SB

322

(FILE 4)

HOUSE LABOR AND COMMERCE COMMITTEE
ALASKA STATE LEGISLATURE
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February 4, 1988

M E M O R A N D U M:

To: Subcommittee members (HB 352 - Workers' Compensation)
House Labor and Commerce Committee

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

Re: Notes for mark-up on HB 352 - Workers' Compensation

Attached for your consideration is a marked up copy of HB 352 indicating the areas that generated considerable public testimony or specific suggestions for statutory change. Enclosed with the bill is a memorandum explaining the questions raised about the areas indicated, with a reference to further attached information that may shed some light on the subject.

In addition to indicating portions of the bill have generated controversy, there is also a list of items that have been suggested for inclusion under HB 352 that are not currently addressed in the measure.

Should the subcommittee decide to draft a proposed committee substitute for HB 352, we should allow enough time for the proposal to be reviewed by members of the Labor/Management Task Force prior to submitting the CS to the full Committee so that we will know whether the Task Force will support the proposed changes.

Introduced: 1/11/88
Referred: Labor & Commerce
and Judiciary

BY THE LABOR AND
COMMERCE COMMITTEE

IN THE HOUSE

HOUSE BILL NO. 352

IN THE LEGISLATURE OF THE STATE OF ALASKA

FIFTEENTH LEGISLATURE - SECOND SESSION

A BILL

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

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

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

(b) The legislature declares that the workers' compensation laws must not be construed by the courts in favor of any party. It is the specific intent of the legislature that workers' compensation cases be decided on their merits, except when otherwise provided by statute. It is also the intent of the legislature that the board possess the greatest possible authority in the exercise of its fact finding responsibilities and that the board's decisions be conclusive if supported by any evidence.

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

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

(2) reduce disincentives to return to work; and

(3) remove obstacles to the utilization of vocational rehabilitation that may be brought about by the payment of workers' compensation benefits at the high levels provided by the Alaska workers' compensation

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

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

(h) The department may adopt identical rules for all panels, and procedures for the periodic selection, retention, and removal of rehabilitation specialists or physicians under AS 23.30.041 and 23.30.095, and may adopt regulations to carry out the provisions of this chapter. Process and procedure under this chapter shall be as summary and simple as possible. The department, the board or a member of it may for the purposes of this chapter subpoena witnesses, administer or cause to be administered oaths, and may examine or cause to have examined the parts of the books and records of the parties to a proceeding that relate [WHICH RELATED] to questions in dispute. The superior court, on application of the department, the board or any members of it, shall enforce the attendance and testimony of witnesses and the production and examination of books, papers, and records.

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

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

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

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

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

(2) there was a causal connection between the false

representation and the injury to the employee.

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

(b) If an employee suffers a compensable injury that results in temporary total disability, temporary partial disability, permanent partial disability, or permanent total disability, the employer or insurance carrier shall contribute to the second injury fund. The contribution shall be made annually at the time of the report filing required by AS 23.30.155(m) [BY ONE YEAR .ROM 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. 6. 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 services administrator. The board may authorize the reemployment services administrator to select and employ additional staff. The reemployment services administrator is in the partially exempt service under AS 39.25.120.

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

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

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

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

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

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

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

(B) the estimated and actual time of each rehabilitation plan;

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

(D) the cost of reemployment services;

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

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

(c) If an employee suffers a compensable injury that may permanently preclude an employee's return to the employee's occupation at the time of injury, the employee or employer may request an eligibility evaluation for reemployment benefits. The reemployment services administrator shall, on a rotating basis, select a rehabilitation specialist from the list maintained under (b)(6) of this section to perform the eligibility evaluation.

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

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

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

employee has held following the injury for a period long enough to obtain the skills to compete in the labor market, according to specific vocational preparation codes as described in the dictionary of occupational titles.

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

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

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

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

(1) an occupational goal in the labor market;

(2) a plan to acquire the occupational skills to be employable;

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

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

(5) the date the plan will commence; and

(6) the time of medical stability as predicted by the physician.

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

(1) on the job training;

(2) vocational training;

(3) academic training;

(4) self-employment; or

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

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

(i) After the injured worker has elected to participate in reemployment benefits, [noncooperation by the worker] shall result in the termination of reemployment benefits on the date of noncooperation. Noncooperation means failure to

(1) keep appointments;

(2) maintain average grades;

(3) attend designated programs;

(4) maintain contact with the rehabilitation specialist;

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

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

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

(j) Reemployment benefits are subject to the following time

limits:

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

(2) election of the eligibility evaluation by the employee for reemployment benefits must occur within 60 days of the employer's notice of injury unless the reemployment services administrator determines that unusual and extenuating physical limitations of the employee preclude the employee from making a timely request;

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

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

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

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

(7) if the employer and employee fail to agree on a reemployment plan, either party may submit a reemployment plan for approval to the reemployment services administrator; the reemployment services administrator shall approve or deny a plan within 14 days after the plan is submitted; within 10 days of the decision, either party may seek review of the decision by requesting a hearing under AS 23.30.110; the board shall uphold the decision of the administrator

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

(k) The cost of the reemployment plan incurred under this section shall be the responsibility of the employer, but may not exceed $10,000. If an employee reaches medical stability before completion of the plan, temporary total disability benefits shall cease and permanent impairment benefits shall then be paid at the employee's temporary total disability rate. If the employee's permanent impairment benefits are exhausted before the completion or termination of the reemployment plan, the employer shall provide wages equal to 60 percent of the employee's spendable weekly wages but not to exceed $525, until the completion or termination of the plan. A permanent impairment benefit remaining unpaid upon the completion or termination of the plan shall be paid to the employee in a single lump sum. The fees of the rehabilitation specialist or rehabilitation professional shall be paid by the employer and may not be included in determining the cost of the reemployment plan.

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

(m) In this section

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

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

(A) area of residence;

(B) area of last employment;

(C) the state;

(D) other states;

(3) "physical capacities" means objective and measurable physical traits such as ability to lift and carry, walk, stand or sit, push, pull, climb, balance, stoop, kneel, crouch, crawl, reach, handle, finger, feel, talk, hear or see;

(4) "physical demands" means the physical requirements of the job such as strength, including positions such as standing, walking, sitting, and movement of objects such as lifting, carrying, pushing, pulling, climbing, balancing, stooping, kneeling, crouching, crawling, reaching, handling, fingering, feeling, talking, hearing, or seeing;

(5) "reemployment benefits" means eligibility determination, plan development, and plan cost not exceeding $10,000, exclusive of provider fees;

(12) (6) "rehabilitation specialist" means a person who is a certified insurance rehabilitation specialist or a person who has equivalent or better qualifications as determined under regulations adopted by the department;

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

average weekly wage.

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

Sec. 23.30.055. EXCLUSIVENESS OF LIABILITY. The liability of an employer prescribed in AS 23.30.045 is exclusive and in place of all other liability of the employer and any fellow employee to the employee, the employee's legal representative, husband or wife, parents, dependents, next of kin, and anyone otherwise entitled to recover damages from the employer or fellow employee at law or in admiralty on account of the injury or death. <u>The liability of the employer is exclusive even if the employee's claim is barred under AS 23.30.-020(b).</u> However, if an employer fails to secure payment of compensation as required by this chapter, an injured employee or the employee's legal representative in case death results from the injury may elect to claim compensation under this chapter, or to maintain an action against the employer at law or in admiralty for damages on account of the injury or death. In that action the defendant may not plead as a defense that the injury was caused by the negligence of a fellow servant, or that the employee assumed the risk of the employment, or that the injury was due to the contributory negligence of the employee.

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

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

employment and after disablement. It shall be additionally provided that, if continued treatment or care or both beyond the two-year period is indicated, the injured employee has the right of review by the board. The board may authorize continued treatment or care or 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 NOTHER PHYSICIAN, THE EMPLOYEE MAY DO SO IN ACCORDANCE WITH REGULATIONS ADOPTED BY THE BOARD].

* Sec. 9. 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 prescribed before the commencement of treatment, completed and signed by the attending physician, and mailed to the employer within one week of the beginning of treatment. The treatment plan must include objectives, modalities, and frequency of treatment. The initial treatment plan may not include more than 20 visits in the first 60 days. If more than 20 visits are required within the first 60 days, or more than four visits a month after the first 60 days, the physician shall document the need for services in excess of the guidelines in the written treatment plan.

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

(e) The employee shall, after an injury, at reasonable times during the continuance of the disability, if requested by the employer or when ordered by the board, submit to an examination by a physician or surgeon of the employer's choice [AUTHORIZED TO PRACTICE MEDICINE UNDER THE LAWS OF THE STATE IN WHICH THE EMPLOYEE MAY BE FOUND], furnished and paid for by the employer. An examination requested by the employer not less than 14 days after injury, and every 30 days thereafter, shall be presumed to be reasonable, and the employee shall submit to the examination without further request or order by the board. Facts relative to the injury or claim communicated to or otherwise learned by a physician or surgeon who may have attended or examined the employee, or who may have been present at an examination are not privileged, either in the hearings provided for in this chapter or an action to recover damages against an employer who is subject to the compensation provisions of this chapter. If an employee

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

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

(f) All fees and other charges for medical treatment or service [ARE LIMITED TO THE CHARGES THAT PREVAIL IN THE SAME COMMUNITY FOR SIMILAR TREATMENT OF INJURED PERSONS OF LIKE STANDARD OF LIVING AND] shall be subject to regulation by the board but may not exceed usual, customary, and reasonable fees for the treatment or service in the community in which it is rendered, as determined by the board.

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

(j) The board may appoint a medical services review committee, or contract with an existing organization in the state or another state, to assist and advise the board in matters involving the appropriateness, necessity, and cost of medical and related services provided under this chapter.

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

(k) In the event of a medical dispute regarding determinations of causation, medical stability, degree of impairment, functional capacity, the amount and efficacy of the continuance of or necessity of treatment, or compensability between the employee's attending physician and the employer's independent medical evaluation, a second independent medical evaluation shall be conducted by a physician or physicians selected by the board from a list established and maintained by the board. The cost of the examination and medical report shall be paid by the employer. The report of the independent medical examiner shall be furnished to the board and to the parties within 14 days after the examination is concluded. The opinion of the independent medical examiner shall, in the absence of clear and convincing objective evidence to the contrary, be presumed to be correct. A person may not seek damages from an independent medical examiner caused by the rendering of an opinion or providing testimony under this subsection, except in the event of fraud.

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

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

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

* Sec. 15. 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 stress.

(23)

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

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

(24)

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

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

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

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

board and sent to the employee within 28 days after the date of issuing the first payment of compensation. If at any time 21 days or more pass and no compensation payment is issued, a report notifying the board and the employee of the termination or suspension of compensation shall be filed with the board and sent to the employee within 28 days after the date the last compensation payment was issued. A report shall also be filed with the board and sent to the employee within 28 days after the date of issuing a payment increasing, decreasing, resuming, or changing the type of compensation paid. If the employer fails to notify the board and the employee within the 28 days prescribed by this subsection for reporting, the employer shall pay a civil penalty of $100 for the first day plus $10 for each day thereafter that the employer failed to give notice. Total penalties under this subsection [SECTION] may not exceed $1,000 for a failure to file a required report. Penalties assessed under this subsection are eligible for reduction under (m) of this section.

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

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

during the pendancy of the dispute. When a final determination of liability is made, any reimbursement required, including interest at the statutory rate, and all costs and attorneys' fees incurred by the prevailing employer, shall be made within 14 days of the determination.

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

(m) By March 1 of each year the employer shall file a verified annual report on a form prescribed by the board stating the total 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. If the annual report is timely and complete when received by the board and provides accurate information about each category of payments, the commissioner shall review the timeliness of the employer's reports filed under (c) of this section. If the employer filed at least 99 percent of the reports on time, the penalties assessed under (c) of this section shall be waived. If the employer filed at least 97 percent of the reports on time, 75 percent of the penalties assessed under (c) of this section shall be waived. If the employer filed 95 percent of the reports on time, 50 percent of the penalties assessed under (c) of this section shall be waived. If the employer's reports have not been filed on time at least 95 percent of the time, none of the penalties assessed under (c) of this section shall be waived. The penalties that are not waived are due and payable when the employer receives notification from the commissioner regarding the timeliness of the reports.

* Sec. 21. AS 23.30.175 is repealed and reenacted to read:

Sec. 23.30.175. RATES OF COMPENSATION. (a) The weekly rate of compensation for disability or death for a recipient residing in the

state may not exceed $700 and initially may not be less than $110. However, if the board determines that the employee's spendable weekly wages are less than $110 a week as computed under AS 23.30.220, or less than $154 a week in the case of an employee who has furnished documentary proof of the employee's wages, it shall issue an order adjusting the weekly rate of compensation to a rate equal to the employee's spendable weekly wages. If the employee's spendable weekly wages are greater than $154, but 80 percent of the employee's spendable weekly wages is less than $154, the employee's weekly rate of compensation shall be $154. Prior payments made in excess of the adjusted rate shall be deducted from the unpaid compensation in the manner the board determines. In any case, the employer shall pay timely compensation.

(b) The following rules apply to benefits payable to recipients not residing in the state at the time compensation benefits are payable:

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

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

(3) if the average weekly wage of the recipient and the resulting compensation rate is determined under AS 23.30.220(a)(2), the calculation required by this subsection applies only to the portion of the recipient's weekly compensation rate attributable to wages earned in the state;

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

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

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

Sec. 23.30.180. PERMANENT TOTAL DISABILITY. In case of total disability adjudged to be permanent 80 percent of the injured employee's spendable weekly wages shall be paid to the employee during the continuance of the total disability. Loss of both hands, or both arms, or both feet, or both legs, or both eyes, or of any two of them, in the absence of conclusive proof to the contrary, constitutes permanent total disability. In all other cases permanent total disability is determined in accordance with the facts. In making this determination the market for the employee's services shall be

(1) area of residence;

(2) area of last employment; and

(3) the state.

* Sec. 23. 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(m)(7) does not, by itself, constitute permanent total disability.

* Sec. 24. 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. Temporary total disability benefits may not be paid for more than two years regardless of continuance of the disability.

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

Sec. 23.30.190. COMPENSATION FOR PERMANENT PARTIAL IMPAIRMENT. (a) In case of impairment partial in character but permanent in quality, and not resulting in permanent total disability, the compensation is $240,000 multiplied by the employee's percentage of net permanent impairment of the whole person, and payable in a single lump sum, except as otherwise provided in AS 23.30.041, but the compensation may not be discounted for any present value considerations. Net permanent impairment is to be determined by multiplying the employee's actual degree of permanent impairment by the appropriate adjustment factor, as follows:

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

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

(c) An employee with an actual permanent impairment as determined under (b) of this section may not receive less than $250 for the impairment.

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

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

Sec. 23.30.200. TEMPORARY PARTIAL DISABILITY. In case of temporary partial disability resulting in decrease of earning capacity the compensation shall be 80 percent of the difference between the injured employee's spendable weekly wages before the injury and the wage-earning capacity of the employee after the injury in the same or another employment, to be paid during the continuance of the disability, but not to be paid for more than <u>two</u> [FIVE] years. <u>Temporary partial disability benefits may not be paid for a period of disability occurring after the date of medical stability, unless otherwise provided under AS 23.30.041.</u>

30

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

31

<u>(b)</u> The wage-earning capacity of an injured employee is determined by the actual spendable weekly wage of the employee if the actual spendable weekly wage fairly and reasonably represents the wage-earning capacity of the employee. The board may, in the interest of justice, fix the wage-earning capacity that is reasonable, having due regard to the nature of the injury, the degree of physical impairment, the usual employment, and other factors or circumstances in the case that may affect the capacity of the employee to earn wages in a

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

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

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

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

32

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

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

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

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

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

33 [(c)] If employer contributions to a qualified pension or profit sharing plan have been included in the determination of gross earnings and the employee is receiving pension or profit sharing payments, weekly compensation benefits payable under this chapter shall be reduced by the amount paid or payable to the injured worker under the plan for any week or weeks during which compensation benefits are also payable. The amount of the reduction may not in any week exceed the increase in weekly compensation benefits brought about by the inclusion of employer contributions to a qualified pension or profit sharing plan in the determination of gross earnings.

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

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

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

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

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

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

* Sec. 32. 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<u>; "injury"</u> [,

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 rather than misperceptions by the employee; 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;

(34)

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

(35)

(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.

* Sec. 34. AS 23.30.210 is repealed.

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

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

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

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

Memorandum for Points of Discussion for
HB 352/SB 322 - Workers' Compensation

February 5, 1988

1. The standard of "any evidence" was questioned by several participants, and the general consensus was that some qualifying language should be included. The current standard is "substantial evidence". The "any evidence" standard was included in response to what many people characterize as the Alaska Supreme Courts' insistence on expanding the bounds of their fact finding responsibilities to consistently and unfairly deny the Boards decisions. (See attachment #5).

2. There was considerable public testimony over whether this section would meet a constitutional challenge. (See attachment #5) There was also some testimony that there is no dependable source of cost of living adjustments for other states to use as a guide in determining benefits for persons residing outside of Alaska.

3. Some participants expressed concern with the method the Board would use to determine eligibility for and placement on the list maintained by the Board. The common fear expressed was that some health care providers would be "blackballed" and would have no recourse to address a possible conflict.

4. There was some concern expressed by participants that an employee may not consider their employment statement false, or may inadvertently omit information that they don't consider important and are later found to have "knowingly made a false statement".

5. A participant who currently serves as a rehabilitation specialist objected to the requirement that specialists must be chosen from a rotating list to perform an eligibility evaluation. She objected because of cost considerations, claiming that she can do several evaluations in adjacent communities at considerably less cost than it would take to send separate specialists for each injured worker seeking an evaluation. She also argued that this provision interfered with free enterprise in that workers would not be free to choose her if they felt she was the best unless her name was at the top of the list at the time.

6. Several participants expressed concern over this section. Their comments generally fell into two categories: 1) Those who felt that "60 percent of pre-injury wages" was not a fair standard for determining eligibility and, 2) those who were concerned that the effect of (2) would be to make rehabilitation a "once in a lifetime deal". Suggestions were made that the language in paragraph (2) include some qualifiers so that a worker can be eligible for a second rehabilitation plan if their previous injury had nothing to do with the second (e.g. working as a dozer operator a worker had a severed limb and was rehabilitated. Several years later the same worker returned to work as a dozer operator and was burned in a job

related fire. Under the current language, this worker would probably not be eligible for a second go at rehabilitation).

7. Several participants asked for qualifying language to be included in this section so that a worker may be able to refuse unreasonable requirements and would have some recourse if they inadvertently missed an appointment or had a family emergency that caused them to fail to adhere to each of the requirements under this section.

8. Several participants expressed concern that the time limits in this section may be difficult or impossible to comply with, in spite of the qualifers giving the Board and/or the rehabilitative specialist the ability to modify the time limits under unusual circumstances.

9. Some participants were concerned that the "abuse of discretion" language was too confusing and restrictive and did not give a worker sufficient ability to argue against a determination under this section.

10. There was concern expressed by several participants that the new definition of "employability" as opposed to "employment" was unfair.

11. Several participants testified in opposition to the expanded definition of "labor market".

12. Several professional rehabilitative groups have asked that their specialties be included in the definition of specialist (see attachment #1)

13. Again, some participants testified that the "60 percent" standard was too low and unfair.

14. The chiropractors offered several suggested amendments to Section 8. (See attachment #2)

15. Several participants objected to this language and testified that "doctor shopping" was as much a problem with employers/insurers as it was with employees. In addition, the chiropractors have suggested language in attachment 2.

16. There were several objections from participants about limiting the number of visits to a treating physician. It appears that most of the objection was based on a misunderstanding about what the language means since several people believed that the bill prohibited any visits beyond the guidelines spelled out in this section. There is a suggested amendment to this section in attachment #2.

17. Several participants objected to this language because they felt an employer would abuse the presumption of reasonableness. In addition, participants testified that if an employees ability to "doctor shop" were limited, then this section should also require a limit on the ability to "doctor shop" by the employer.

18. Some participants testified that some IME's use painful and unnecessary testing procedures in order to force an employee to refuse treatment/tests and thus loose their benefits. Participants asked that language be included to require that the tests had to be reasonably connected with the injury under investigation. There is additional suggested language in attachment #2 and additional information in attachment #5.

19. There was concern expressed that this section only applied to fees charged by an employee's provider and that the standard would not be applied to IME's chosen by the Board and/or the employer.

20. There was some concern expressed about permitting an "outside" organization to have any say about Alaska Workers' Compensation issues.

21. Participants expressed concern over language giving the presumption of correctness to the second IME.

22. Participants suggested that the "fraud" standard be expanded to include "misrepresentation and gross incompetence. (Also see attachment #2).

23. There was some concern about whether a stress claim could be defined in this manner and still meet a subsequent constitutional challenge.

24. Again, the "any evidence" standard. (See #1)

25. Again, there was some concern expressed as to whether determining benefits on the basis of residency could meet a constitutional challenge.

26. Several participants objected to the expanded definition of the labor market for employee's services.

27. Again, concern was expressed over the new definition of remunerative employability. In particular, the way that definition is applied in direction in order (in some participants minds) "to avoid paying permanent total disability".

28. There was some objection voiced over the "arbitrary" decision that TTD benefits may not be paid for more than two years. Suggestions were made that this section should be amended to allow TTD benefits to continue beyond 2 years in extenuating circumstances.

29. There were many objections voiced over the new method of determining permanent partial disability benefits under this section. Testimony from John Lewis indicated that several national studies failed to show any correlation between the method used to determine PPD benefits and the subsequent well-being of an injured worker. There was also testimony that indicated that, while this new method would not necessarily reduce benefits for workers, it would insert an "element of certainty" in determining benefits that

may reduce litigation and make it easier for insurers to make actuarial predictions.

30. Again, there was concern expressed over the definition of medical stability and whether it adequately addressed a situation where a worker may be stable but could deteriorate unless medical treatments were continued.

31. There was much concern expressed over this new section, most of which appeared to result from confusion over the wording and the intent.

32. Attachment #3 outlines concerns that legislative drafting has with the way this section is written.

33. Concern was expressed that this section assures that only vested pension and benefits be considered with determining the average weekly wage.

34. Concern was expressed that the definition of a "mental injury" may preclude claims based on mental injuries due to sexual, racial, and religious harassment and discrimination and other illegal employment practices.

35. Again, there was concern that "medical stability" did not adequately address conditions where an injured workers' condition may deteriorate without continued treatment.

* * * * *

In addition to concerns expressed over language included in the bill, there were several comments addressed to items that are not covered in the bill. They include:

1. The growing length of time between filing a workers' comp case and a Board hearing (See attachment #4).

2. A request that the bills include a mandated rate reduction of at least 10 percent.

3, Other "insurance questions", specifically the complaint that HB 352/SB322 fail to "get tough" or make any demands on the insurance industry, either to comply with laws requiring certain information to be filed or to require the Division of Insurance to beef up their financial and market examination functions.

4. The question of whether a contractor can be retroactively billed for workers' compensation insurance for an independent contractor who is a sole-proprietorship that they have contracted with.

5. The entire question of retroactive billing or "post audit" billing. One participant testified that a client of his, a small Southeast Alaska community, had a quote of $6500.00 for workers' comp

coverage for a small capital project. Upon completion of the project and a post audit report, the municipality was presented with a $75,000.00 bill for a completed project on which no injuries occurred.

6. Some participants requested that the measure address the problem with out of state companies not having to pay Alaska workers' compensation rates because they have an "all states rider" on their home-based policy that covers them. This puts Alaska businesses, particularly the construction industry, at a tremendous disadvantage.

7. Some participants suggested, in response to claims that injured workers prolonged their problems and used workers' comp as unemployment insurance, that the unemployment law be amended to allow an injured worker to claim unemployment that they have paid in to if they fail to find a job after recovering from an on-the-job injury.

(ATTACHMENT #1)

By the Labor and Commerce Committee

SENATE BILL NO. 322
HOUSE BILL No. 352

"AN ACT RELATING TO WORKERS' COMPENSATION..."

PROPOSED CHANGE:

Page 10. Sec. AS 23.30.041 REHABILITATION OF INJURED WORKERS. should be changed to read as follows:

(6) "Rehabilitation Specialist" means a person who is certified by at least one of the following national certifying boards: THE NATIONAL BOARD OF CERTIFIED COUNSELORS (National Certified Counselors - NCC); THE COMMISSION ON REHABILITATION COUNSELOR CERTIFICATION (Certified Rehabilitation Counselor - CRC); THE CERTIFIED INSURANCE REHABILITATION SPECIALISTS COMMISSION (Certified Insurance Rehabilitation Specialists - CIRS); THE AMERICAN BOARD OF VOCATIONAL EXPERTS (DIPLOMATE/FELLOW, VOCATIONAL EXPERT - ABVE).

AT PRESENT, P. 10, Sec. AS 23.30.041 (6) reads as follows:

"(6) "rehabilitation specialist" means a person who is a certified insurance rehabilitation specialist or a person who has equivalent or better qualifications as determined under regulations adopted by the department;

Representative Dave Donley, Chairman
support the above proposed change
Dean Higgs NCC
2910 West Northern Lights Blvd. #E
Anchorage, AK. 99517

HB352/SB222

[redacted]

ATTACHMENT #2

SECTION A.S. 23.30.095(a):

(1) DELETE underlined passage beginning page 12, line 7 through line 11, starting with "The employee".

RATIONALE: This passage is objectionable for several reasons:

(a) because there is an insufficient definition of "attending physician";

(b) because there is an insufficient definition of "specialist";

(c) because there is no indication of when a physician becomes an "attending" physician as opposed to an examining or consulting physician; and,

(d) because there is no real indication of how a choice of a different specialty is treated. For instance, if employee's attending physician is a GP and he has a broken leg and decides that a orthopedist would be better able to treat him, does that decision count as a change? Or, the employee has a lower back injury, choses to try an osteopath or a chiropractor instead of his GP, does that decision count as a change when he is not merely changing from one doctor to another but is actually seeking a different type of treatment?

If the passage must remain in, here is a suggested change:

The employee may not make more than one change <u>of attending physician within the employee's attending physician's specialty</u> without the written consent of the employer.

(2) Keep language that will be deleted (bracketed langauge on page 12, line 11 through line 13). There does not appear to be any justification for taking away the boards authority to make exceptions to this rule in the appropriate cases.

(3) Amend the language in the next sentence, page 12, line 13, starting "Upon procuring" to read:

Upon procuring the services of an attending physician, etc.

(4) Add sentence to end of present section stating:

With the exception of the above, no party shall attempt to interfere with or restrict by any means the employee's right to select a physician of his or her choice.

SECTION A.S. 23.30.095(c):

(1) DELETE the added language (underlined and appearing on page 13, line 2 through line 13).

RATIONALE: This passage is ill considered:

(a) because there is no definition of what is considered "continuing and multiple treatments" and health care providers must necessarily guess;

(b) because there is no designation of who will approve the plan and what standards will be employed and upon what facts or basis the review will rest;

(c) because the process of review will occur simultaneously with the provision of treatment and, according to the current language, the health care provider must bear the financial risk of disapproval;

(d) because there are no provisions for amendment of the plan should the need arise; and,

(e) because the provision imposes maximum limits arbitrarily.

Generally, it appears to us that these provisions will probably result in an increase in litigation and resulting costs rather that a decrease since so much is left unstated.

If the reason for this amendment is to guard against unreasonable or unnecessary treatment, there are already regulations in place and the employer can, with most health care professions, submit perceived abuses to the appropriate peer review committees.

If the reason for this provision is, as some of our members strongly suspect, an indirect attack on Chiropractic, it is not in fact cost effective and is, to say the least, discriminatory.

SECTION A.S. 23.30.95(e):

(1) Proposed amendment deleting requirement that examining physician be authorized to practice is inappropriate and suspect. Therefore, bracketed section on page 13, line 18 through line 19, should be RETAINED.

How is either the Board or the employee able to rely upon the competence of a report or examination if there is no requirement that the physician doing the examining be appropriately licensed? Does the legislature really intend to require that the employee must submit to an examination by someone who may not be capable of meeting license requirements?

(2) The creation of a presumption of reasonableness of requiring examinations every 30 days appears to be irrational. It seems obvious that the added language could easily be used by the employer to harass an employee in cases where either (1) the condition is stable enough that monthly examinations are unnecessary, and/or the examination technique used is painful and the likelihood of substantial changes in condition would not, in the absence of an adversary relationship, be normally considered justified. In addition, should the employee not be able to work at his/her old job, a requirement for monthly examinations by the former employer's doctor may well interfere with the ability of the employee to secure other employment.

(3) Although there are fairly draconian provisions within this section for employee non-cooperation, there are no provisions for (i) advance (reasonable) notice requirement by the employer; or, (ii) a means by which the employee can contest the necessity and/or reasonableness of the monthly examinations prior to their imposition.

SECTION A.S. 23.30.95(f):

DELETE (UNDERLINED) changes.

RATIONALE: The present section, prior to amendment, limited fees charged for medical treatment and services to charges that generally prevailed in the community. (See bracketed section, page 14, lines 18 through 19). The new section (underlined, page 14, line 20 through line 22) adds to the Board's responsibility the necessity to determine whether or not the charge, which may well be customary in the community, is reasonable (underlined).

That being true, the phrase that the Board may regulate fees and charges contained within this section would become a reality since the Board would have authority under this section to override free market considerations, including local economics and the effects of local competition and declare that charges that were in fact usual and customary but, in the Board's opinion, unreasonable.

The proposed change is actually unnecessary since normal free enterprise processes supply reasonableness of price through market place competition.

SECTION A.S. 23.30.99(i):

DELETE changes. AMEND CURRENT LANGUAGE.

The most offensive of the added language is contained on page 14, lines 25 through 26, which allows for an out-of-state organization to advise the Board on the appropriateness and necessity for and costs of medical treatment of Alaskan workmen by Alaskan physicians. A host of questions arise by this wording. If an out-of-state organization is appointed, how well qualified are they to judge these issues? Could they pass the relevant Alaska boards? Are they in fact licensed physicians/health care providers? Are they anything more than claim adjusters? How is an out-of-state organization going to determine appropriateness of treatment without recourse to examining the patient or taking additional xrays or additional studies? Why is an out-of-state organization needed when there are peer review committees set up within the various disciplines for these purposes now?

Regarding costs, once again, how is an out-of-state organization going to determine appropriate levels of costs? If for instance, the person making the determination on appropriateness of costs lives in and is familiar with medical costs in some small town in Illinois, will that familiarity influence the advice he gives to the Board on treatment rendered in Alaska where the cost of everything is higher?

Based upon the recommendations that are made to the Board, the Board will be determining whether an employer should pay a bill for services that have already been rendered. Because it has the power to approve of the withholding of payment, the employee and the local physician in Alaska rendering treatment to him is at a distinct disadvantage in challenging the advice of an out-of-state organization.

If the advice is unsound, but because of economics, remains unchallenged, the Board's decision will eventually begin to influence the manner in which Alaskan physicians treat injured workmen since their choices will essentially be to either adopt an approved (but unsound) procedure or to refuse to treat the injured workman. Additionally, injured employees may not seek appropriate treatment since they might end up having to pay for it themselves, which will either add to the term of the injury or begin to increase costs of employee medical insurance plans.

We suggest the following language REPLACE Section (j):

> The board may appoint a medical services review board consisting of physicians licensed in the state and employer and employee representatives to assist and advise the Board in matters involving the costs of health care services. The medical services advisory board shall conduct anonymous surveys biannually to determine usual and customary costs of treatment and procedures, and in the case of unusual situations, may conduct special surveys to determine usual and customary costs for treatment of procedures not normally encountered. If the Board shall determine that a physician or health care provider has inappropriately or unnecessarily provided treatment, or has habitually and substantially exceeded the usual and customary charges in the community in which treatment was rendered, the committee shall refer the matter to the peer review committee of the health care provider's discipline and advise the Board to disapprove the charges in question.

SECTION A.S.23.30.095(k):

(1) AMEND proposed language.

RATIONALE: The clear import of this section is to provide the Board with an independent source to turn to when a dispute arises between the party's experts. Unfortunately, the proposed section as it's presently worded does not go far enough to insure the independence of the source. Additionally, it fails to guard against apples and oranges comparisons that so often create or increase litigation before the Board. Finally, the proposed section creates an inappropriate limited standard of review which is inconsistent with current diagnostic techniques.

First, in order to insure the independence of the review, the selection of a physician or health care provider should be from a rotating list so that there can be no question as to impartiality in the selection process.

Second, both parties should have the right to object to one selection within a reasonable time period so that questions of bias may be minimized.

Third, the lists that are resorted to by the Board should be kept by discipline and specialty and the selection made should conform to the discipline or specialty of the health care provider of the employee. Otherwise, there is every likelihood that the Board will become embroiled in jurisdictional disputes between disciplines and specialties that will provide no meaningful comparison.

Fourth, limiting the standard required to overcome the presumption to objective evidence deselects critical subjective findings that often times form the backbone of a valid diagnosis.

We would suggest the following language be substituted for the proposed language:

> In the event of a medical dispute regarding determinations of causation, medical stability, degree of impairment, functional capacity, the amount and efficacy of the continuance of or necessity of treatment, or compensability between the employee's attending physician and the employer's medical evaluation, an independent medical evaluation shall be conducted by a physician or physicians of the same

physicians licensed in the State of Alaska or the state that treatment was rendered from a list established by, with the aid and advice of the medical advisory board, and maintained by the Board. Both the employee and employer shall have the right to challenge one appointment. In the event of a challenge, the next physician on the list will be appointed. The contents of the list and the order of its contents shall be kept confidential by the Board. The report of the independent medical examiner shall be furnished to the Board and both parties within 14 days after the examination is concluded. The opinion of the independent medical examiner shall, in the absence of clear and convincing evidence to the contrary, be presumed to be correct. A person may not seek damages from an independent medical examiner caused by the rendering of an opinion or providing testimony under this subsection, except in the case of fraud, misrepresentation or gross negligence.

SECTION A.S. 23.30.155(c):

DELETE Added language.

RATIONALE: As will be explained more fully when Subsection (m) is discussed, the exception being grafted onto this section is, in essence, gutting the penalty provisions by allowing an employer to escape the penalties by simply performing once a year ministerial acts that have nothing to do with the merits of a particular controversion, or for that matter, to do with a habitual practice of unjustifiably controverting employee claims. As a result, it is our suggestion that the amenditory language be deleted.

SECTION A.S. 23.30.155(m):

DELETE changes.

RATIONALE: This section as it is proposed, essentially vacates the penalty provisions in subsection (c) by allowing an employer to avoid penalties for failure to timely notify the employee and the board of changes it unilaterally makes to the employee's compensation, or whether or not the employer intends to controvert at all. In essence this provision allows, on a sliding scale, an employer to escape substantial penalties if it performs the ministerial acts that, under the present and proposed statute, it must perform.

For the employee who is caught within the exception's parameters, however, there is little relief. If the filing requirements did not incorporate notifications to the employee and were, in fact, only ministerial, there might be some justification for the proposal, although it is not readily apparent even in that situation. However, the reports do require notification to the employee and, in the absence of receiving timely reports, the employee may well make decisions that he might not should he receive a timely notification that the employer was either going to controvert, suspend or terminate his compensation. In essence then, the employer is, according to this section, allowed to escape penalties for failing to comply with the employee notification provisions in Subsection (c).

SECTIONS A.S. 23.30.185, A.S. 23.30.200:

DELETE proposed language unless the term medical stability is changed as noted below.

RATIONALE: Obviously, the employers and their carriers are seeking to place a limit upon TTD and TPD payments. However, they are basing the proposed limit upon an unrealistic and unfair standard, "medical stability". As will be demonstrated below, the definition for the term "medical stability" is suspect.

SECTION A.S. 23.30.265 (34):

AMEND proposed language.

RATIONALE: According to the proposed language, an employee's medical condition is "stable" after the date that no further objectively measurable improvement is reasonably expected to result from additional medical care or treatment. This definition has several flaws.

First, hinging a definition of medical stability on whether or not the patient will improve disregards situations where continued treatment is necessary to prevent a diminishment of medical status, or to prolong the patient's medical status.

Second, once again the standards for masking the determination are based solely upon objective findings when modern diagnostic techniques used a combination of objective and subjective techniques. As a result, the employee and all of the physicians coming into contact with him are artificially limited to decision making that bears no relationship to how medical decisions are normally made.

SECTION ENTITLED LEGISLATIVE INTENT, SUBSECTION (b):

AMEND proposed language.

RATIONALE: In decreeing that the Board has increased powers, there must be some authority for decision making concerning his medical treatment left to the injured employee. Therefore, there should be some provision contained within the statute that it is not the legislature's intent that the employee's right to chose who his health care provider will be will not be restricted unreasonably.

We suggest that the following language be added to subsection (b):

> With the exception of the provisions contained in A.S. 23.30.095(a), nothing contained within this section shall empower either the board or any party to interfer with or infringe upon the employee's right to select the type of health care and the person to provide it for the treatment of his injuries. Any employer or its representative that violates this section is guilty of practicing discrimation against the employee and subject to the provisions of A.S. 23.30.247.

ATTACHMENT #3

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

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

M E M O R A N D U M February 1, 1988

SUBJECT: Calculation of gross weekly earnings - SB 322

TO: Senator Mike Szymanski

FROM: Michael F. Ford
Legislative Counsel

You have asked for our opinion as to the determination of gross weekly wages under AS 23.30.220(a)(2) as amended in SB 322. Under current law, if the board determines that an employee's gross weekly earnings cannot be fairly calculated from the two previous years earnings, then the board may determine gross weekly earnings by considering the nature of the employee's work and work history, including probably future earnings. See Johnson v, RCA-OMS, Inc., 681 P.2d 905, 907 (Alaska 1984). The amendment to AS 23.30.220(a)(2) removes the language that allows the board to make a fairness determination, and limits compensation to the employee's earnings at the time of injury. It is not clear whether the board would be allowed to consider probable future weekly earnings in determining gross weekly earnings or whether gross weekly earnings are intended to be limited to actual earnings at the time of injury. Under sec. 21 of SB 322 the weekly rate of compensation received by an injured employee is equal to the employee's spendable weekly wages, determined under AS 23.30.220. Therefore, the weekly rate of compensation under AS 23.30.220(a)(2) could be the actual wages earned by the employee.

I would recommend that the language of AS 23.30.220(a)(2) be changed to clearly indicate whether in the case of an employee without sufficient work history, probable future earnings may be considered by the board in calculating gross weekly earnings. If you have further questions, please contact me.

MFF:gc
WKG1:060

ATTACHMENT #4

Chancy Croft Law Office

738 H Street -- Suite 200
Anchorage, Alaska 99501

Chancy Croft
Michael J. Jensen

(907) 272-3508

January 29, 1988

Representative Mike Navarre
Alaska State Legislature
P. O. Box V(MS 3100)
Juneau, Alaska 99811

Dear Mike Representative Navarre:

A problem of increasing proportions is developing with the 25,000 Alaskans injured at work each year. Claims cannot be heard in a prompt manner. Many people suffer.

The idea of workers compensation is to provide a speedy, efficient remedy to industrial accidents. Long delays must be avoided. This is the trade-off for limited benefits. It is crucial for workers to receive prompt payment of medical expenses and compensation if the system is to be effective. If claims cannot be heard in a timely and efficient manner workers suffer. Their spouses and children suffer.

The economic consequences of delay have a ripple effect. When compensation is not paid, lost wages to workers mean delayed or missed payments to landlords, utility companies, banks, groceries and department stores. Medical benefits are terminated. Indirectly these costs are passed to the public. Equally important, when workers are paid while disputes are litigated, the costs to employers of rehabilitation and other services are increased. The solution is not to penalize injured workers or good employers. It is to resolve disputes quickly.

The time between filing a claim and getting a decision from the Alaska Workers Compensation Board has increased 67% in the last two years. The delay is getting worse. None of the proposals before the Legislature or any administrative action addresses this problem. Senate Bill 322 and House Bill 352 will only make the problem worse without reducing the cost of premiums to employers or increasing benefits to injured workers.

Very truly yours,

Chancy

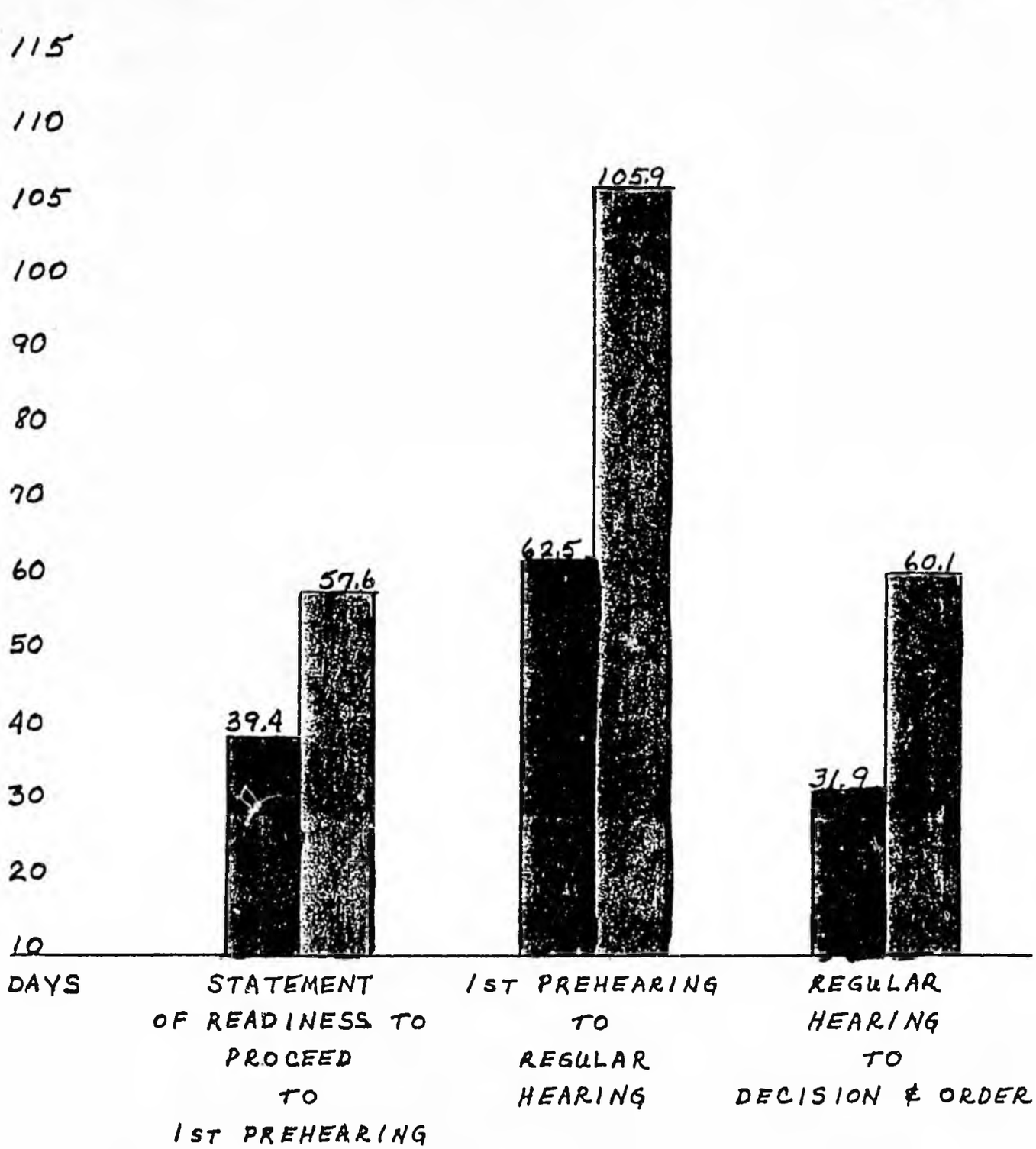
CHANCY CROFT

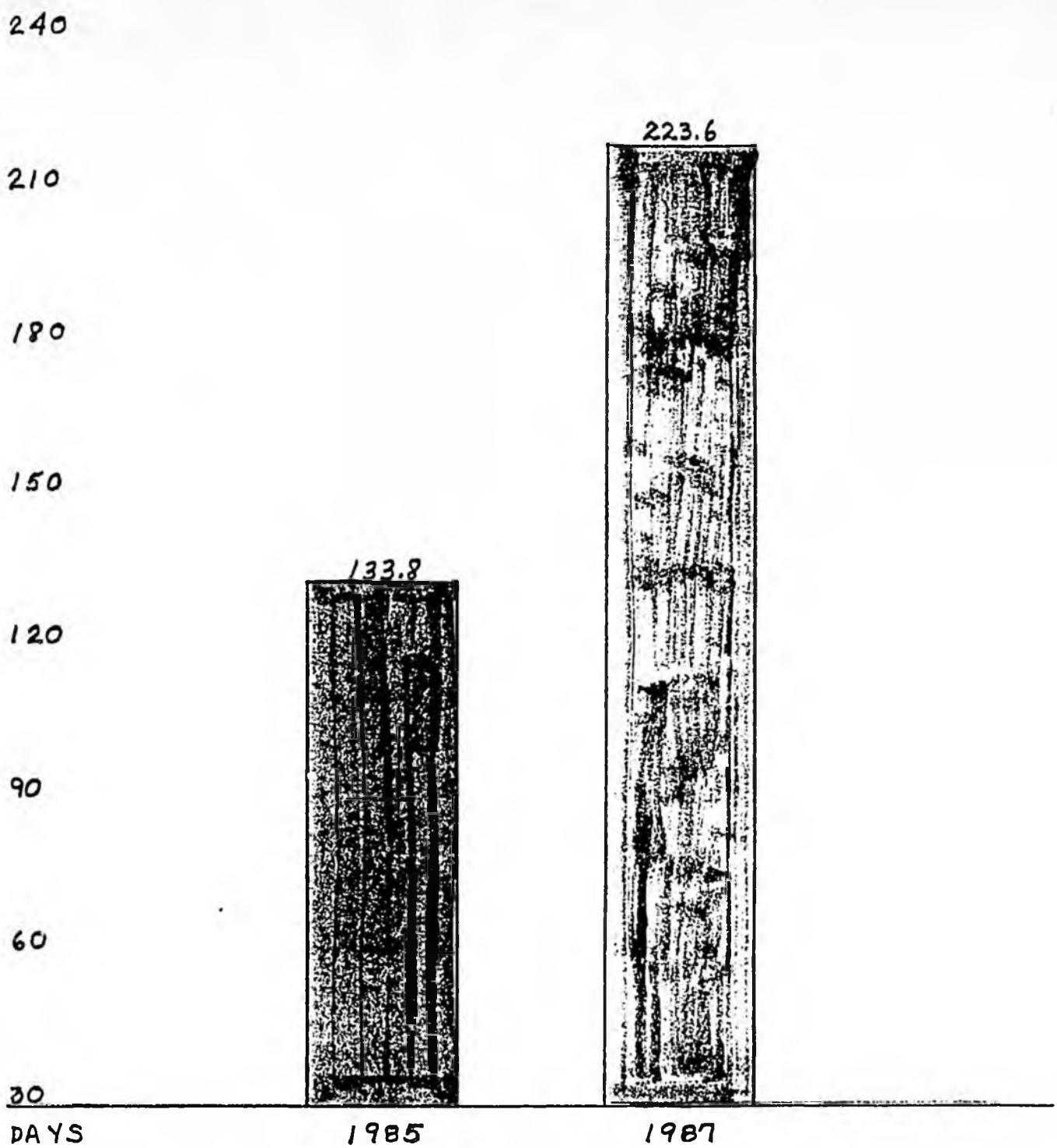
CC/blm/bh

Enclosures

THE INCREASING DELAYS

WORKERS' COMPENSATION TIME PERIODS





THE OVERALL EFFECT

JANUARY

29 STATEMENT OF READINESS TO PROCEED

FEBRUARY

14 VALENTINE'S DAY

MARCH

28 SEWARD'S DAY

APRIL

3 EASTER

MAY

9 LEGISLATURE ADJOURNS (120 DAYS)

30 MEMORIAL DAY

JUNE

JULY

4 INDEPENDENCE DAY

AUGUST

4 SPACE SHUTTLE LAUNCH

SEPTEMBER

5 LABOR DAY

9 DECISION & ORDER

224 DAYS OF WAITING

CHART #1

Chart #1 shows the increased delays in the three crucial steps of getting a workers' compensation case to hearing:

1. First, the filing of a Statement of Readiness to Proceed which initiates Board action,

2. Second, getting a prehearing at which time the date of a full board hearing is set, and

3. Third, to the time a Decision and Order of the Board is issued. Compensation is usually paid within two weeks of the Board's decision.

CHART #2

Chart #2 shows the combined effect of the three steps in Chart #1.

CHART #3

Chart #3 puts in a different perspective a wait of 224 days which is the average time between the date of filing of a Statement of Readiness to Proceed and the Board's decision in the 60 cases decided between October 1 and December 31, 1987.

ATTACHMENT #5

LAW OFFICE OF
SHELBY L. NUENKE-DAVISON

(907) 276-6555

2525 BLUEBERRY ROAD, SUITE 102
ANCHORAGE, ALASKA 99503

February 3, 1988

Representative Dave Donely
P.O. Box V
Juneau, AK 99811

Re: Workers' Compensation Bill

Dear Mr. Donely:

Thank you for phoning me the other evening in regard to some of your concerns about the Workers' Compensation bill. As indicated in our discussion, there are some valid points that were made at the hearing where some of the language should be cleaned up so as to avoid any potential abuses that could arise under the bill. I am going to attempt to sit down and draft up some amendment language on the issue of constitutionality of Brown v. AlPac, and the medical every 30 day IME, so that there is no doubt in anybodies mind that the IME is not meant to be used for a lot of "invasive diagnostic testing." Please feel free to call me any time you have comments or concerns regarding the bill, in that I am anxious to see this bill passed, and as you can tell from the hearings, one desperately needs to be passed as there are a lot of problems under the present system.

I think politically if you can clear up some of the concerns made by some of your constituents you could get the bill through with little changes. I do hope you continue to include the joint Labor Management Task Force in the involvement of any amendments, because as I testified at the hearings, the Workers' Compensation bill is a delicately balanced document.

Since I was unable to testify to everything I had wanted to, and most of the committee members were gone, enclosed please find written testimony I would like submitted to your committee. I will forward the same written testimony to Senator Tim Kelly and his committee.

Sincerely,

Shelby

Shelby L. Nuenke-Davison
Attorney at Law

SND/kac

enclosure:

LAW OFFICE OF
SHELBY L. NUENKE-DAVISON (907) 276-6555

2525 BLUEBERRY ROAD, SUITE 102
ANCHORAGE, ALASKA 99503

Date: February 3, 1988

To: Honorable Tim Kelly and Honorable Dave Donley

From: Shelby L. Nuenke-Davison
Attorney at Law
2525 Blueberry Road, Suite 102
Anchorage, AK 99503
(907) 276-6555

Re: Labor Management Task Force Bill

WRITTEN TESTIMONY

I have been practicing workers' compensation defense almost exclusively in the State of Alaska for the last six years. I testified just briefly at the hearings held in Anchorage, on January 29, 1988 and was the last witness. Since a lot of committee members were unavailable, I have decided to take the time to do some written testimony because I think this bill is crucial.

I am of the opinion that the Labor Management Task Force Bill should be passed with no amendments made to the bill that do not go through the Labor Management Task Force. The reason for this is because, though I can see legally where some language changes need to be made, I know from working in the Alaska workers' compensation arena that all the statutes are directly related to each other and are intimately intertwined.

I would like to briefly comment on why some of the proposed changes are of the utmost importance. Failure of me to address any particular portion of the bill does not mean that I am not in support of those aspects of the bill.

1. Page 1, Section 1, lines 14 & 15 state, "The legislature declares that the workers' compensation laws must not be construed by the courts in favor of any party." This language is crucial to get passed and quite frankly I think it should be a lot stronger in that no matter what workers' compensation reform is done by the legislature, unless there is a message given to the Alaska Supreme Court that when there is any ambiguity in the workers'

compensation statute it should not go in favor of any party, then the Alaska Supreme Court through case law will nullify a lot of your work. Both the employer and employee give up significant rights in the workers' compensation arena. It is important that everybody understands this because much of the testimony has been surrounding the employee's rights. Employers give up the right to have the employee prove by a preponderance of evidence that he was injured, that the defendants are liable, and his damages. The employer also gives up his common law defenses to comparative negligence and assumption of risk. These are significant rights to give up and, as such, the law should not be construed just in favor of the employee. I understand that the employee also gives up his common law damages in exchange for the workers' compensation remedies. Because both parties give up significant rights, neither party should be favored in the law.

As the law presently stands, the Workers' Compensation Act does not state this. As such, the Alaska Supreme Court always construes the law in favor of the employee if there is any ambiguity in the statute. This is based upon a common law rule that the humanitarian purpose of the law is to favor claimants. To give you an example of how bad the Supreme Court is against employers, there is a common joke which goes around the workers' compensation arena, which is that if a claimant losses at the Board level, the claimant's attorney is malpractice not to appeal. That is somewhat of a significant statement and gives you an idea of how crucial this intent language is.

However, under this section, line 20, we should omit the word "any" evidence and substitute "substantial" evidence because that is the appropriate standard of review for appeals on issues of fact. Keep in mind, substantial evidence is easily found on appeal because it has been defined that any evidence is "substantial enough if it supports the conclusion in the contemplation of a reasonable mind."

2. I would now like to comment on page 2 of the bill Section 4, lines 24 through 29 and over to page 3, line 1. This proposed amendment is important to protect employers from being liable on a claim where an employee knowingly makes a false statement as to his physical condition and then allegedly has an aggravation to that condition. Because of the three-pronged test outlined in the proposed bill, this statute will be hard to prove and will not be easy to abuse against the claimant by the employer. This section however, needs to be supported by the new language in AS 23.30.055 which is on page 11, lines 9-10 & 11 of the

bill. Which states that, "the liability of the employer is exclusive even if the employee's claim is barred under AS 23.30.020 (b)."

3. AS 23.30.095, Section A which is found on page 12, lines 7 & 11, is an important amendment so as to avoid doctor shopping. Doctor shopping prolongs a claim unfairly to the employer. Doctor shopping can presently occur if a claimant goes to a doctor who does not support his position and wants to prolong the claim. Presently, there is nothing in the law stopping this and, therefore, claims go on indefinitely. This statute, however, appropriately protects a claimant if his treating physician refers him to a specialist in an area so as not to have the specialist be constituted a treating physician. At the hearing there was some testimony regarding the right of the employer to have IME's every 30 days and the fear that the claimant would be subjected to numerous "invasive diagnostic tests." As such, I recommend inserting on page 13, line 24 the following: "When possible, the IME physicians should use already existing diagnostic data to make his determination."

4. I would like to discuss briefly on two intertwined statutes which I think are very important to be passed untouched. There is nothing legally wrong with either of these paragraphs. One is Section 15 of AS 23.31.120 (c) which is found on page 16 of the bill, lines 4 through 7, and the other is Section 32, which is AS 23.30.265 (17) which is found on page 25 & 26, specifically on page 26, lines 4 through 14. Both of these amendments are absolutely crucial to be adopted without any changes because stress claims are as a general rule hard to objectify and are the up and coming big exposure for employers. Because there was no legislation on the books, the Alaska Supreme Court have made two devastating rulings on stress that make these claims almost undefensible. Since there are so many stressors in ones life and since a stress claim is subjective in nature, I urge you to enact both amendments untouched. These statutes still affords a party to file a stress claim.

5. Finally, the last areas I would like to address are Section 6, Voluntary Vocational Rehabilitation, Section 24, Temporary Total Disability, and Section 25, The Scheduling of All PPD Benefits and why these sections are important to pass without any significant amendments being made unless they go through the task force.

The present vocational rehabilitation statute in Alaska has already been labeled a failure by many claimants, employers, workers' compensation board members, and

vocational rehabilitation counselors alike. The Alaska vocational rehabilitation system is not fair because it is too intimately connected to the types, amount, and period of time benefits that will be received by the claimant and has resulted in increased litigation to the detriment of the employee. Because of its close connection to the types, amount, and period of time benefits that are received, vocational rehabilitation in Alaska is nothing more than a litigation tool, and as such, is usually computed to dollars and settled out in a settlement. After the settlement, the claimant is no longer entitled to vocational rehabilitation and will more than likely have to return to his work at the time of injury, even if he really should not.

To understand the failure of the present vocational rehabilitation statutes, one must understand the interplay between Temporary Total Disability benefits, Permanent Partial Disability and Vocational Rehabilitation under the present law. Under the present law, it is important for you to understand because there is no cap on the amount or period of time a person can collect Temporary Total Disability benefits and there is a cap on Permanent Partial Disability benefits and because the Alaska Supreme Court in a case called Bignell v. Wise, determined that until a person is both "medically and vocationally stationary" he is entitle to get Temporary Total Disability benefits, the claimant has no interest in getting off Temporary Total Disability and on to Permanent Partial Disability benefits. Therefore, because vocational rehabilitation is so closely tied to how much a person gets and for how long it results in a lot of litigation. This is why vocational rehabilitation does not work in the present system because all it is really used for is a tool to facilitate larger claims and/or to prolong the claim. This is where we lawyers do a lot of our work. As such, the Joint Labor Management Task Force Bill should be passed because it removes vocational rehabilitation from the litigation process and puts a cap on Temporary Total Disability benefits of two years and does not make Temporary Total Disability benefits or Permanent Partial Disability benefits tied to whether or not the patient is vocationally stable. However, in the bill pending vocational rehabilitation is still afforded to claimants who need the services. Only those claimants who truly want these services will use them if they are not tied so intimiately to the claim. Even though no one can give hard dollars in terms of savings, I cannot see how this concept would not save a lot of costs in the workers' compensation system.

If any of you have any questions in regard to this bill or any legal questions on this matter, please feel free to

connect me. Thank you for taking the time to read this written testimony.

Sincerely,

Shelby L. Nuenke-Davison

SND/kac

711 W. Eighth Street
Anchorage, AK

Hank Receveur
room 1312 phone 265 6123

[redacted]

Bev:

Bill Lutes has passed along this analysis of the Worker Comp bill by John Lewis, a nationally recognized Comp expert.

As soon as the bill becomes law, the significant changes in the soft costs to employers, limits to the number of visits for therapy, the need for approval before seeing a doctor, etc., etc., should result in an immediate 15 percent savings.

Lutes has said that recent similar changes in Florida resulted in the state insurance commissioner ordering a corresponding roll back in premiums and has asked us to sound out our guy, Paul Roller (?), to see if we could expect the same action here.

Let me know what you think.

Hank

Rosa:
FYI

[redacted]

cc Heatwole, Posey, Kevin

WHAT YOU SHOULD KNOW ABOUT THE PROPOSED WORKERS' COMPENSATION LEGISLATION.

The proposed law now before the legislature came about as a result of a year-long effort conducted by a statewide labor-management task force.

If passed, the new law would do the following:

1. Increase disability benefits for seriously injured workers.

2. Increase temporary total disability benefits for workers employed in low-paying jobs to match at least minimum wage.

3. Provide for voluntary rehabilitation for workers who want to prepare for future employment.

4. Encourage cooperation between injured workers and rehabilitation counselors.

5. Establish minimum qualification standards for rehabilitation counselors, and offer a referral service to workers and employers.

6. Allow physicians to charge only "reasonable" fees for specific services.

7. Provide for unbiased and cost effective settlements in medical disputes.

8. Encourage patients to seek quality medical care that promotes recovery rather than dependency.

9. Require health care providers to show cause for continuous multiple treatments. It does not, however, limit treatment if it can be proven to promote recovery.

10. Make it unlawful for an employer to discriminate against a job applicant who has previously filed for workers' comp benefits.

11. Protect workers from loss or delay of benefits in the event of a dispute where an insurance carrier is ultimately liable.

12. Allow for the reduction of benefits for workers who relocate to an area with a lower cost of living.

13. Set a standard under which stress claims may be judged valid.

14. Allocate a greater portion of worker compensation dollars directly to injured employees.

15. Provide for a cost-effective, equitable program that provides incentives to injured workers to return to work.

We are representative of the companies and organizations that support this legislation because it is fair to injured workers, cost effective to employers and will save jobs in Alaska.

-ACME FENCE
-ALASCOM
-ALASKA AIRLINES
-ALASKA CLEANERS
-ALASKA PULP CORPORATION
-ALASKA SALES AND SERVICE
-ALASKA STATE CHAMBER OF COMMERCE
-ALASKA STATE HOMEBUILDERS
-ALASKA STATE MEDICAL ASSN.
-ANCHORAGE REFUSE
-ANGLO ALASKA PETROLEUM
-ASSOCIATED GENERAL CONTRACTORS
-BAILEY'S RENT ALL
-BARRATT INN
-BUILDING INDUSTRY ASSOCIATION OF ANCHORAGE
-CARR-GOTTSTEIN
-CENTRAL PLUMBING AND HEATING
-CIMMARON HOLDINGS
-GCI
-HICKEL INVESTMENT
-HOFFMAN CONSTRUCTION COMPANY OF ALASKA
-HOLLAND AMERICA
-KLUKWAN, INC.
-MIDAS MUFFLER
-NATIONAL BANK OF ALASKA
-NORTHERN ADJUSTORS
-NORTHERN AIR CARGO
-PACIFIC MOVERS
-PETER KIEWIT AND SONS
-RAIN PROOF ROOFING
-REEVE ALEUTIAN
-RESOURCE DEVELOPMENT COUNCIL
-SAUPE ENTERPRISES
-SCOTT WETZEL SERVICES
-SMYTH MOVING SERVICES
-SPENARD BUILDING SUPPLY
-TOTEM OCEAN TRAILER EXPRESS
-USIBELLI COAL MINE
-WESTMARK HOTELS
-WILDER CONSTRUCTION COMPANY, INC.

-ALASKA STATE AFL-CIO
-BRICKLAYERS LOCAL 1
-CARPENTERS LOCAL 1281
-CARPENTERS LOCAL 2162
-INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS LOCAL 1547
-FAIRBANKS BUILDING AND CONSTRUCTION TRADES COUNCIL
-FIREFIGHTERS LOCAL 1264
-INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 302
-LABORERS INTERNATIONAL UNION LOCAL 341
-LABORERS INTERNATIONAL UNION LOCAL 942
-LAUNDRY AND DRY CLEANING LOCAL333
-PAINTERS AND ALLIED TRADES LOCAL1140
-PAINTERS AND ALLIED TRADES LOCAL 1555
-PUBLIC EMPLOYEES UNION LOCAL 71
-ROOFERS AND WATERPROOFERS LOCAL 190
-SHEETMETAL WORKERS LOCAL 23
-TEAMSTERS UNION LOCAL 959
-UNITED FOOD AND COMMERCIAL WORKERS LOCAL 1469
-UNITED TRANSPORTATION UNION LOCAL 1626
-WESTERN ALASKA BUILDING AND CONSTRUCTION TRADES COUNCIL

This united demonstration of support will be displayed as a full page ad in the Anchorage Times Sunday, February 14 and in the Anchorage Daily News.

TIM KELLY

D. G.'s # DIDN'T GET TO

-2%

-6% ON BILL ON IMP

TOP @ 50% DISABILITY INSTEAD OF 30%

33% IS BREAK PT. FOR GETTING MORE THAN NOW

ROLLER

TIM KELLY

25% OF CLAIMS = BACK CLAIMS

50% OF BACK CLAIMS w/ ATTORNEYS

BACK CLAIMS FALL INTO 15 - 35% IMPAIRMENTS

AK PREMIUMS = 3/4 OF 1% OF USA PREMIUMS

RATE INCREASE ABOUT OCT ABOUT 13.6%

TIM KELLY

$0,000 ON AN EXPENSE PAID BASIS.

COST OF LIVING = 2.2% SAVINGS

TOTAL COST 1993 $70 MIL
1996 - $150 MIL
1997 PROJECTED $190

1/19/88

(1) John Lewis - nat'l expert
overview

(2) Comm. Sampson who will introduce Jackie McClintock

(3) presentation by Labor/Mgmnt task force who will explain bill

(4) ~~brief statement from Div. of Ins.~~ LINDA WILDE - COMMERCE
RE: actual research

(5) maybe Mr. Lewis again

NCCI –

~~WCCA~~ –

Milliman + Roberts –

~~NCCA~~ –

NCCI – Marc Mulvaney

Milliman + Robert – Mike McMurray

John Lewis

Hard Cost

2) whole man

3) Fall back on original finding.

6/10 of 1% savings

Distribution of costs

Permanent Partial – +18%

Neutral – 6% saving

240 - 200

significant offset to future trends.

10% 4,800

11% 10,560

Gisela I Lindblom – John call.

Stan Sparks

Marc Mulvaney > NCCI

Vote Rebal

How

Alaska Classification + Rating Committee

9 Insurance Carriers —

Hard (1) + 1.8%

(2) − 2.00 COLA constitutional

−.2% —

probable savings soft dollars —

1) Fatal —
2) Perm Total —
3) Perm Partial — 50.2%
4) Temp Total —
5) Medical —

40%

12-13%

37 weeks

Mark Mulvaney — Healing periods doubled.

30%

Earl Davis -

Millivia + Roberts } 6/10 Hard dollars
NCCI 2/10 ——— Probable savings

$383 weeks - 40+ weeks

quarterly payments?

13.4
24.6

John Lewis — M+R - +18

Permanent Partial — Object wa zero

↑

if zero -
- 4 - 6 2o

lost $ money

Insurance prepaid —

X 100
4 - payments

— Joel Weiman —
Jesus christ these guys are nuts.
A real bit.

— stress management workshops —
Mental + physical —

~~Long~~

Wagshunt

~~Rene Murray~~ George Eichen
Eicha MaHaney

Payments up front

Paul Roller

— medical plan —

Eicha MAHaney
Don Sasser
Jerry Binkley

Don Sasser

1) Rehabilitation Process
2) Medical fee's

Solution

#1 - 3 Programs

1) Rehab
2) Partially disabled
3) Permanent disability

unemployment insurance
Worker's comp

Jerry Brindley] Medical insurance while on worker's comp.

[any] examination

Cathy Broomer - dislikes IME

too high

waiver's

$20

$40 an hr

* Gay Massey