relative to the injury or claim communicated to or  
26 otherwise learned by a physician or surgeon who may have attended or  
27 examined the employee, or who may have been present at an examination  
28 are not privileged, either in the hearings provided for in this chap-  
29 ter or an action to recover damages against an employer who is subject

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

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

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

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

27 *OL* (j) The board may appoint a medical services review committee,  
28 or contract with an existing organization in the state or another  
29 state, to assist and advise the board in matters involving the

1           appropriateness, necessity, and cost of medical and related services  
2           provided under this chapter.

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

4           (k) In the event of a medical dispute regarding determinations  
5           of causation, medical stability, ability to enter a reemployment plan,  
6           degree of impairment, functional capacity, the amount and efficacy of  
7           the continuance of or necessity of treatment, or compensability be-  
8           tween the employee's attending physician and the employer's indepen-  
9           dent medical evaluation, a second independent medical evaluation shall  
10          be conducted by a physician or physicians selected by the board from a  
11          list established and maintained by the board. The cost of the exami-  
12          nation and medical report shall be paid by the employer. The report  
13          of the independent medical examiner shall be furnished to the board  
14          and to the parties within 14 days after the examination is concluded.

15          A person may not seek damages from an independent medical examiner  
16          caused by the rendering of an opinion or providing testimony under  
17          this subsection, except in the event of fraud or gross incompetence.

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

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

1 23.30.190, 23.30.200, or 23.30.215. It is additionally provided that,  
2 in the case of latent defects pertinent to and causing compensable  
3 disability, the injured employee has full right to claim as shall be  
4 determined by the board, time limitations notwithstanding.

5 \* Sec. 18. AS 23.30.110(c) is repealed and reenacted to read:

6 *HL (c)* (c) Before a hearing is scheduled, the party seeking a hearing  
*VERSION* shall file a request for a hearing together with an affidavit stating  
7 that the party has completed necessary discovery, obtained <sup>ALL</sup> necessary  
8 evidence, and is <sup>fully</sup> prepared for the hearing. An opposing party shall  
9 have 10 days after the hearing request is filed to file a response.  
10 If a party opposes the hearing request, the board or a board designee  
11 shall within 30 days of the filing of the opposition conduct a pre-  
12 hearing conference and set a hearing date. If opposition is not  
13 filed, a hearing shall be scheduled no later than 60 days after the  
14 receipt of the hearing request. The board shall give each party at  
15 least 10 days' notice of the hearing, either personally or by certi-  
16 fied mail. After a hearing has been scheduled, a continuance may not  
17 be granted. After completion of the hearing the board shall close the  
18 hearing record. Evidence or arguments filed after the conclusion of  
19 the hearing may not be considered by the board, unless the board  
20 determines that good cause exists for failure to complete the hearing  
21 at the scheduled time. If a settlement agreement is reached by the  
22 parties less than 14 days before the hearing, the parties shall appear  
23 at the time of the scheduled hearing to state the terms of the settle-  
24 ment agreement. Within 30 days after the hearing record closes, the  
25 board shall file its decision. If the employer controverts a claim on  
26 a board-prescribed controversion notice and the employee does not  
27 request a hearing within two years following the filing of the con-  
28 troversion notice, the claim is denied.  
29

1 \* Sec. 19. AS 23.30.120 is amended by adding a new subsection to read:

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

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

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

10 \* Sec. 21. AS 23.30.130(a) is amended to read:

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

23 \* Sec. 22. AS 23.30.155(c) is amended to read:

24 *OK* (c) The insurer or adjuster [EMPLOYER] shall notify the board  
25 and the employee on a form prescribed by the board that the payment of  
26 compensation has begun or has been increased, decreased, suspended,  
27 terminated, resumed, or changed in type. An initial report shall be  
28 filed with the board and sent to the employee within 28 days after the  
29 date of issuing the first payment of compensation. If at any time 21

1 days or more pass and no compensation payment is issued, a report  
2 notifying the board and the employee of the termination or suspension  
3 of compensation shall be filed with the board and sent to the employee  
4 within 28 days after the date the last compensation payment was is-  
5 sued. A report shall also be filed with the board and sent to the  
6 employee within 28 days after the date of issuing a payment increas-  
7 ing, decreasing, resuming, or changing the type of compensation paid.  
8 If the [EMPLOYER FAILS TO NOTIFY THE] board and the employee are not  
9 notified within the 28 days prescribed by this subsection for report-  
10 ing, the insurer or adjuster [EMPLOYER] shall pay a civil penalty of  
11 \$100 for the first day plus \$10 for each day thereafter that the  
12 [EMPLOYER FAILED TO GIVE] notice was not given. Total penalties under  
13 this subsection [SECTION] may not exceed \$1,000 for a failure to file  
14 a required report. Penalties assessed under this subsection are  
15 eligible for reduction under (m) of this section. A penalty assessed  
16 under this subsection after penalties have been reduced under (m) of  
17 this section shall be increased by 25 percent and shall bear interest  
18 at the rate established under AS 45.45.010.

19 \* Sec. 23. AS 23.30.155(d) is amended to read:

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

1 a portion of the benefits, the most recent employer or insurer who is  
2 party to the claim and who may be liable shall make the payments  
3 during the pendency of the dispute. When a final determination of  
4 liability is made, any reimbursement required, including interest at  
5 the statutory rate, and all costs and attorneys' fees incurred by the  
6 prevailing employer, shall be made within 14 days of the determina-  
7 tion.

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

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

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

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

1 the penalties assessed under (c) of this section shall be waived. If  
 2 during the preceding year the insurer or adjuster filed at least 97  
 3 percent of the reports on time, 75 percent of the penalties assessed  
 4 under (c) of this section shall be waived. If during the preceding  
 5 year the insurer or adjuster filed 95 percent of the reports on time,  
 6 50 percent of the penalties assessed under (c) of this section shall  
 7 be waived. If during the preceding year the insurer's or adjuster's  
 8 reports have not been filed on time at least 95 percent of the time,  
 9 none of the penalties assessed under (c) of this section shall be  
 10 waived. The penalties that are not waived are due and payable when  
 11 the insurer or adjuster receives notification from the commissioner  
 12 regarding the timeliness of the reports. If the annual report is not  
 13 filed by March 1 of each year, the insurer or adjuster shall pay a  
 14 civil penalty of \$100 for the first day the annual report is late, and  
 15 \$10 for each additional day the report is late. P 23 L 12-14 (JLT)

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

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

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

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

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

29 Sec. 23.30.175. RATES OF COMPENSATION. (a) The weekly rate of

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

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

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

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

28 (3) if the gross weekly earnings of the recipient and the  
29 resulting compensation rate is determined under AS 23.30.220(a)(2),

1 the calculation required by this subsection applies only to the por-  
2 tion of the recipient's weekly compensation rate attributable to wages  
3 earned in the state;

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

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

11 \* Sec. 28. AS 23.30.180 is amended to read:

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

25 (1) area of residence;

26 (2) area of last employment;

27 (3) the state of residence; and

28 (4) the State of Alaska.

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

1 (b) Failure to achieve remunerative employability as defined in  
 2 AS 23.30.041(p) does not, by itself, constitute permanent total dis-  
 3 ability.

4 \* Sec. 30. AS 23.30.185 is amended to read:

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

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

12 Sec. 23.30.190. COMPENSATION FOR PERMANENT PARTIAL IMPAIRMENT.

13 (a) In case of impairment partial in character but permanent in  
 14 quality, and not resulting in permanent total disability, the compen-  
 15 sation is \$135,000 multiplied by the employee's percentage of net  
 16 permanent impairment of the whole person, and payable in a single lump  
 17 sum, except as otherwise provided in AS 23.30.041, but the compensa-  
 18 tion may not be discounted for any present value considerations.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12 \* Sec. 44. APPLICABILITY. Except for secs. 6, 23, 25, 26, 38, and 42  
 13 of this Act, this Act applies only to injuries sustained on or after Ju-  
 14 ly 1, 1988.

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

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

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

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

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Original sponsor: Labor and Commerce  
Committee

1 IN THE SENATE

BY THE JUDICIARY COMMITTEE

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

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

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

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

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

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

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

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

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

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

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

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

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

12 (1) the state has failed to impose the punishment authorized  
13 under AS 23.30.075(b) against those employers who fail to obtain workers'  
14 compensation insurance or to qualify as a self-insurer; and

15 (2) there is a lack of specific data from the division of work-  
16 ers' compensation and division of insurance to adequately assess the effi-  
17 ciency and costs of the workers' compensation system.

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

19 Sec. 21.89.015. WORKPLACE SAFETY PROGRAM. An insurer who pro-  
20 vides worker' compensation insurance in this state shall establish and  
21 maintain a workplace safety rate reduction program available to all  
22 insureds. The program must include

23 (1) a reduction in future workers' compensation premiums  
24 based on the insured's documented and successful implementation of a  
25 safety program; and

26 (2) consulting services available to the insured to estab-  
27 lish a workplace safety program.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12 (D) the cost of reemployment benefits;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

28 (2) an inventory of the employee's technical skills, phys-  
29 ical and intellectual capacities, academic achievement, emotional

condition and family support;

1  
2 (3) a plan to acquire the occupational skills to be employ-  
3 able;

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

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

8 (6) the date the plan will commence;

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

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

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

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

19 (1) on the job training;

20 (2) vocational training;

21 (3) academic training;

22 (4) self-employment; or

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

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

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

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

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

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

and location.

1  
2 (n) After the employee has elected to participate in reemploy-  
3 ment benefits, if the employer believes the employee has not coop-  
4 erated the employer may terminate reemployment benefits on the date of  
5 noncooperation. Noncooperation means unreasonable failure to

6 (1) keep appointments;

7 (2) maintain passing grades;

8 (3) attend designated programs;

9 (4) maintain contact with the rehabilitation specialist;

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

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

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

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

28 (p) In this section

29 (1) "administrator" means the reemployment benefits

1 administrator under AS 23.30.041(a);

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10 (c) A claim for medical or surgical treatment, or treatment  
11 requiring continuing and multiple treatments of a similar nature is  
12 not valid and enforceable against the employer unless, within 14 days  
13 following treatment, the physician giving the treatment or the employ-  
14 ee receiving it furnishes to the employer and the board notice of the  
15 injury and treatment, preferably on a form prescribed by the board.  
16 The board shall, however, excuse the failure to furnish notice within  
17 14 days when it finds it to be in the interest of justice to do so,  
18 and it may, upon application by a party in interest, make an award for  
19 the reasonable value of the medical or surgical treatment so obtained  
20 by the employee. A written treatment plan requiring continuing and  
21 multiple treatments of a similar nature must include objectives,  
22 modalities, and frequency of treatment. The physician shall document  
23 the need for services in excess of the guidelines in the written  
24 treatment plan.

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

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

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

1 autopsy. If adequate notice is not given, the findings from the  
2 autopsy may be suppressed on motion made to the board or to the supe-  
3 rior court, as the case may be.

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

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

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

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

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

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

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

5 \* Sec. 18. AS 23.30.105(a) is amended to read:

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

21 \* Sec. 19. AS 23.30.110(c) is repealed and reenacted to read:

22 (c) Before a hearing is scheduled, the party seeking a hearing  
23 shall file a request for a hearing together with an affidavit stating  
24 that the party has completed necessary discovery, obtained necessary  
25 evidence, and is prepared for the hearing. An opposing party shall  
26 have 10 days after the hearing request is filed to file a response.  
27 If a party opposes the hearing request, the board or a board designee  
28 shall within 30 days of the filing of the opposition conduct a pre-  
29 hearing conference and set a hearing date. If opposition is not

1 filed, a hearing shall be scheduled no later than 60 days after the  
2 receipt of the hearing request. The board shall give each party at  
3 least 10 days' notice of the hearing, either personally or by cer-  
4 tified mail. After a hearing has been scheduled, the parties may not  
5 stipulate to change the hearing date or to cancel, postpone, or con-  
6 tinue the hearing, except for good cause as determined by the board.  
7 After completion of the hearing the board shall close the hearing  
8 record. If a settlement agreement is reached by the parties less than  
9 14 days before the hearing, the parties shall appear at the time of  
10 the scheduled hearing to state the terms of the settlement agreement.  
11 Within 30 days after the hearing record closes, the board shall file  
12 its decision. If the employer controverts a claim on a board-pre-  
13 scribed controversion notice and the employee does not request a  
14 hearing within two years following the filing of the controversion  
15 notice, the claim is denied.

16 \* Sec. 20. 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. 21. 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. 22. 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. 23. 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 25 percent and shall bear interest  
4 at the rate established under AS 45.45.010.

5 \* Sec. 24. 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. 25. AS 23.30.155(e) is amended to read:

24 (e) If any installment of compensation payable without an award  
25 is not paid within seven days after it becomes due, as provided in (b)  
26 of this section, there shall be added to the unpaid installment an  
27 amount equal to <sup>25</sup>50 [20] percent of it <sup>100</sup>or \$300, whichever amount is  
28 greater. This additional amount shall be paid at the same time as,  
29 and in addition to, the installment, unless notice is filed under (d)

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

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

6 (f) If compensation payable under the terms of an award is not  
7 paid within 14 days after it becomes due, there shall be added to that  
8 unpaid compensation an amount equal to <sup>25</sup>50 [20] percent or <sup>100</sup>\$300 which-  
9 ever is greater of it, which shall be paid at the same time as, but in  
10 addition to, the compensation, unless review of the compensation order  
11 making the award is had as provided in AS 23.30.125 and an interlocu-  
12 tory injunction staying payments is allowed by the court.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 (1) area of residence;

25 (2) area of last employment;

26 (3) the state of residence; and

27 (4) the State of Alaska.

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

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

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

3 \* Sec. 32. AS 23.30.185 is amended to read:

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

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

11 Sec. 23.30.190. COMPENSATION FOR PERMANENT PARTIAL IMPAIRMENT.

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

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

29 (c) 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. 34. 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 five years. Temporary partial  
17 disability benefits may not be paid for a period of disability occur-  
18 ring after the date of medical stability.

19 \* Sec. 35. 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. 36. 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 absent from the labor market for 18  
11 months or more of the two calendar years preceding the injury [THE  
12 BOARD DETERMINES THAT THE GROSS WEEKLY EARNINGS AT THE TIME OF THE  
13 INJURY CANNOT BE FAIRLY CALCULATED UNDER (1) OF THIS SUBSECTION], the  
14 board shall [MAY] determine the employee's gross weekly earnings for  
15 calculating compensation by considering the nature of the employee's  
16 work and work history, but compensation may not exceed the employee's  
17 projected 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, <sup>or a full-time ambulance attendant</sup> 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. 37. 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. 38. 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 sea d 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. 39. 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. 40. 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; a mental injury is not considered to arise  
9 out of and in the course of employment if it results from a disciplin-  
10 ary action, work evaluation, job transfer, layoff, demotion, termina-  
11 tion or similar action, taken in good faith by the employer;

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

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

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

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

DATE 98  
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December 31, 1988.

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

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

12 \* Sec. 46. APPLICABILITY. Except for secs. 7, 24, 27, 28, 40, and 44  
13 of this Act, this Act applies only to injuries sustained on or after Ju-  
14 ly 1, 1988.

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

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

19 \* Sec. 49. Sections 1 - 39, and 41 - 46 of this Act take effect July 1,  
20 1988.  
21  
22  
23  
24  
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27  
28

December 31, 1988.

1  
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19 AS 01.10.070(c).

20 \* Sec. 49. Sections 1 - 39, and 41 - 46 of this Act take effect July 1,  
21 1988.

Original sponsor: Labor and Commerce  
Committee

1 IN THE SENATE

BY THE LABOR AND  
COMMERCE COMMITTEE

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

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10 (D) the cost of reemployment benefits;

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

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

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

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

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

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

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

25 (f) An employee is not eligible for reemployment benefits if  
26 (1) the employer offers employment within the employee's  
27 predicted post-injury physical capacities at a wage equivalent to at  
28 least the state minimum wage under AS 23.10.065 or 60 percent of the  
29 worker's gross hourly wages at the time of injury, whichever is

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

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

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

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

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

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

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

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

1           (4) the cost estimate of the reemployment plan, including  
2 provider fees; the amount of tuition, books, tools, and supplies;  
3 transportation; temporary lodging; or job modification devices;  
4           (5) the estimated length of time that the plan will take;  
5           (6) the date the plan will commence;  
6           (7) the estimated time of medical stability as predicted by  
7 the physician;  
8           (8) a detailed description and plan schedule; and  
9           (9) a finding by the rehabilitation specialist that the  
10 inventory under (2) of this subsection indicates that the employee can  
11 be reasonably expected to satisfactorily complete the plan and perform  
12 in a new occupation within the time and cost limitations of the plan.  
13           (i) Reemployment benefits shall be selected from the following  
14 in a manner that ensures remunerative employability in the shortest  
15 possible time:  
16           (1) on the job training;  
17           (2) vocational training;  
18           (3) academic training;  
19           (4) self-employment; or  
20           (5) a combination of (1) - (4) of this subsection.  
21           (j) The employee, rehabilitation specialist, and the employer  
22 shall sign the reemployment benefits plan. If the employer and em-  
23 ployee fail to agree on a reemployment plan, either party may submit a  
24 reemployment plan for approval to the administrator; the adminis-  
25 trator shall approve or deny a plan within 14 days after the plan is  
26 submitted; within 10 days of the decision, either party may seek  
27 review of the decision by requesting a hearing under AS 23.30.110; the  
28 board shall uphold the decision of the administrator unless evidence  
29 is submitted supporting an allegation of abuse of discretion on the

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

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

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

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

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

1 cooperated the employer may terminate reemployment benefits on the  
2 date of noncooperation. Noncooperation means unreasonable failure to  
3 (1) keep appointments;  
4 (2) maintain passing grades;  
5 (3) attend designated programs;  
6 (4) maintain contact with the rehabilitation specialist;  
7 (5) cooperate with the rehabilitation specialist in devel-  
8 oping a reemployment plan and participating in activities relating to  
9 reemployability on a full-time basis;  
10 (6) comply with the employee's responsibilities outlined in  
11 the reemployment plan; or  
12 (7) participate in any planned reemployment activity as  
13 determined by the administrator.  
14 (o) Upon the request of either party, the administrator shall  
15 decide whether the employee has not cooperated as provided under (n)  
16 of this section. A hearing before the administrator shall be held  
17 within 30 days after it is requested. The administrator shall issue a  
18 decision within 14 days after the hearing. Within 10 days after the  
19 administrator files the decision, either party may seek review of the  
20 decision by requesting a hearing under AS 23.30.110; the board shall  
21 uphold the decision of the administrator unless evidence is submitted  
22 supporting an allegation of abuse of discretion on the part of the  
23 administrator; the board shall render a decision within 30 days after  
24 completion of the hearing.  
25 (p) In this section  
26 (1) "administrator" means the reemployment benefits admin-  
27 istrator under AS 23.30.041(a);  
28 (2) "employability" means possessing the ability but not  
29 necessarily the opportunity to engage in employment that is consistent

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

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

4 (A) area of residence;

5 (B) area of last employment;

6 (C) the state;

7 (D) other states;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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determined by the board, time limitations notwithstanding.

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

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

Amended #6 10/20/00

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

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

1 stress.

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

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

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

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

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

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

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

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

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

1 liability is made, any reimbursement required, including interest at  
2 the statutory rate, and all costs and attorneys' fees incurred by the  
3 prevailing employer, shall be made within 14 days of the determina-  
4 tion. X INSERT AS 23.30.155(E) ADOPTED AS # 7

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

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

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

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

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

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

14 (n) If the employer is self-insured, the requirements of (c) and *AS*  
15 (m) of this section apply to the employer. *= 9*

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

22 (p) When an employer pays compensation due under this chapter to  
23 an employee residing in this state, the payment must be made by check  
24 or other negotiable instrument drawn on funds deposited in this state,  
25 or by certified check. *AS 23.30.155 = 10*

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

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

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

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

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

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

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

1 earned in the state;

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

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

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

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

23 (1) area of residence;

24 (2) area of last employment;

25 (3) the state of residence; and

26 (4) the State of Alaska.

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

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

AS 23.30.180  
# 11

P 7 L 28  
 P 24 L 13-29 3 15  
 P 27 1-24  
 P 28 L 19

4/15/88

TASE FORCE'S NEW  
 CHANGES - SHOULD  
 NOT OUT TO LTO  
 REDUCTION USING  
 SEVERAL BILL ACCOUNTING  
 TO M. E. R.

1 disability.

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

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

4 case of disability total in character but temporary in quality, 80

5 percent of the injured employee's spendable weekly wages shall be paid

6 to the employee during the continuance of the disability. Temporary

7 total disability benefits may not be paid for any period of disability

8 occurring after the date of medical stability. Temporary total dis-

9 ability benefits may not be paid for more than two years regardless of

10 continuance of the disability.

23.30.185  
 AS AMEND  
 #12

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

12 Sec. 23.30.190. COMPENSATION FOR PERMANENT PARTIAL IMPAIRMENT.

13 (a) In case of impairment partial in character but permanent in

14 quality, and not resulting in permanent total disability, the compen-

15 sation is \$240,000 multiplied by the employee's percentage of net

16 permanent impairment of the whole person, and payable in a single lump

17 sum, except as otherwise provided in AS 23.30.041, but the compensa-

18 tion may not be discounted for any present value considerations. The

19 percentage of net permanent impairment shall be determined by multi-

20 plying the employee's actual degree of permanent impairment by the

21 appropriate adjustment factor, as follows:

AS AMEND  
 #12

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27 \* Sec. 42. AS 23.30.210 is repealed.

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

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

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

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

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

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

23 \* Sec. 48. Sections 40 and 47 of this Act takes effect immediately  
24 under AS 01.10.070(c). AMF # 17

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

Original sponsor: Labor and Commerce  
Committee

1 IN THE SENATE

BY THE LABOR AND  
COMMERCE COMMITTEE

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

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 (h) The department shall [MAY] adopt [IDENTICAL] rules for all  
25 panels, and procedures for the periodic selection, retention, and re-  
26 <sup>2014</sup> ~~removal of~~ rehabilitation specialists or physicians under AS 23.30.041  
27 and 23.30.095, and shall [MAY] adopt regulations to carry out the  
28 provisions of this chapter. Process and procedure under this chapter  
29 shall be as summary and simple as possible. The department, the board

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10 (D) the cost of reemployment benefits;

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

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

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

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

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

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

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

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

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

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28

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

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

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

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

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

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

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

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

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

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

5           (6) the date the plan will commence;

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

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

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

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

16           (1) on the job training;

17           (2) vocational training;

18           (3) academic training;

19           (4) self-employment; or

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

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

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

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

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

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

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

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

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

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

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

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

25 (p) In this section

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

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

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

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

4 (A) area of residence;

5 (B) area of last employment;

6 (C) the state;

7 (D) other states;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 determined by the board, time limitations notwithstanding.

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

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

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

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

1 stress.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

14 (n) If the employer is self-insured, <sup>or UNINSURED</sup> the requirements of (c) and  
15 (m) of this section apply to the employer.

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

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

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

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

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

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

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

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

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

1 earned in the state;

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

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

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

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

23 (1) area of residence;

24 (2) area of last employment;

25 (3) the state of residence; and

26 (4) the State of Alaska.

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

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

1 disability.

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

3 Sec. 23.30.185. COMPENSATION FOR TEMPORARY TOTAL DISABILITY. In  
4 case of disability total in character but temporary in quality, 80  
5 percent of the injured employee's spendable weekly wages shall be paid  
6 to the employee during the continuance of the disability. Temporary  
7 total disability benefits may not be paid for any period of disability  
8 occurring after the date of medical stability. [Temporary total dis-  
9 ability benefits may not be paid for more than two years regardless of  
10 continuance of the disability. ]

11 \* Sec. 33. AS 23.30.190 is repealed and reenacted to read:

12 Sec. 23.30.190. COMPENSATION FOR PERMANENT PARTIAL IMPAIRMENT.  
13 (a) In case of impairment partial in character but permanent in  
14 quality, and not resulting in permanent total disability, the compen-  
15 sation is ~~\$240,000~~ <sup>\$135,000</sup> multiplied by the employee's percentage of net  
16 permanent impairment of the whole person, and payable in a single lump  
17 sum, except as otherwise provided in AS 23.30.041, but the compensa-  
18 tion may not be discounted for any present value considerations. [ The  
19 percentage of net permanent impairment shall be determined by multi-  
20 plying the employee's actual degree of permanent impairment by the  
21 appropriate adjustment factor, as follows:

Degree of Actual Impairment	Adjustment Factor
0 - 5	0
6	0.060
7	0.120
8	0.180
9	0.240
10	0.300
11	0.333

1	12	0.366
2	13	0.399
3	14	0.432
4	15	0.465
5	16	0.495
6	17	0.540
7	18	0.585
8	19	0.630
9	20	0.675
10	21	0.680
11	22	0.688
12	23	0.696
13	24	0.704
14	25	0.712
15	26	0.740
16	27	0.765
17	28	0.790
18	29	0.815
19	30	0.840
20	31	0.880
21	32	0.910
22	33	0.940
23	34	0.970
24	35-100	1.000

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25 (b) All determinations of the existence and degree of permanent  
 26 impairment shall be made strictly and solely under the whole person  
 27 determination as set out in the American Medical Association Guides to  
 28 the Evaluation of Permanent Impairment, except that an impairment  
 29 rating may not be rounded to the next five percent. The board shall

1 adopt a supplementary recognized schedule for injuries that cannot be  
2 rated by use of the American Medical Association Guides.

3 (c) An employee with an actual permanent impairment as deter-  
4 mined under (b) of this section may not receive less than \$250 for the  
5 impairment.

6 (d) The impairment rating determined under (a) of this section  
7 shall be reduced by a permanent impairment that existed before the  
8 compensable injury. If the combination of a prior impairment rating  
9 and a rating under (a) of this section would result in the employee  
10 being considered permanently totally disabled, the prior rating does  
11 not negate a finding of permanent total disability.

12 \* Sec. 34. AS 23.30.200 is amended to read:

13 Sec. 23.30.200. TEMPORARY PARTIAL DISABILITY. In case of tempo-  
14 rary partial disability resulting in decrease of earning capacity the  
15 compensation shall be 80 percent of the difference between the injured  
16 employee's spendable weekly wages before the injury and the wage-  
17 earning capacity of the employee after the injury in the same or  
18 another employment, to be paid during the continuance of the disabili-  
19 ty, but not to be paid for more than <sup>FIVE</sup> two [FIVE] years. Temporary  
20 partial disability benefits may not be paid for a period of disability  
21 occurring after the date of medical stability.

22 \* Sec. 35. AS 23.30.200 is amended by adding a new subsection to read:

23 (b) The wage-earning capacity of an injured employee is deter-  
24 mined by the actual spendable weekly wage of the employee if the  
25 actual spendable weekly wage fairly and reasonably represents the  
26 wage-earning capacity of the employee. The board may, in the interest  
27 of justice, fix the wage-earning capacity that is reasonable, having  
28 due regard to the nature of the injury, the degree of physical impair-  
29 ment, the usual employment, and other factors or circumstances in the

1 case that may affect the capacity of the employee to earn wages in a  
2 disabled condition, including the effect of disability as it may  
3 naturally extend into the future.

4 \* Sec. 36. AS 23.30.220(a) is amended to read:

5 (a) The spendable weekly wage of an injured employee at the time  
6 of an injury is the basis for computing compensation. It is the  
7 employee's gross weekly earnings minus payroll tax deductions. The  
8 gross weekly earnings shall be calculated as follows:

9 (1) The gross weekly earnings are computed by dividing by  
10 100 the gross earnings of the employee in the two calendar years  
11 immediately preceding the injury.

12 (2) If the employee had no earnings during the two calendar  
13 years preceding the injury or was voluntarily absent from the labor  
14 market for 18 months or more of the two calendar years preceding the  
15 injury [THE BOARD DETERMINES THAT THE GROSS WEEKLY EARNINGS AT THE  
16 TIME OF THE INJURY CANNOT BE FAIRLY CALCULATED UNDER (1) OF THIS  
17 SUBSECTION], the board shall [MAY] determine the employee's gross  
18 weekly earnings for calculating compensation by considering the nature  
19 of the employee's work and work history, but compensation may not  
20 exceed the employee's projected gross weekly earnings at the time of  
21 injury.

22 (3) If an employee when injured is a minor, an apprentice,  
23 or a trainee in a formal training program, as determined by the board,  
24 whose wages under normal conditions would increase during the period  
25 of disability, the projected increase may be considered by the board  
26 in computing the gross weekly earnings of the employee.

27 (4) If the employee is injured while performing duties as a  
28 volunteer ambulance attendant, policeman, or fireman, the gross weekly  
29 earnings for calculating compensation shall be the minimum gross

1 weekly earnings paid a full-time ambulance attendant, policeman, or  
2 fireman employed in the political subdivision where the injury oc-  
3 curred, or, if the political subdivision has no full-time ambulance  
4 attendants, policemen, or firemen, at a reasonable figure previously  
5 set by the political subdivision to make this determination but in no  
6 case may the gross weekly earnings for calculating compensation be  
7 less than the minimum wage computed on the basis of 40 hours work per  
8 week.

9 \* Sec. 37. AS 23.30.225 is amended by adding a new subsection to read:

10 (c) If employer contributions to a qualified pension or profit  
11 sharing plan have been included in the determination of gross earnings  
12 and the employee is receiving pension or profit sharing payments,  
13 weekly compensation benefits payable under this chapter shall be  
14 reduced by the amount paid or payable to the injured worker under the  
15 plan for any week or weeks during which compensation benefits are also  
16 payable. The amount of the reduction may not in any week exceed the  
17 increase in weekly compensation benefits brought about by the inclu-  
18 sion of employer contributions to a qualified pension or profit shar-  
19 ing plan in the determination of gross earnings.

20 \* Sec. 38. AS 23.30 is amended by adding a new section to read:

21 Sec. 23.30.247. DISCRIMINATION PROHIBITED. (a) An employer may  
22 not discriminate in hiring, promotion, or retention policies or prac-  
23 tices against an employee who has in good faith filed a claim for or  
24 received benefits under this chapter. An employer who violates this  
25 section is liable to the employee for damages to be assessed by the  
26 court in a private civil action.

27 (b) This section may not be construed to prevent an employer  
28 from basing hiring, promotion, or retention policies or practices on  
29 considerations of the employee's safety practices or the employee's

1 physical and mental abilities; nor may this section be construed so as  
2 to create employment rights not otherwise in existence.

3 (c) This section may not be construed to prohibit an employer  
4 from requiring a prospective employee to fill out a preemployment  
5 questionnaire or application regarding the person's prior health or  
6 disability history as long as it is meant to either document written  
7 notice for second injury fund reimbursement under AS 23.30.205(c) or  
8 to determine whether the employee has the physical or mental capacity  
9 to meet the documented physical or mental demands of the work.

10 \* Sec. 39. AS 23.30.265(15) is amended to read:

11 (15) "gross earnings" means periodic payments, by an em-  
12 ployer to an employee for employment before any authorized or lawfully  
13 required deduction or withholding of money by the employer, including  
14 compensation that is deferred at the option of the employee, and  
15 excluding irregular bonuses, reimbursement of expenses, expense allow-  
16 ances, and any benefit or payment to the employee that is not fully  
17 taxable to the employee during the pay period, except that the total  
18 amount of contributions made by an employer to a qualified pension or  
19 profit sharing plan during the two plan years preceding the injury,  
20 multiplied by the percentage of the employee's vested interest in the  
21 plan at the time of injury, shall be included in the determination of  
22 gross earnings; the value of room and board if taxable to the employee  
23 may be considered in determining gross earnings; however, the value of  
24 room and board that would raise an employee's gross weekly earning  
25 above the state [ALASKA] average weekly wage at the time of injury may  
26 not be considered;

27 \* Sec. 40. AS 23.30.265(17) is amended to read:

28 (17) "injury" means accidental injury or death arising out  
29 of and in the course of employment, and an occupational disease or

1 infection which arises naturally out of the employment or which natu-  
2 rally or unavoidably results from an accidental injury; "injury" [,  
3 AND] includes breakage or damage to eyeglasses, hearing aids, den-  
4 tures, or any prosthetic devices which function as part of the body  
5 and further includes an injury caused by the wilful act of a third  
6 person directed against an employee because of the employment; "in-  
7 jury" does not include mental injury caused by mental stress unless it  
8 is established that (A) the work stress was extraordinary and unusual  
9 in comparison to pressures and tensions experienced by individuals in  
10 a comparable work environment, and (B) the work stress was the predom-  
11 inant cause of the mental injury; the amount of work stress shall be  
12 measured by actual events rather than misperceptions by the employee;  
13 a mental injury is not considered to arise out of and in the course of  
14 employment if it results from a disciplinary action, work evaluation,  
15 job transfer, layoff, demotion, termination or similar action, taken  
16 in good faith by the employer;

17 \* Sec. 41. AS 23.30.265 is amended by adding a new paragraph to read:

18 (34) "medical stability" means the date after which further  
19 objectively measurable improvement from the effects of the compensable  
20 injury is not reasonably expected to result from additional medical  
21 care or treatment, notwithstanding the possible need for additional  
22 medical care or the possibility of improvement or deterioration re-  
23 sulting from the passage of time; medical stability shall be presumed  
24 in the absence of objectively measurable improvement for a period of  
25 45 days; this presumption may be rebutted by clear and convincing  
26 evidence.

27 \* Sec. 42. AS 23.30.210 is repealed.

28 \* Sec. 43. TRANSITIONAL PROVISIONS. Notwithstanding AS 23.30.040(b),  
29 as amended by sec. 8 of this Act, and AS 23.30.155(m), as amended by

1 sec. 27 of this Act, on or before March 1, 1989, each employer that is  
2 subject to those sections shall file a report and make the appropriate  
3 contribution for all claims existing as of December 31, 1988. The period  
4 covered in the report shall be from the date of the termination report or  
5 the last anniversary report filed, if one has been filed, through Decem-  
6 ber 31, 1988.

7 \* Sec. 44. TEMPORARY RATE REDUCTION. Notwithstanding AS 21.39.030, an  
8 insurer providing workers' compensation insurance in the state shall pro-  
9 vide at least a six percent reduction in the premium rate charged within  
10 the state for workers' compensation insurance, for the period beginning  
11 July 1, 1988, and ending January 1, 1990.

12 \* Sec. 45. TRANSITIONAL PROVISION. Notwithstanding AS 23.30.041(p), as  
13 amended by sec. 9 of this Act, for the period from July 1, 1988, until  
14 June 30, 1989, the term "rehabilitation specialist" as used in AS 23.30.041  
15 includes a person who was actively employed for at least one year before  
16 June 30, 1988, in providing rehabilitation services to an injured worker  
17 receiving benefits under AS 23.30.

18 \* Sec. 46. APPLICABILITY. Except for secs. 8, 25, 27, 28, 40, and 44  
19 of this Act, this Act applies only to injuries sustained on or after  
20 July 1, 1988.

21 \* Sec. 47. Section 40 of this Act applies to injuries sustained on or  
22 after the effective date of sec. 40 of this Act.

23 \* Sec. 48. Sections 40 and 47 of this Act takes effect immediately  
24 under AS 01.10.070(c).

25 \* Sec. 49. Sections 1 - 39, and 41 - 46 of this Act take effect July 1,  
26 1988.