

SB

322

(FILE 3)

SECTIONAL ANALYSIS OF WORKERS' COMPENSATION  
TASK FORCE SB 322 AND HB 352

Section 1. Parts A and B:

This intent language is meant to give a clear message to the courts that they are not to construe workers' compensation laws in favor of any party but to be fair and to decide cases upon their merit and always within the confines of the written statute. It is also intended that the Board possess the weight of fact-finding authority and that its decision, if supported by evidence, is conclusive.

Part C:

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

Section 2. This section gives the Department the authority to establish and maintain a roster of rehabilitation specialists or physicians that are needed for dispute resolutions under two other sections: AS 23.30.041 (vocational rehabilitation) and AS 23.30.095 (medical benefit).

Section 3. This section mandates the department to adopt new regulations if one is declared invalid by the supreme court.

It is our intention to insure that any new regulations adopted under this section have retroactive as well as prospective application, so that everyone is treated equally. We question whether the legislative drafter's language fulfills this intent, and request that a definitive answer be obtained.

Section 4. This section provides the employer with protection against an employee who falsely represents his/her physical condition, and the employer relies upon knowledge of his/her physical condition for job placement, and the employee is then injured. The intent of this section is to uphold the Board's decision in Robinett v. Enserch Alaska Construction, AWCB No. 870210 (September 4, 1987), and is a contract of hire issue.

Sectional Analysis of SB 322 and HB 352

- Section 5. This section is a minor change made by the administration to provide more timely payments to the Second Injury Fund.
- Section 6. In this section we have completely revised the vocational rehabilitation statute.

Parts A and B:

This subsection defines a reemployment services administrator and his duties. This reemployment services administrator is selected by the Board and serves to perform several functions, some of which include enforcing regulations, recommending regulations, establishing performance and reporting criteria to be adopted by the Board, enforcing the reemployment benefits provided under AS 23.30.041, and reviewing on an annual basis the performance of the rehabilitation specialists. The reemployment services administrator is also charged with submitting to the Department a variety of reports relating to vocational rehabilitation statistics.

Part C:

This is a guide to the employee's opportunity to enter into a voluntary rehabilitation program. This sets forward an eligibility evaluation to establish the employee's eligibility for future vocational rehabilitation services. It is important to note here that either an employee or an employer may request the eligibility evaluation. The rehabilitation specialist that is chosen to do the eligibility evaluation comes from a roster maintained by the reemployment services administrator. This system should provide for a fair evaluation to each employee without any bias toward a specific rehabilitation specialist. Unfortunately the dispute resolution process for eligibility disputes was omitted during the drafting of the bill.

Part D:

If found eligible for rehabilitation benefits the employee is responsible to request in writing his/her desire to enter into a vocational rehabilitation program. Part D also sets out the criteria under which an employee will be found eligible for such a program.

Part E:

This section specifically speaks to an employee's ineligibility for reemployment benefits. If the employer offers employment that is within the employee's physical capacities at a wage equivalent to 60% of the worker's gross hourly wages at the time of the injury and that new employment allows the employee to be employable in other jobs that exist in the labor market, then the employee is not eligible for reemployment benefits. If the employee has been previously rehabilitated in a former workers' compensation claim and then proceeded to return to work in the same or similar occupation, the new employer is not responsible for further rehabilitation. This criteria should be an incentive for employers to return to work an injured employee, if possible.

Part F:

This part outlines the choice of reemployment specialist and the employee's and employer's involvement in that choice. It also outlines the goals of the reemployment plan and the criteria that must be met.

Part G:

This part lists the various outcomes of a reemployment program. These must be achieved in the shortest possible time and insure remunerative employability but not remunerative employment. This is meant to discourage elaborate rehabilitation plans and encourage an injured worker to return to the work force.

Part H:

This discusses who are parties to this contract.

Part I:

This part addresses non-cooperation by the injured worker. Not included here, although it should be, is the resolution process we propose in a situation where there is non-cooperation.

Part J.

This part outlines time limits in the reemployment benefits process. Time limits are: (1) benefits may

*RE-employment  
Programs -*

not extend past two years from the date of plan acceptance at the discretion of the employer; (2) the employee, if electing reemployment benefits, must do so within 60 days of the employers notice of injury. (If the employee is in fact unable to make this selection because of an unusual physical injury perhaps in a coma or in the hospital with severe injuries, then there is an exception to this 60-day limitation); (3) the chosen rehabilitation specialist has 30 days to determine the employee's eligibility for reemployment benefits (if there are unusual or extenuating circumstances the reemployment services administrator may grant additional time); (4) the employee and employer have 10 days to select a rehabilitation specialist; (5) the plan must be developed and submitted within 90 days of the determination of eligibility; (6) is to caution against employees that would not be physically able to engage in the plan and allow them to do so upon their physician's approval. All of these time lines are intended to assist the employee in a speedy rehabilitation plan and not to prolong an employee's entrance back into the work force. This section also sets forth various disputes and resolution processes with final decision-making power by the Board.

*Sooner They  
Need to  
Return to  
Work!*

Part K:

This discusses costs of the plan and compensation to the employee while in the plan. The total cost of the plan shall not exceed \$10,000.00. In order to encourage the employee to complete the plan, the employee's temporary total disability benefits cease after he/she reaches medical stability. But if these benefits cease before the plan is complete, we have established a mechanism whereby the permanent impairment benefits will then be paid at the temporary total disability rate. In order to further protect the employee if the permanent impairment benefits are exhausted, the employee will continue to be paid at a rate of wages equal to 60% of the employee's spendable weekly wages not exceeding \$525.00. Any remaining permanent impairment benefits after the employee has completed the plan will be paid in a single lump sum. The purpose of this section is to provide the employee with the necessary money to enable for self-support during the rehabilitation program.

*NECESSARY TO  
COMPLETE PLAN!*

Part L:

In this part of the vocational rehabilitation statute we are trying to establish some professional standards regarding who is allowed to complete eligibility evaluations.

Part M:

In this part we have included several definitions specific to vocational rehabilitation.

(1) Employability is defined to mean an employee has the ability to engage in employment but he/she hasn't necessarily achieved employment. (2) Labor markets have been expanded to include geographical areas outside of the State or in a different part of the State. (3) Further, there are definitions of physical capacity and physical demands. (4) A rehabilitation specialist is defined as a Certified Insurance Rehabilitation Specialist. (5) Remunerative employability is defined in this section also.

Note on Section 6:

As part of the legislative process we moved quickly from a work draft to a bill. There are certain sections of the vocational rehabilitation statute, AS 23.30.041, that are erroneous, and items not included in the bill. It is our intent to request the opportunity to look at this section and recommend some changes consistent with our intent. This is applicable only to AS 23.30.041.

*REQUEST  
TO LOOK AT  
SECTION AT  
THIS  
POINT*

Section 7. This section was amended to add the additional protection for an employer whose employee's claim is barred under AS 23.30.020(b) (false representation as to physical condition) from being sued in a court action. (See Section 4.)

Sections 8, 9, 10, 11, 12, and 13 all speak to medical benefits as provided under the Workers' Compensation Act. Our intent was first to try and curb abuses that have occurred under this system and the cost of those abuses. Currently Alaska, with medical costs at 38%, has the highest medical costs of any state in the nation (percentage of total costs of workers' compensation).

Section 8. The employee in this section still has the opportunity to choose a physician but is limited to a single change of a treating physician. An additional change can be made only with written consent of the employer. We are not intending to hamper an employee's attending physician from referring that employee to a specialist when necessary.

*?*  
*TREATING  
PHYSICIAN  
(1 CHANGE)  
+ SPECIALIST*

Sectional Analysis of SB 322 and HB 352

Section 9. This section clarifies that, at reasonable times throughout disability, the employee must submit to an examination by a physician or surgeon of the employer's choice and establishes a presumption of reasonableness.

Section 10. This section allows the employer to check on the reasonableness of treatment without discontinuing the employee's medical treatment by controversion. This section also sets forth a process of dispute resolution by providing the employer with the right to a separate evaluation.

Section 11. This section adds language establishing a medical fee standard as usual, customary, and reasonable. The intent was for fees to be paid using HIAA (Health Insurance Association of America) as a standard for what is usual, customary and reasonable. We allow the Board to determine what is used as the standard because in subsequent years HIAA may not be considered to be the best choice of a standard. (HIAA is a national service which provides medical fees by zip code). Physicians are familiar with this standard as it is normal for usual, customary, and reasonable fees to be paid in non-occupational benefits. Also, our intent is that in no case would an employee be charged for any medical services. The physician will be paid at 100% of the HIAA's usual, customary and reasonable fee.

*fees - they can  
only charge these  
fees, all fees  
may not  
exceed  
this*

Section 12. This section is repealed and reenacted authorizing the board to appoint or contract with a medical services review committee to assist and advise on the appropriateness, necessity and cost of medical and related services.

Section 13. This new subsection gives the Board the opportunity to select a physician to resolve a medical dispute from a list established and maintained by the Board. It is presumed that greater weight be given to the opinion of that independent medical examiner, and he will be presumed to be correct unless there is absolutely clear and convincing objective evidence to the contrary. Also, this section provides some protection to the selected physician in the rendering of his opinion. We felt it was very important to provide a dispute resolution process in the new statute to resolve medical issues by medical experts.

*I.M.E.-*

Section 14. This section codifies the board's interpretation of the meaning of compensation for statute of limita-

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

Section 15. This section shifts the burden of proof to the employee for establishing a compensable claim for mental injury resulting from work-related stress, consistent with the amendment to AS 23.30.165(17) found in section 32.

Section 16. This new subsection enforces findings by the Board to be conclusive if supported by any evidence. This is a message to the higher courts.

Section 17. This section codifies the board's interpretation of the meaning of compensation for statute of limitations purposes under AS 23.30.130, which provides that a request for modification of a compensation award must be made within one year after the last payment of disability or death benefits. This is consistent with the amendment to AS 23.30.105 found in section 14.

Section 18. This section reflects changes consistent with the repeal and reenactment of AS 23.30.155(m) found in section 20, concerning the reduction of reporting penalties.

Section 19. This section was amended to assure that an employee continues to receive benefits if his/her claim is controverted solely on the grounds that one or more employer is liable. We were concerned about cases where an employee had a legitimate claim but was not receiving benefits because two insurers were fighting over who should pay. We have added a penalty in the form of attorney's fees and costs and interest as a further disincentive.

Section 20. This section repeals and reenacts employer/insurer reporting provisions requiring that an annual, instead of an anniversary, report be filed with the board by March 1 of each year showing the total

IS THAT PRESENTLY IN LAW?  
DISPUTE OF INSURANCE COMPANY

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

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

Because of the insurers' past reporting record, we will also be recommending changes that will include a penalty provision for failure to file an annual report.

Section 21. The intent here is to limit the weekly compensation rate for recipients residing inside or outside the state to a maximum of \$700. The bill unfortunately doesn't address the maximum "outside the state" and needs to be corrected. It also allows for an employee who can document wages to receive a minimum of the lesser of his spendable weekly wage or \$154 per week. An employee who does not document his wages will receive no less than \$110 per week.

*REDUCTION  
ON COSTS  
IF THEY MOVE  
OUT OF STATE*

In Part B of Section 21 the weekly rate of compensation is adjusted based upon the cost of living of the locality in which the recipient resides compared to the cost of living of the State of Alaska. This section addresses the constitutionality under Alaska Pacific Assurance Co. v. Brown, 687 P.2d 264 (Alaska 1984). It allows the Board the opportunity to pick what shall be used as the standard for cost of living indexes.

Four corrections that need to be made in this section are deletion of the statement "for a recipient residing in the state" at line 29, and insert "average" before cost of living in lines 20 and 21 on page 19, and line 5 on page 20. Substitute the term "gross" for average and "earnings" for wage in line 25 and "are" for is in line 26.

Sectional Analysis of SB 322 and HB 352

- Section 22. This section was amended to conform AS 23.30.041's definition of a labor market and to broaden the market for the employee's service in determining permanent total disability.
- Section 23. This is a new section that further clarifies that a failure to satisfy the remunerative employability definition as a wage goal as defined in AS 23.30.041 does not mean that an employee is automatically permanently totally disabled.
- Section 24. This section defines when permanent impairment benefits begin. In no case will temporary total disability benefits be paid beyond the date of medical stability, and temporary total disability benefits may not be paid for more than two years regardless of the continuance of the disability. Our intent here was to disallow the continuance of temporary total disability benefits as it is under the current system and also to conform with the limitation as provided in AS 23.30.041 where a reemployment plan may not exceed two years.
- Section 25. This section was repealed and reenacted. In this section permanent partial impairment payments are based upon the "whole man" concept as set out in the American Medical Association's Guides to the Evaluation of Permanent Impairment. Compensation paid to claimants under this section is based upon total disability of \$240,000 multiplied by the claimant's percentage of net permanent impairment. Impairment levels below 30% are further adjusted by a factor less than one, but in no case is the impairment compensation less than \$250. The intent of this section was to redistribute benefits so that those employees who have a greater percentage of injury receive awards commensurate with their injuries whereas those with minor injuries receive a proportionately less amount of compensation.
- Section 26. This section provides for payment of temporary partial disability benefits only up to the time of medical stability, consistent with the amendment to AS 23.30.185 found in section 24. It also reduces the maximum period for paying temporary partial disability benefits from five to two years.

In the last sentence of this section the statement "unless otherwise provided under AS 23.30.041" should be deleted.

Section 27. This is a new subsection intended to further define what the wage-earning capacity of an injured employee is. It also allows the Board to fix the wage-earning capacity based upon reasonable regard for the nature of the injury, degree of physical impairment, usual employment, and other factors and circumstances.

Section 28. This section was amended to define what will be used to compute the spendable weekly wage of an employee. Specifically, we were addressing several Supreme Court decisions which fixed spendable weekly wage on future earnings. These cases, such as Johnson v. RCA-OMS, 681 P.2d 905 (Alaska 1984), and its progeny, have made the determination of spendable weekly wage impossible because it is based on the predictability of what someone might be making at some future point in time. We intend to clearly base the determination of spendable weekly wage on the employees' past earnings history except under some very specific cases listed in AS 23.30.220(a)(2) and (3). We believe this change will markedly decrease the amount of litigation over determination of spendable weekly wage.

PREDICTABLE  
AMOUNT  
OF MONEY  
EARNING CAPACITY

Section 29. This section is an offset for a future section, section #31, which defines what gross earnings are. This section allows the employer to offset those contributions made to a qualified pension or profit sharing plan that have in fact been paid or are payable to an injured worker under the plan for any week or weeks during which compensation benefits are also available.

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Section 30. This section addresses and prohibits discrimination by an employer in hiring, promoting, or firing an employee just because they have filed a workers' compensation claim. This does not prevent an employer from basing his hiring, firing, or promotion practices or policies on the consideration of safety and safe practices. It also allows the employer to require a prospective employee to fill out a pre-employment questionnaire and to use that questionnaire as documentation for the Second Injury Fund or to determine if the employee has the physical or medical capacity to meet the documented physical or medical demands of a particular job.

Section 31. This section amends the definition of employee gross earnings to include total contributions by an employer to a qualified pension or profit sharing plan for the two prior years multiplied by the

PENSION +  
PROFIT  
SHARING  
PLAN!

percentage of vested interest at the time of injury. This change is consistent with the board's interpretation of the Supreme Court's ruling in Ragland v. Morrison-Knudsen Co., Inc., 724 P.2d 579 (Alaska 1986).

Section 32. This section amends the definition of injury by providing specific language concerning mental injury caused by mental stress. This section is meant to address the ever increasing possibility of stress-related workers' compensation claims. Such a claim is Wade v. Anchorage School District, 741 P.2d 634 (Alaska 1987). In the Wade case the employee perceived that work stress caused him to have a mental injury and therefore he was injured. Under this amendment work stress does not cause a mental injury unless the work stress was extraordinary and unusual in the profession and a predominant cause. The burden, unlike other injuries, is placed on the employee to prove the mental injury is work connected.

STRESS

Section 33. This section adds a new paragraph to define what is meant by medical stability. This is consistent with changes made in Sections 6, 24, and 26. This is in direct opposition to current legislation where temporary disability benefits are paid until employment or release for employment regardless of medical stability.

Section 34. This section repeals provisions that are unnecessary or inconsistent with the repeal and reenactment of AS 23.30.200(b) found in section 27.

Section 35. This section is an administrative section amended to require employers to file a annual rather than an anniversary report. The purpose of this section was to allow us to have future opportunity to have correct and complete reporting information which we have not had in the past.

Section 36. This section specifically mandates that only future injuries sustained after July 1, 1988 will come under the jurisdiction of this proposed legislation. This legislation will not be considered retrospective in any way except for the changes in reporting requirements. (See Sections 5, 18, 20 and 35).

Section 37. This section provides that the Act takes effect July 1, 1988.

It may be necessary to change the effective date for some section of this bill.

STATE OF ALASKA  
THE LEGISLATURE

POUCHY STATE CAPITOL  
JUNEAU, ALASKA 99811  
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

February 19, 1988

SUBJECT: Workers' Compensation - CSSB 322 (L&C)

TO: Senator Tim Kelly  
Chairman  
Senate Labor and Commerce Committee

FROM: Michael F. Ford *M.F.*  
Legislative Counsel

The following is a sectional analysis of CSSB 322 (L&C).

Section 1 - Establishes the legislative intent of the bill.

Section 2 - Creates additional departmental authority regarding rehabilitation specialists and physicians who are involved in rehabilitation.

Section 3 - Allows the department to adopt new regulations if an existing regulation is held invalid by the state supreme court.

Section 4 - Precludes certain employees who knowingly make a false statement on an employment application from receiving compensation benefits.

Section 5 - Requires an insurer to provide notice to the department, if certain coverage is extended.

Section 6 - Requires that worker's compensation insurance premiums be paid semiannually, if requested by the insured.

Section 7 - Alters the time for an employer to make required contributions to the second injury fund.

Section 8 - Requires that administrative expenses of the second injury fund must be paid from the second injury fund.

Section 9 - Establishes the responsibility and authority of the department regarding rehabilitation of injured workers. Establishes specific eligibility criteria requirements for rehabilitation plans, specifies reemployment benefits, and duties of the employee while receiving reemployment benefits. Provides time limits for reemployment plans, limits the cost to the employer of the plan, and provides that only a rehabilitation specialist may perform certain casework. Also includes a definitions subsection.

Section 10 - Establishes that the liability of the employer is limited to workers compensation even if the employee is barred from receiving compensation because the employee knowingly made a false employment application.

Section 11 - Limits the employee's designation of a physician to the state where the employee resides. Provides the employee may make only one change of physician without consent of the employer and requires notice of the change.

Section 12 - Establishes that a written plan is required for continuing medical treatment. Specifies the contents of the treatment plan and requires certain documentation.

Section 13 - Provides that the employee shall submit to examination by a physician chosen by the employer, and establishes a presumption of reasonableness for certain examinations.

Section 14 - Establishes a fee standard for medical treatment.

Section 15 - Authorizes the board to appoint a medical services review committee to assist the board in issues regarding the cost of medical services.

Section 16 - Establishes procedures in the event of conflicting medical opinions. Provides for independent medical examination and creates a presumption that this opinion is correct.

Section 17 - Specifies that a claim may be filed within two years of the last payment of certain benefits.

Section 18 - Provides that the presumption of compensability does not apply to a mental injury resulting from work related stress.

Section 19 - Establishes that a finding of fact made by the board in a compensation order and supported by any evidence, is conclusive unless the court specifically finds that a reasonable person could not have reached the conclusion made by the board, if the employer and employee have also met their proof requirements.

Section 20 - Specifies that the board may review a compensation case brought within one year after the last payment of certain benefits.

Section 21 - Provides that certain insurer or adjuster penalties may be reduced as provided under AS 23.30.155(m).

Section 22 - Requires the most recent employer to make temporary disability payments when there is a dispute as to which employer is responsible for compensation.

Section 23 - Requires the employer to submit a report regarding total compensation paid and provides for a reduction in certain late report penalties.

Section 24 - Provides that certain reporting requirements are the duty of the employer, if the employer is self-insured.

Section 25 - Establishes the weekly rate of compensation for disability or death for in-state and out-of-state recipients. Requires the board to establish regulations for determining living costs.

Section 26 - Establishes a market for an employee's services in determining permanent total disability. Requires a reduction in permanent total disability benefits if an award for permanent partial disability has been received.

Section 27 - Provides that failure to achieve remunerative employment as defined in AS 23.30.041(m)(7) does not by itself constitute permanent total disability.

Section 28 - Establishes limits on payment of temporary total disability.

Section 29 - Provides compensation for permanent partial impairment and establishes guidelines for determining the existence and degree of impairment.

Section 30 - Limits payment of temporary partial disability compensation to two years or the date of medical stability.

Section 31 - Provides for determination of an employee's wage earning capacity, for purposes of temporary partial disability compensation.

Section 32 - Provides for calculation of an employee's spendable weekly wage. Limits the compensation due an employee who had no earnings during the two calendar years preceding injury, or was voluntarily absent for 18 months or more of the previous two years.

Section 33 - Establishes a reduction in weekly compensation benefits when an employer makes a contribution to a pension or profit sharing plan of the employee.

Section 34 - Prohibits discrimination against an employee who files a good faith claim for compensation benefits.

Section 35 - Redefines "gross earnings" to include certain pension and profit sharing contributions.

Section 36 - Redefines "injury" to exclude certain mental injuries.

Section 37 - Definition of medical stability.

Section 38 - Repeals existing wage earning determination for partial disability compensation.

Section 39 - Transitional provision for contributions to the second injury fund.

Section 40 - Applicability section.

Section 41 - Effective date.

## ALASKA

### SUMMARY OF KEY PROVISIONS OF HB352 AND SB322

#### 1. STATEMENT OF INTENT

- a. Abolishes the common law rule of liberal construction on behalf of the claimant, and substitutes a standard based upon fairness to all parties.
- b. Provides that the Board's findings of fact are conclusive if supported by any evidence.
- c. Provides that the intent of section 20.30.175 (adjustment to benefits for claimants residing outside Alaska) is to recognize the high cost of living in Alaska, reduce disincentives to return to work, and to remove obstacles to the utilization of vocational rehabilitation.

#### 2. VOCATIONAL REHABILITATION BENEFITS

- a. The entire existing vocational rehabilitation provisions are deleted and completely rewritten.
- b. The board is to select a "reemployment services administrator". This administrator is to adopt regulations and enforce the quality and effectiveness of the reemployment benefits under the workers compensation act.
- c. The vocational rehabilitation program is optional with respects to eligible employees. Employers or employees can request an eligibility evaluation.
- d. An employee is eligible for vocational rehabilitation if a doctor finds permanent physical capacities less than the physical demands of the employee's job.
- e. An employee is not eligible for vocational rehabilitation if the employer offers a job within the employee's predicted post-injury capacities at a wage equivalent to 60 percent of the former hourly wage and this job prepares the employee to be employable in other jobs in the labor market. In addition, employees are not eligible if they have been previously injured and rehabilitated to a similar occupation in terms of physical demands.
- f. The employer and employee must agree upon a rehabilitation specialist or one will be selected by the administrator. The employer and employee are to agree upon a reemployment plan or one will be selected by the administrator.

- g. Non-cooperation on the part of the employee in a rehabilitation plan shall result in a termination of the reemployment benefits.
- h. Time constraints are enacted regarding the election of the eligibility evaluation (60 days from injury), the determination of eligibility (30 days from request), selection of a specialist (10 days from determination of eligibility) and approval of the plan (90 days from determination of eligibility).
- i. The cost of the reemployment plan may not exceed \$10,000 and may not exceed two years. Temporary total benefits are to be paid until the employee is medically stationary. After medical stability, permanent impairment benefits are to be paid at the temporary total rate during the continuance of the plan. If the plan is completed prior to the exhaustion of the permanent impairment benefits, the remainder is to be paid in a lump sum. If permanent impairment benefits are exhausted prior to the completion of the plan additional weekly benefits are to be paid. Such additional benefits are to be equal to 60 percent of the employee's spendable wage not to exceed \$525. The costs of the reemployment specialist are in addition to the costs of the plan. All vocational rehabilitation expenses are to be paid by the employer.

3. BENEFIT FORMULA CHANGES

- a. The maximum weekly benefit is reduced from the current \$1108 to \$700. The minimum weekly benefit remains at \$110. However, if the employee can document his wages, the minimum is increased to 100% of the spendable wages or \$154, whichever is less. The benefit formula works as follows:

<u>Spendable Wage</u>	<u>Benefit</u>
Less than \$110	\$110 or 100% spendable
\$110 to \$154	100% spendable wage
\$154 to \$192.50	\$154
\$192.50 to \$875	80% spendable wage
over \$875	\$700

- b. Temporary disability is to stop at the earlier of medical stability or two years, whichever is earlier. Current law has no limit, but temporary disability is stopped upon release to employment.

- c. Permanent partial benefits are to be based upon the impairment to the whole man based upon the AMA guides. The amount is to be paid in a lump sum and is calculated as \$240,000 x %impairment x conversion factor. The conversion factors are based upon the % impairment as follows:

<u>% impairment</u>	<u>conversion factor</u>
0-5	0.0
6-10	0.2
11-15	0.4
16-20	0.6
21-25	0.7
26-30	0.8
over 31	1.0

- d. Clarifies the rules used by the board for determination of the employee's wages for benefit computation.
- e. Allows employer's contributions to a pension or profit sharing plan during the two preceding years to be included as wages to the extent of the employee's vested interest. This section codified existing case law in Ragland v. Morrison-Knudsen Co., Inc., 724 P2d 579 (Alaska 1986).

#### 4. DEFINITIONAL CHANGES

- a. The point of "medical stability" is defined as the point where further objectively measurable improvement is not expected. Medical stability is presumed in the absence of objectively measurable improvement for a period of 45 days; such presumption may be rebutted by clear and convincing evidence.
- b. The definition of "injury" is modified to exclude mental injury caused by mental stress (with certain exceptions).

#### 5. CHANGES TO MEDICAL

- a. Medical payments may not exceed usual, customary, and reasonable fees as determined by the Board.
- b. Employee choice of physician is maintained, but the employee may not make more than one change (excluding referrals) without the employer's written consent.

- c. Courses of multiple treatments must be made in accordance with a written plan that is mailed to the employer within the first week of treatment. The initial treatment plan may not include more than 20 visits in the first 60 days. Documented need is required of the physician for plans exceeding these specifications.
- d. Employer's medical examinations of employees within the first 14 days and every 30 days thereafter are presumed to be reasonable.
- e. In the event of a medical dispute between the employee's attending physician and the employer's independent medical evaluation, a second independent medical exam will be performed by a physician selected from a panel by the Board. This second evaluation will be presumed to be correct in the absence of clear and convincing objective evidence to the contrary.

6. OTHER

- a. The statute of limitations is clarified to exclude medical payments as "compensation" in determining the two year limit from last payment.
- b. Exclude workers compensation claims where the employee makes false statements regarding physical condition on the employment application, where the employer relied upon the false information, and where there is a causal relationship between the injury and the false representation.
- c. The most recent employer is to pay temporary disability benefits where there is a dispute as to which employer is responsible.

## ALASKA

### SUMMARY OF KEY PROVISIONS OF HB352 AND SB322

#### 1. STATEMENT OF INTENT

- a. Abolishes the common law rule of liberal construction on behalf of the claimant, and substitutes a standard based upon fairness to all parties.
- b. Provides that the Board's findings of fact are conclusive if supported by any evidence.
- c. Provides that the intent of section 20.30.175 (adjustment to benefits for claimants residing outside Alaska) is to recognize the high cost of living in Alaska, reduce disincentives to return to work, and to remove obstacles to the utilization of vocational rehabilitation.

#### 2. VOCATIONAL REHABILITATION BENEFITS

- a. The entire existing vocational rehabilitation provisions are deleted and completely rewritten.
  - b. The board is to select a "reemployment services administrator". This administrator is to adopt regulations and enforce the quality and effectiveness of the reemployment benefits under the workers compensation act.
  - c. The vocational rehabilitation program is optional with respects to eligible employees. Employers or employees can request an eligibility evaluation.
  - d. An employee is eligible for vocational rehabilitation if a doctor finds permanent physical capacities less than the physical demands of the employee's job.
  - e. An employee is not eligible for vocational rehabilitation if the employer offers a job within the employee's predicted post-injury capacities at a wage equivalent to 60 percent of the former hourly wage and this job prepares the employee to be employable in other jobs in the labor market. In addition, employees are not eligible if they have been previously injured and rehabilitated to a similar occupation in terms of physical demands.
2. The employer and employee must agree upon a rehabilitation specialist or one will be selected by the administrator. The employer and employee are to agree upon a reemployment plan or one will be selected by the administrator.

- g. Non-cooperation on the part of the employee in a rehabilitation plan shall result in a termination of the reemployment benefits.
- h. Time constraints are enacted regarding the election of the eligibility evaluation (60 days from injury), the determination of eligibility (30 days from request), selection of a specialist (10 days from determination of eligibility) and approval of the plan (90 days from determination of eligibility).
- i. The cost of the reemployment plan may not exceed \$10,000 and may not exceed two years. Temporary total benefits are to be paid until the employee is medically stationary. After medical stability, permanent impairment benefits are to be paid at the temporary total rate during the continuance of the plan. If the plan is completed prior to the exhaustion of the permanent impairment benefits, the remainder is to be paid in a lump sum. If permanent impairment benefits are exhausted prior to the completion of the plan additional weekly benefits are to be paid. Such additional benefits are to be equal to 60 percent of the employee's spendable wage not to exceed \$525. The costs of the reemployment specialist are in addition to the costs of the plan. All vocational rehabilitation expenses are to be paid by the employer.

3. BENEFIT FORMULA CHANGES

- a. The maximum weekly benefit is reduced from the current \$1108 to \$700. The minimum weekly benefit remains at \$110. However, if the employee can document his wages, the minimum is increased to 100% of the spendable wages or \$154, whichever is less. The benefit formula works as follows:

<u>Spendable Wage</u>	<u>Benefit</u>
Less than \$110	\$110 or 100% spendable
\$110 to \$154	100% spendable wage
\$154 to \$192.50	\$154
\$192.50 to \$875	80% spendable wage
over \$875	\$700

- b. Temporary disability is to stop at the earlier of medical stability or two years, whichever is earlier. Current law has no limit, but temporary disability is stopped upon release to employment.

- c. Permanent partial benefits are to be based upon the impairment to the whole man based upon the AMA guides. The amount is to be paid in a lump sum and is calculated as \$240,000 x %impairment x conversion factor. The conversion factors are based upon the % impairment as follows:

<u>% impairment</u>	<u>conversion factor</u>
0-5	0.0
6-10	0.2
11-15	0.4
16-20	0.6
21-25	0.7
26-30	0.8
over 31	1.0

- d. Clarifies the rules used by the board for determination of the employee's wages for benefit computation.
- e. Allows employer's contributions to a pension or profit sharing plan during the two preceding years to be included as wages to the extent of the employee's vested interest. This section codified existing case law in Rafland v. Morrison-Knudsen Co., Inc., 724 P2d 579 (Alaska 1986).

#### 4. DEFINITIONAL CHANGES

- a. The point of "medical stability" is defined as the point where further objectively measurable improvement is not expected. Medical stability is presumed in the absence of objectively measurable improvement for a period of 45 days; such presumption may be rebutted by clear and convincing evidence.
- b. The definition of "injury" is modified to exclude mental injury caused by mental stress (with certain exceptions).

#### 5. CHANGES TO MEDICAL

- a. Medical payments may not exceed usual, customary, and reasonable fees as determined by the Board.
- b. Employee choice of physician is maintained, but the employee may not make more than one change (excluding referrals) without the employer's written consent.

- c. Courses of multiple treatments must be made in accordance with a written plan that is mailed to the employer within the first week of treatment. The initial treatment plan may not include more than 20 visits in the first 60 days. Documented need is required of the physician for plans exceeding these specifications.
- d. Employer's medical examinations of employees within the first 14 days and every 30 days thereafter are presumed to be reasonable.
- e. In the event of a medical dispute between the employee's attending physician and the employer's independent medical evaluation, a second independent medical exam will be performed by a physician selected from a panel by the Board. This second evaluation will be presumed to be correct in the absence of clear and convincing objective evidence to the contrary.

#### 6. OTHER

- a. The statute of limitations is clarified to exclude medical payments as "compensation" in determining the two year limit from last payment.
- b. Exclude workers compensation claims where the employee makes false statements regarding physical condition on the employment application, where the employer relied upon the false information, and where there is a causal relationship between the injury and the false representation.
- c. The most recent employer is to pay temporary disability benefits where there is a dispute as to which employer is responsible.

STATE OF ALASKA  
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

January 12, 1988

SUBJECT: Workers' Compensation - SB 322

TO: Senator Tim Kelly  
Chairman  
Senate Labor and Commerce Committee

FROM: Michael F. Ford *M.F.*  
Legislative Counsel

The following is a sectional analysis of the above referenced bill:

Section 1 - Establishes the legislative intent of the bill.

Section 2 - Creates additional departmental authority regarding rehabilitation specialists and physicians who are involved in rehabilitation.

Section 3 - Requires the department to adopt new regulations if an existing regulation is held invalid by the state supreme court.

Section 4 - Precludes certain employees who knowingly make a false statement on an employment application from receiving compensation benefits.

Section 5 - Alters the time for an employer to make required contributions to the second injury fund.

Section 6 - Establishes the responsibility and authority of the department regarding rehabilitation of injured workers. Establishes specific eligibility criteria requirements for rehabilitation plans, specifies reemployment benefits, and duties of the employee while receiving reemployment benefits. Provides time limits for reemployment plans, limits the cost to the employer of the plan, and provides that only a rehabilitation specialist may perform certain casework. Also includes a definitions subsection.

Section 7 - Establishes that the liability of the employer is limited to workers compensation even if the employee is barred from receiving compensation because the employee knowingly made a false employment application.

Section 8 - Limits the employee's designation of a physician to the state where the employee resides. Provides the employee may make only one change of physician without consent of the employer and requires notice of the change.

Section 9 - Establishes that a written plan is required for continuing medical treatment. Specifies the contents of the treatment plan and requires certain documentation.

Section 10 - Provides that the employee shall submit to examination by a physician chosen by the employer, and establishes a presumption of reasonableness for certain examinations.

Section 11 - Establishes a fee standard for medical treatment.

Section 12 - Authorizes the board to appoint a medical services review committee to assist the board in issues regarding the cost of medical services.

Section 13 - Establishes procedures in the event of conflicting medical opinions. Provides for independent medical examination and creates a presumption that this opinion is correct.

Section 14 - Specifies that a claim may be filed within two years of the last payment of certain benefits.

Section 15 - Provides that the presumption of compensability does not apply to a mental injury resulting from work related stress.

Section 16 - Establishes that a finding of fact made by the board in a compensation order and supported by any evidence, is conclusive if the employer and employee have also met their proof requirements.

Section 17 - Specifies that the board may review a compensation case brought within one year after the last payment of certain benefits.

Section 18 - Provides that certain employer penalties may be reduced as provided under AS 23.30.155(m).

Section 19 - Requires the most recent employer to make temporary disability payments when there is a dispute as to which employer is responsible for compensation.

Section 20 - Requires the employer to submit a report regarding total compensation paid and provides for a reduction in certain late report penalties.

Section 21 - Establishes the weekly rate of compensation for disability or death for in-state and out-of-state recipients. Requires the board to establish regulations for determining living costs.

Section 22 - Establishes a market for an employee's services in determining permanent total disability.

Section 23 - Provides that failure to achieve remunerative employment as defined in AS 23.30.041(m)(7) does not by itself constitute permanent total disability.

Section 24 - Establishes limits on payment of temporary total disability.

Section 25 - Provides compensation for permanent partial impairment and establishes guidelines for determining the existence and degree of impairment.

Section 26 - Limits payment of temporary partial disability compensation to two years or the date of medical stability, except as provided in AS 23.30.041.

Section 27 - Provides for determination of an employee's wage earning capacity, for purposes of temporary partial disability compensation.

Section 28 - Provides for calculation of an employee's spendable weekly wage. Limits the compensation due an employee who had no earnings during the two calendar years preceding injury, or was voluntarily absent for 18 months or more of the previous two years.

Section 29 - Establishes a reduction in weekly compensation benefits when an employer makes a contribution to a pension or profit sharing plan of the employee.

Section 30 - Prohibits discrimination against an employee who files a good faith claim for compensation benefits.

Section 31 - Redefines "gross earnings" to include certain pension and profit sharing contributions.

Section 32 - Redefines "injury" to exclude certain mental injuries.

Section 33 - Definition of medical stability.

Section 34 - Repeals existing wage earning determination for partial disability compensation.

Section 35 - Transitional provision for contributions to the second injury fund.

Section 36 - Applicability section.

Section 37 - Effective date.

MFF:bb  
WKB1/041

FISCAL NOTE

REQUEST:

Revision Date: \_\_\_\_\_  
Title: "An act relating to Workers' Compensation"  
Sponsor: Senate Labor and Commerce  
Requestor: Senate Labor and Commerce

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

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL SUPPLIES		112.0	46.7	46.7	46.7	46.7
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		112.0	46.7	46.7	46.7	46.7

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

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

FUNDING: (Thousands of Dollars)

GENERAL FUND		112.0	46.7	46.7	46.7	46.7
FEDERAL FUNDS						
OTHER						
TOTAL		112.0	46.7	46.7	46.7	46.7

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Jacque McClintock Phone: 465-2790  
Division: Workers' Compensation Date: 2/16/88

Approved by Commissioner: Jim Sampson Date: 2/16/88  
Agency: Labor

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

## Analysis of Fiscal Note

### For SB 322

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

#### 1. Additional Information Requirements

As a result of this bill, additional detail on information items for each workers' compensation claim would have to be reported by employers/ insurers on a by claim and annual basis. This additional information would be input into our computer database which would require a change in the computer programs associated with that system. Estimated costs are \$49,500 to modify the programs, and an additional \$12,500 in CPU time to test and verify the modifications. The total one-time data processing cost would therefore be \$62,000.

#### 2. Annual Cost of Living Survey

An annual cost of living survey would be required to adjust the compensation to those workers compensation recipients who move from Alaska. We estimate that 250 locations (an average of 5 per state) would have to be surveyed each year. At \$200 per site, the total cost the first year would be \$50,000. The cost of the survey in future years would decrease slightly to an estimated \$46,700 a year.

#### Assumptions:

1. An effective date of July 1, 1988.

FISCAL NOTE

REQUEST:

Revision Date: \_\_\_\_\_  
Title: "An act relating to Workers' Compensation"  
Sponsor: Senate Labor and Commerce  
Requestor: Senate Labor and Commerce

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

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

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

\*Second Injury Fund POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

(See Attached)

Prepared by: Jacque McClintock Phone: 465-2790  
Division: Workers' Compensation Date: 2-22-88  
Approved by Commissioner: Jim Sampson Date: 2-22-88  
Agency: Labor

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

## Analysis of Fiscal Note

For CSSB 322(L&C)

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

### 1. Additional Information Requirements

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

### 2. Annual Cost of Living Survey

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

### Assumptions:

1. An effective date of July 1, 1988.

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

ALASKA STATE SENATE



SENATOR TIM KELLY  
ANCHORAGE/EAGLE RIVER  
CHAIRMAN

SENATOR DICK ELIASON  
SITKA  
VICE CHAIRMAN

LABOR AND COMMERCE COMMITTEE

MEMBERS  
SENATOR BETTYE FAHRENKAMP  
FAIRBANKS

SENATOR RICK UEHLING  
ANCHORAGE

SENATOR MIKE SZYMANSKI  
ANCHORAGE

DIFFERENCES IN CSSB 322 FROM ORIGINAL

Page 1 Line 11; after "efficient," insert "fair,".

Page 1 Line 20; after "conclusive", insert "unless the court finds that a reasonable person could not have reached the conclusion made by the board."

Page 2 Line 5; change "may" to "shall"; delete "identical".

Page 2 Line 8; change "may" to "shall".

Page 2 Line 22; delete "shall immediately", insert "may".

Page 3 Line 3; a new section 5 is inserted requiring insurers to notify the department of all policies naming Alaska in their all states coverage section.

Page 3 Line 8; a new section 6 is inserted to require that annual premiums of more than \$2,000 may be paid twice a year and that notice of this clause will be given to the insured.

Page 4 Line 15; a new section 8 is inserted allowing the second injury fund to be used for administrative expenses of this section."

Page 4 - 12; Sec. 9 Rehabilitation - has been rewritten in a new format with only a few substantive changes;

Page 5 L9 -11; a phrase is inserted to further clarify the administrator's report.

P6 L1 - 5; sentence from P8 L5-9 inserted; 60 increased to 90.

P6 L6; after "rotating" insert "and geographic".

P6 L28; change "and" to "or".

P7 L1; after "held" insert "or received training for".

P7 L9 - 10; a phrase is inserted to provide a floor is this section of the minimum wage.

P7 L15 & 16; after "demands" insert "required of the employee at the time of the previous injury; or".

P7 L17 & 18; insert "(3) at the time of medical stability no permanent impairment is identified or expected."

P8 L4; after "(1)", insert "a determination of".

P8 L6 - 8; a new paragraph 2 is inserted to require an inventory of the employee's abilities.

P8 L16; after "the", insert "estimated".

P8 L18; a new paragraph 8 is inserted to require a detailed description and schedule of the plan.

P8 L19 - 22; a new paragraph 9 is inserted to require findings in the plan.

P10 L11; after "means" insert "unreasonable".

P10 L13; delete "average", insert "passing".

P10 L23 - P11 L4; new paragraph inserted to provide for an appeal process in the determination of noncooperation.

P11 L6 & 7; definition of administrator is inserted.

P11 L10; "or disease" is deleted from the end of the phrase.

P11 L28 & 29; after "specialist," insert "a certified rehabilitation counselor".

Page 14 Line 13; after "commencement", insert "of the course".

Page 14 Line 29; delete "30", insert "60".

Page 15 Line 3 & 4; after "board.", insert "Unless medically appropriate, the physician shall use existing diagnostic data to complete the examination."

Page 16 Lines 2 - 4; a sentence is inserted to clarify that the employee will not have to pay for services.

Page 16 Line 13; after "stability," insert "the ability to enter a re-employment plan,".

Page 16 Lines 27 - 28; after "fraud" insert "or gross incompetence".

Page 17 Lines 23 - 24; delete language after "conclusive", insert "unless the court specifically finds that a reasonable person could not have reached the conclusion made by the board".

Page 18 Line 10; delete "employer" insert "insurer or adjuster".

Page 18 Line 23; delete "employer fails to notify the".

Page 18 Line 23; after "employee" insert "are not notified".

Page 18 Line 25; delete "employer" insert "insurer or adjuster".

Page 18 Line 27; delete "employer failed to give".

Page 18 Line 27; before "." insert "was not given".

Page 19 Line 1 - 4; a new sentence is included regarding penalties.

Page 19 Line 24; delete "employer", insert "insurer or adjuster".

Page 20 Lines 2,4,7,9,12 & 15; delete "employer" insert "insurer or adjuster".

Page 20 Lines 3,4,6,9 & 11; insert "during the preceding year".

Page 20 Lines 17-20; insert " If the annual report is not filed by March 1 of each year, the insurer or adjuster shall pay a civil penalty of \$100 for the first day the annual report is late, and \$10 for each additional day the report is late."

Page 20 Line 22 & 23; insert a new section stating that for self-insureds the notification and penalty sections are the responsibility of the employer.

Page 20 Line 26; delete "for a recipient residing in the state".

Page 21 Line 3 - 7; insert "If the employer can verify that the employee's spendable weekly wages are less than \$154, the employer may adjust the weekly rate of compensation to the employee's weekly spendable wages without an order of the board."

Page 21 Line 19: delete "locality" insert "area".

Page 21 Line 20: delete "of the", insert "in this".

Page 21 Line 24: delete "average" insert "gross"; delete "wage" insert "earnings".

Page 22 Line 4: after "determination", insert "and comparison"; delete "the", insert "this"; delete "other localities" insert "the other areas".

Page 22 Lines 10 - 14; a new sentence is inserted to prevent a person from improperly receiving both PPD and PTD.

Page 22 Line 22; after "state" insert "of residence; and"

Page 22 Line 23; insert a new line, "(4) the state of Alaska."

Page 23 Line 21; a new schedule of adjustment factors is used to smooth out the curve.

Page 24 Line 27; delete "and use a supplemental", insert "a supplementary recognized".

Page 25 Line 18; delete "unless otherwise provided under AS 23.30.041"

Page 26 Line 18; after "employee's", insert "projected gross weekly".

Page 30 Line 3; insert "Except for sections 7, 21, 23 and 24 of this Act,".

ALASKA STATE SENATE



SENATOR TIM KELLY  
ANCHORAGE/EAGLE RIVER  
CHAIRMAN

SENATOR DICK ELIASON  
SITKA  
VICE CHAIRMAN

LABOR AND COMMERCE COMMITTEE

MEMBERS  
SENATOR BETTYE FAHRENKAMP  
FAIRBANKS

SENATOR RICK UEHLING  
ANCHORAGE

SENATOR MIKE SZYMANSKI  
ANCHORAGE

DIFFERENCES IN CSSB322 FROM ORIGINAL

Page 1 Line 11; after "efficient," insert "fair,".

Page 1 Line 20; delete "any", insert "substantial".

Page 2 Line 4; change "may" to "shall".

Page 2 Line 7; change "may" to "shall".

Page 2 Line 20; delete "shall immediately", insert "may".

Page 3 Line 2; a new section 5 is inserted to require that premiums may be paid twice a year and that notice of this clause will be given to the insured.

Page 4 - 11; Sec. 7 Rehabilitation - has been rewritten in a new format with only a few substantive changes;

P5 L18 - 22; sentence from P8 L5-9 inserted; 60 increased to 90.

P5 L23; after "rotating" insert "and geographic".

P6 L18; after "held" insert "or received training for".

P7 L2 & 3; after "demands" insert "required of the employee at the time of the previous injury; or".

P7 L4 & 5; insert "(3) at the time of medical stability no permanent impairment is identified or expected."

P7 (g); this is rewritten to clarify the process to be used to select a rehabilitation specialist.

P7 L28; after "the", insert "estimated".

P9 L18; after "means" insert "unreasonable".

P9 L16; delete "average", insert "passing".

P10 L1 - 11; new paragraph inserted to provide for an appeal process in the determination of noncooperation.

P10 L13 & 14; definition of administrator is inserted.

P10 L17; "or disease" is deleted from the end of the phrase.

P11 L6 & 7; after "specialist," insert "a certified rehabilitation counselor".

Page 13 Line 19; after "commencement", insert "of the course".

Page 14 Line 9 & 10; after "board.", insert "Unless medically necessary, the physician shall use existing diagnostic data to complete the examination."

Page 15 Line 17; after "stability," insert "the ability to enter a re-employment plan,".

Page 16 Line 3; after "fraud" insert "or gross incompetence".

Page 16 Line 27; delete "any" insert "substantial".

Page 17 Line 13; delete "employer" insert "insurer or adjuster".

Page 17 Line 26; delete "employer fails to notify the".

Page 17 Line 26; after "employee" insert "are not notified".

Page 17 Line 28; delete "employer" insert "insurer or adjuster".

Page 18 Line 1; delete "employer failed to give".

Page 18 Line 1; before "." insert "was not given".

Page 18 Line 4 - 7; a new sentence is included regarding penalties.

Page 18 Line 27, Page 19 Lines 5,7,9,11,13 & 17; delete "employer" insert "insurer or adjuster".

Page 19 Line 6; after "filed" insert "during the preceding year".

Page 19 Lines 18-21; insert " If the annual report is not filed by March 1 of each year, the insurer or adjuster shall pay a civil penalty of \$100 for the first day the annual report is late, and \$10 for each additional day the report is late."

Page 19 Line 22; insert a new section stating that for self-insureds the notification and penalty sections don't apply.

Page 19 Line 27; delete "for a recipient residing in the state".

Page 20 Line 4; insert "If the employer can verify that the employee's spendable weekly wages are less than \$154, the employer may adjust the weekly rate of compensation to the employee's weekly spendable wages without an order of the board."

Page 20 Line 21: after "living" insert "index".

Page 20 Line 22: after "living" insert "index"; delete "the" insert "this".

Page 20 Line 26: delete "average" insert "gross"; delete "wage" insert "earnings".

Page 21 Line 6: delete "the", insert "this"; delete "localities" insert "states".

Page 21 Line 20; after "state" insert "of residence; and"

Page 21 Line 21; insert a new line, "(4) the state of Alaska."

Page 23 Lines 2-6: reformatted to give priority in determining impairment.

Page 23 Line 25; delete "unless otherwise provided under AS 23.30.041"

Page 28 Line 10; insert "Except for sections 6,19,21 and 23of this Act,".

# Municipality of Anchorage

## MEMORANDUM

DATE: February 24, 1988

TO: Mark Johnson  
Legislative Liaison

FROM: Harry Sjoberg //  
Risk Management

SUBJECT: CSSB 322 Workers Compensation

The original bill was supported by this office with a projected annual savings of \$500,000 to \$750,000 to the Municipality if it passed in its original form.

The substitute bill with changes should not be a significant factor in decreasing savings when compared to the original. It is true Sec. 23.30.190 does allow an increase for persons at the low end of the rating scale but the breakdown in degree of impairment should result in a more equitable rating.

The large savings resulting from passage of the bill will come from areas addressed by the bill such as stress and rehabilitation and other areas of high expense.

The Municipal Risk Management Office supports the bill and does not feel the substitute language will have a significant effect.

HES:ps

cc: Trudie Alford

Proposed changes to CSSB 322 (L&C)

- 1) Page 3 Line 9; reword to say "an annual premium paid for the insurance, that exceeds \$2,000, may be paid semi-annually, if requested by the insured."
- 2) Page 6 Line 28; change "and" to "or".
- 3) Page 26 Line 18; after "employee's" insert "projected".

ALASKA STATE SENATE



SENATOR TIM KELLY  
ANCHORAGE/EAGLE RIVER  
CHAIRMAN

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FAIRBANKS

SENATOR DICK ELIASON  
SITKA  
VICE CHAIRMAN

LABOR AND COMMERCE COMMITTEE

SENATOR RICK UEHLING  
ANCHORAGE  
SENATOR MIKE SZYMANSKI  
ANCHORAGE

February 23, 1988

MEMORANDUM

To: All Senators

From: Senator Tim Kelly *TJK*

After a considerable amount of input and effort we have agreed upon a workers' compensation bill that the Labor & Commerce Committee passed out yesterday. CSSB 322(L&C) has been scheduled for floor action on Thursday, February 25.

To assist you in your review of this, I am providing you a packet including a sectional analysis from the legal department, a more detailed analysis done by my staff, a list of the differences between the original bill and the CS and as well as other miscellaneous information.

If I can be of further assistance to you please contact my office.

ALASKA STATE SENATE



SENATOR TIM KELLY  
ANCHORAGE/EAGLE RIVER  
CHAIRMAN

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VICE CHAIRMAN

LABOR AND COMMERCE COMMITTEE

SENATOR RICK UEHLING  
ANCHORAGE

SENATOR MIKE SZYMANSKI  
ANCHORAGE

TO: All Senators

FROM: Senator Tim Kelly *TDK*

Re: SB 322 Workers' Compensation Schedule

This schedule is to keep you updated on the status of the workers' compensation legislation. All the hearings are being held jointly with the House Labor & Commerce Committee and all members of the Senate are invited to attend.

Tuesday, January 19, 3:00 to 5:00 - Capitol Rm. 518

Overview of U.S. and Alaska Workers' Compensation Systems

Presentation and explanation of SB 322 by the Labor/Management Task Force on Workers' Compensation.

Discussion by the Division of Insurance on the impact of proposed legislation on workers' compensation premium rates.

Statewide teleconference - listen only

Thursday, January 21, 3:00 to 5:00 - Capitol Rm. 518

SB 322 "An Act relating to Workers' Compensation."

Public Hearing - Juneau

Statewide Teleconference, listen only

Friday, January 29, 9:00 - 12:00/2:00 - 4:00 Anchorage LIO

SB 322 "An Act relating to Workers' Compensation."

Public Hearing - Statewide Teleconference

Friday, February 12, 9:00 - 12:00/2:00 - 4:00 Anchorage LIO

SB 322 "An Act relating to Workers' Compensation."

Public Hearing - Statewide Teleconference

ALASKA STATE SENATE



SENATOR TIM KELLY  
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FAIRBANKS

SENATOR RICK UEHLING  
ANCHORAGE

SENATOR MIKE SZYMANSKI  
ANCHORAGE

TO: All Senators

FROM: Sen. Tim Kelly *TDK*

January 8, 1988

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This bill has been negotiated by the organized labor/management task force during the past ten months. It will be introduced Monday as SB322. The House Labor and Commerce Committee will be introducing an identical version of this also.

ALASKA STATE SENATE



SENATOR TIM KELLY  
ANCHORAGE/EAGLE RIVER  
CHAIRMAN

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SENATOR MIKE SZYMANSKI  
ANCHORAGE

January 28, 1988

MEMORANDUM:

To: All Senators  
From: Senator Tim Kelly *TDK*  
Re: SB 322 Worker's Compensation

I'm sure each of you are aware of the current condition of the worker's compensation program. To expedite a remedy, we have been working closely with the House Labor & Commerce Committee. SB 322 and HB 352 have been introduced as identical bills. We have already held 3 joint hearings and have 2 more scheduled.

In order to possibly have an affect on the rates for the second half of 1988, we must pass legislation early this session. It is our plan to have the worker's compensation bill to the Senate floor before the first of March.

If there is anything my office can do to assist you on this issue please let us know.

I am also attaching a fact sheet from Rep. Donley showing some of the significant items that workers gain in the worker's compensation bill.

# HOUSE LABOR AND COMMERCE COMMITTEE

ALASKA STATE LEGISLATURE

P.O. BOX V, JUNEAU 99811

(907) 465-3892



HB 352/SB 322 - Relating to Workers' Compensation

## WHAT'S IN IT FOR WORKERS?

### THE BIG THREE:

1. Significant raise in payments for permanent, partial disability with a system that assures substantial payments to workers with the most serious injuries.
2. Raise in weekly benefits for workers at the bottom end of the scale and lowering the maximum benefit. This statute change will raise benefits for the majority of injured workers since less than five percent are near the maximum benefit level.
3. Requires that pension and benefits be included in calculating a workers average weekly wage for the purposes of determining workers' compensation benefit levels (this is in response to the Hagland case).

### AND A FEW MORE

4. Assures that an injured worker will immediately receive benefits when there is argument about which carrier is obligated to pay. Currently an injured worker may go months with no benefits because of a technical squabble among carriers.
5. Prohibits discrimination against a workers who has filed a workers' compensation claim.
6. Makes rehabilitation services voluntary instead of mandatory so that workers aren't forced to participate in a program they don't want and probably can't benefit from as a condition of receiving benefits.

Prepared by Representative Dave Donley, Chair  
House Labor and Commerce Committee  
January 20, 1988

STATE OF ALASKA  
1988 LEGISLATIVE SESSION

BILL VERSION : HCS CSSB 322(Jud)

PUBLISH DATE : \_\_\_\_\_

FISCAL NOTE

REQUEST:

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

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

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

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

FUNDING: (Thousands of Dollars)

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

\* Second Injury Fund

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

(See Attached)

Prepared by: Jacque McClintock Phone: 465-2790  
 Division: Worker's Compensation Date: 4/27/88  
 Approved by Commissioner: Jim Sampson Date: 4/27/88  
 Agency: Department of Labor

Distribution (by preparer) :

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

## Analysis of Fiscal Note

For HCS CSSB 322 (Jud)

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

### 1. Additional Information Requirements

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

### 2. Annual Cost of Living Survey

An annual cost of living survey would be required to adjust the compensation to those workers' compensation recipients who move from Alaska. We estimate that 250 locations (an average of 5 per state) would have to be surveyed each year. At \$200 per site, the total cost the first year would be \$50,000. In addition, we estimate that 10 foreign locations would have to be surveyed each year at an approximate cost of \$350 per site, or \$3,500 per year. This would make a total of \$53,500 for all sites for the first year. The cost of the survey in future years would decrease slightly to an estimated \$49,700 a year.

### Assumptions:

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

# STATE OF ALASKA THE LEGISLATURE

FOUCH Y STATE CAPITOL  
JUNEAU, ALASKA 99811  
907 465 3800

## LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

December 17, 1987

SUBJECT: Workers' Compensation  
(Work Order No. 15-1514)

TO: Senator Tim Kelly  
Chairman, Senate Labor and Commerce

FROM: Michael F. Ford *M.F.*  
Legislative Counsel

The changes you requested to the existing workers' compensation laws have been incorporated into the attached draft. The draft language received from your office has been changed for purposes of form and style. There are a few substantive matters that remain unresolved that I wanted to bring to your attention:

1. Although there is a reference in section 2 to "panels established in AS 23.30.041 and 23.30.095", I could not find any language establishing panels in those sections. Therefore, the language in section 2 has been slightly changed.
2. The applicability section, section 34, provides that the Act applies to injuries sustained after July 1, 1988, which is also the effective date of the bill. But several sections of the bill would apply to injuries sustained prior to July 1, at least regarding reporting of compensation and contribution to the second injury fund. Specifically you may want sections 4, 18, and 33 to have retroactive application. If those sections are to apply to the entire calendar year, rather than the period after the effective date of the bill then the applicability section should be changed.
3. There may be constitutional equal protection problems concerning the exclusivity language in section 6, which would prevent an employee who is barred from receiving compensation benefits from bringing a lawsuit for any injuries sustained. In combination with section 3, an injured employee guilty of this kind of misconduct would be denied

Senator Tim Kelly  
Page 2  
December 17, 1987

both workers' compensation and access to the courts. The constitutional question should be researched.

Please contact me if you have any further questions.

MFF:mi  
wkmi1/109

STATE OF ALASKA  
1988 LEGISLATIVE SESSION

BILL VERSION: HCS CSSB 322(Jud)

PUBLISH DATE: \_\_\_\_\_

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PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

(See Attached)

Prepared by: Jacque McClintock Phone: 465-2790  
 Division: Worker's Compensation Date: 4/27/88  
 Approved by Commissioner: Jim Sampson Date: 4/27/88  
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 Legislative Finance  
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OFFICE OF THE COMMISSIONER  
Division of Insurance  
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ANCHORAGE, ALASKA 99503  
(907) 562-3626  
Telecopy #(907)562-0048

TELECOPIER TRANSMITTAL SHEET

TO: TIM KELLY

FROM: PAUL ROLLER, Dep. Director  
Division of Insurance

NUMBER OF PAGES, INCLUDING TRANSMITTAL SHEET: 5

DATE: 2/8/88

TIME: 9:45 a.m.

# Sending to: 586-9548

Sender: Spencer

If there are any problems with the copy, please call (907) 562-3626.

#20

## ALASKA

### SUMMARY OF KEY PROVISIONS OF HB352 AND SB322

#### 1. STATEMENT OF INTENT

- a. Abolishes the common law rule of liberal construction on behalf of the claimant, and substitutes a standard based upon fairness to all parties.
- b. Provides that the Board's findings of fact are conclusive if supported by any evidence.
- c. Provides that the intent of section 20.30.175 (adjustment to benefits for claimants residing outside Alaska) is to recognize the high cost of living in Alaska, reduce disincentives to return to work, and to remove obstacles to the utilization of vocational rehabilitation.

#### 2. VOCATIONAL REHABILITATION BENEFITS

- a. The entire existing vocational rehabilitation provisions are deleted and completely rewritten.
- b. The board is to select a "reemployment services administrator". This administrator is to adopt regulations and enforce the quality and effectiveness of the reemployment benefits under the workers compensation act.
- c. The vocational rehabilitation program is optional with respects to eligible employees. Employers or employees can request an eligibility evaluation.
- d. An employee is eligible for vocational rehabilitation if a doctor finds permanent physical capacities less than the physical demands of the employee's job.
- e. An employee is not eligible for vocational rehabilitation if the employer offers a job within the employee's predicted post-injury capacities at a wage equivalent to 60 percent of the former hourly wage and this job prepares the employee to be employable in other jobs in the labor market. In addition, employees are not eligible if they have been previously injured and rehabilitated to a similar occupation in terms of physical demands.
- f. The employer and employee must agree upon a rehabilitation specialist or one will be selected by the administrator. The employer and employee are to agree upon a reemployment plan or one will be selected by the administrator.

- g. Non-cooperation on the part of the employee in a rehabilitation plan shall result in a termination of the reemployment benefits.
- h. Time constraints are enacted regarding the election of the eligibility evaluation (60 days from injury), the determination of eligibility (30 days from request), selection of a specialist (10 days from determination of eligibility) and approval of the plan (90 days from determination of eligibility).
- i. The cost of the reemployment plan may not exceed \$10,000 and may not exceed two years. Temporary total benefits are to be paid until the employee is medically stationary. After medical stability, permanent impairment benefits are to be paid at the temporary total rate during the continuance of the plan. If the plan is completed prior to the exhaustion of the permanent impairment benefits, the remainder is to be paid in a lump sum. If permanent impairment benefits are exhausted prior to the completion of the plan additional weekly benefits are to be paid. Such additional benefits are to be equal to 80 percent of the employee's spendable wage not to exceed \$525. The costs of the reemployment specialist are in addition to the costs of the plan. All vocational rehabilitation expenses are to be paid by the employer.

3. BENEFIT FORMULA CHANGES

- a. The maximum weekly benefit is reduced from the current \$1108 to \$700. The minimum weekly benefit remains at \$110. However, if the employee can document his wages, the minimum is increased to 100% of the spendable wages or \$154, whichever is less. The benefit formula works as follows:

<u>Spendable Wage</u>	<u>Benefit</u>
Less than \$110	\$110 or 100% spendable
\$110 to \$154	100% spendable wage
\$154 to \$192.50	\$154
\$192.50 to \$575	80% spendable wage
over \$575	\$700

- b. Temporary disability is to stop at the earlier of medical stability or two years, whichever is earlier. Current law has no limit, but temporary disability is stopped upon release to employment.

- c. Permanent partial benefits are to be based upon the impairment to the whole man based upon the AMA guides. The amount is to be paid in a lump sum and is calculated as \$240,000 x %impairment x conversion factor. The conversion factors are based upon the % impairment as follows:

<u>% impairment</u>	<u>conversion factor</u>
0-5	0.0
6-10	0.2
11-15	0.4
16-20	0.5
21-25	0.7
26-30	0.8
over 31	1.0

- d. Clarifies the rules used by the board for determination of the employee's wages for benefit computation.
- e. Allows employer's contributions to a pension or profit sharing plan during the two preceding years to be included as wages to the extent of the employee's vested interest. This section modified existing case law in Ragland v. Morrison-Knudsen Co., Inc., 724 P2d 575 (Alaska 1986).

#### 4. DEFINITIONAL CHANGES

- a. The point of "medical stability" is defined as the point where further objectively measurable improvement is not expected. Medical stability is presumed in the absence of objectively measurable improvement for a period of 45 days; such presumption may be rebutted by clear and convincing evidence.
- b. The definition of "injury" is modified to exclude mental injury caused by mental stress (with certain exceptions).

#### 5. CHANGES TO MEDICAL

- a. Medical payments may not exceed usual, customary, and reasonable fees as determined by the Board.
- b. Employee choice of physician is maintained, but the employee may not make more than one change (excluding referrals) without the employer's written consent.

- c. Courses of multiple treatments must be made in accordance with a written plan that is mailed to the employer within the first week of treatment. The initial treatment plan may not include more than 20 visits in the first 60 days. Documented need is required of the physician for plans exceeding these specifications.
- d. Employer's medical examinations of employees within the first 14 days and every 30 days thereafter are presumed to be reasonable.
- e. In the event of a medical dispute between the employee's attending physician and the employer's independent medical evaluation, a second independent medical exam will be performed by a physician selected from a panel by the Board. This second evaluation will be presumed to be correct in the absence of clear and convincing objective evidence to the contrary.

#### 5. OTHER

- a. The statute of limitations is clarified to exclude medical payments as "compensation" in determining the two year limit from last payment.
- b. Exclude workers compensation claims where the employee makes false statements regarding physical condition on the employment application, where the employer relied upon the false information, and where there is a causal relationship between the injury and the false representation.
- c. The most recent employer is to pay temporary disability benefits where there is a dispute as to which employer is responsible.