SB

322

(File 7)

HOUSE LABOR AND COMMERCE COMMITTEE

REPRESENTATIVE DAVE DONLEY, CHAIRMAN

WORKERS' COMPENSATION LEGISLATION

Comparative Analysis - House and Senate Bills
Prepared by the House Labor and Commerce Committee
February 23, 1988

ISSUE	HB 352/SB 322	CURRENT LAW	PUBLIC TESTIMONY	CS SB 322 (L&C)
(1) Standard of evidence to uphold a Board decision	"Any evidence" standard set in AS 23.30.(b) under Legislative intent language in Section 1.	"Substantial evidence"	Several participants argued that the "any evidence" standard was too broad and should be amended to read "any reasonable" or "preponderance of evidence".	The "any evidence" standard is changed to provide that a Board's decision is conclusive "unless the court finds that a reasonable person could not have reached the conclusion made by the Board".
(2) Adjust benefits by COLA	Adjusts benefits for workers by the cost of living (COLA) for their area of residence	Adjusts benefits for workers by a formula based on the difference between the hourly wage in Alaska vs the hourly wage for the same kind of work in another state.	Some participants expressed concern that this change may have constitutional problems, particularly since a reliable source of informaton about the COLA by states is hard to obtain. Generally, testimony favored this change.	Legislative Intent language in Section 1. is amended to include the word "fair" under the purposes for which the workers' compensation program was created.
(3) Board established list of providers	Board establishes and maintains a list of health care providers and may choose providers on a rotating basis to conduct IME's and other services at the request of the Board.	Health care providers picked at random by employer/insurer, employee, or by the Board.	Some participants expressed concern that some providers may be "black-balled" from the list and have no recourse to address their grievance under this section.	AS 23.30.005(h) is amended to change "may" to "shall", thus requiring the Board to establish the list of providers. AS 23.30.005 (m) is amended to change "shall" immediately adopt new regulations" to "may".
(4) Reporting of prior existing injury	AS 23.30.020(b) denies benefits to a worker who "knowlingly makes a false statement" about a pre-existing injury and the employer (1) depends on that statement in hiring and (2) the prior injury has a causal relationship to the second injury.	Current law is silent on this particular circumstance although there is a general prohibition in AS 23.30.250 that makes it a felony (perjury) for anyone to make a false or misleading statement for the purposes of obtaining or denying a workers' comp benefit.	There was some testimony that a worker may make a false statement through omission or misunderstanding and later be denied benefits. Generally this addition was supported because an employer has to have the information to meet reporting requirements under the second injury fund. Fairbanks United supported this change but suggested (1) that a standardized form be used, (2) adding provisions for making a prompt determination as to whether fraud was committed and (3) that an employer have immunity from civil liability from a worker denied benefits under (b).	A new Section 5 (AS 23.30.025) is added to provide that any "all states' rider" on a workers' compensation policy issued from another state must designate whether Alaska is one of the states covered by the rider and the report must be submitted to the Department of Labor under AS 23.30.085. (Upon receipt of the report, DOL could to refuse to recognize a policy if the rates paid by the employer/firm are not adequate for Alaska coverage.) See #5 under "OTHER ISSUES". A new Section 6 (AS 23.30.030) is added to provide that a premium paid for insurance may be paid semi-annually if requested by the insured and if the annual policy is $2,000 or more and requires the insurer to notify the insured of this provision.

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				A new Section 8 (AS 23.30.040(h) is added to roll in the major provision of HB 177 to provide that administrative expenses for the second injury fund will be paid from the fund. The effect of this cost-saving measure is to give the pending legislation (HB 352/SB 322) a zero fiscal note.
(5) Vocational Rehabilitation Services Selection of Rehab Serv. Administrator	AS 23.30.041 (a) Board selects a Reemployment Services Administrator (RSA) to (b) perform functions outlined in paragraphs (1 through 4) including: enforcement of regulations, recommending regulations and monitoring the quality and effectiveness of programs and (5) (a through d) monitoring the costs of rehab programs and following up on clients and (b) establish and maintain a list of qualified specialists and (7) promote awareness of the program	AS 23.30.041(a) provides that the Board shall select a rehabilitation administrator to (b) implement the section and study the program.	Some participants objected to what they termed as the "sweeping powers" granted to the RSA under pending legislation. Fairbanks United was not convinced that the proposed changes to the rehab section would work and suggested, (1) requirements for reporting/compiling data on the costs of rehab evaluations, (2) implementation of regulations that require timely action on cases, (3) establishing a task force to track the rehab section, and (4)redirecting the second injury fund to provide incentives for employers to rehire injured workers.	AS 23.30.041 is amended into a new format with only a few substantive changes that include:
Rotating roster for selection:	AS 23.30.041 (c) requires the RSA to establish and maintain a rotating roster of specialists to perform eligibility evaluations for rehab and to make selections from the list when needed.			AS 23.30.041(c) is further amended to provide that the list maintained by the RSA shall be "on a rotating and geographic basis".
	AS. 23.30.041 (d) provides that an employee shall be eligible for rehab services if a doctor predicts that the worker will have a permanent impairment from their injury that will leave them with less than what it it takes to do the job they were (1) doing at the time of injury or (2) held during the last ten years long enough to learn the necessary skills.	AS 23.30.041(c) provides that an employee is eligible for rehab if a doctor predicts that the injury will cause a permanent impairment that precludes a return to "gainful employment"		AS 23.30.041(e)(2) is amended to include "jobs that exist in the labor market that the employee has held or received training for within 10 years before the injury....".
Eligibility for rehab services	AS 23.30.041(e) provides that an employee is not eligible if (1) employer offers employee a job at no less than 60% of pre-injury gross hourly wage or (2) employee has been previously injured, completed a rehab program, and returned to a similar job.		Several participants complained that this section would make rehab a "once in a lifetime deal" under workers comp and asked that the section be amended to permit subsequent rehab services to an injured worker if their current injury had no substantial relationship to the first injury that resulted in rehabilitation.	AS 23.30.041(f)(1) is amended to provide that "the employer offers employment within the employee's predicted post-injury physical capacities at a wage equivalent to at least the state minimum wage under AS 23.10.065 or 60% of....".

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(5) Cont'd Rehab Services	AS 23.30.041 (f) provides that a worker eligible for rehab shall select a rehab specialist from the rotating roster.	No Board maintained roster under current law.	Several voc rehab specialists objected to being chosen from a rotating roster because, (1) it was not cost effective for doing several evaluations in adjacent communities and (2) it interferes with free enterprise and free choice by employee of a rehab specialist who has demonstrated quality results.	
Conflicts	If their is a conflict between the employee/er over the choice the RSA shall appoint a specialist to perform the eligibility determination. Both parties have one right of refusal for a specialist.	AS 23.30.041(f) provides that if there is a disagreement between the employee/er, the RS shall appoint or deny a plan by any party within 14 days and any party can seek a review of the decision within 10 days under AS 23.30.110.		AS 23.30.041(f)(2) is amended to provide that "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 required of the employee at the time of the previous injury, or"
Design of Rehab Plan	The rehabilitation plan shall include (1) the occupational goals in the labor market (2) plan to acquire skills to be employed (3) cost estimate of the plan (4) length of time the plan will take (5) date plan begins (6) date of medical stability as predicted by a doctor	AS 23.30.041(d) provides that the first evaluation shall judge whether rehab is necessary including (1) if the plan allows the worker to return to work, (2) if worker can return to work without the plan, (3) costs of plan including all costs to employer and whether worker will be more or less able to work after the plan AS 23.30.041(e) provides that the plan may consist of the following with the highest preference on that which will get the worker back to work the soonest, (1) prosthetic devices (2) work site modification, (3) on the job training, (4) vocational training for a new job, (5) academic training.		A new paragraph (3) is added to AS 23.30.041(f) to provide that "at the time of medical stability no permanent impairment is identified or expected.
Agreement to the Plan	AS 23.30.041 (h) requires employee/er to sign the plan.			AS 23.30.041(h) is amended by adding a new paragraph (2) to require an inventory of the employee's abilities in formulating a rehab plan. AS 23.30.041(h)(7) is amended to read "the estimated time of medical stability as predicted by the physician". AS 23.30.041(h) is amended by adding a new paragraph (8) to require a detailed description of the rehab plan.

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(5) Vocational Rehabilitation Services Non-cooperation	AS 23.30.041 (i) provides that noncooperation by an employee shall mean loss of benefits from the date of noncooperation which is defined as failure to: (1) keep appointments, (2) maintain average grades, (3) attend programs as assigned by the specialist, (4) maintain contact, (5)cooperate in the development of the plan and participate in assigned activities, (6) comply with employees responsibilities outlined in the plan and (7) participate in activities as determined by the RSA	AS 23.30.041 (h) provides that refusal to participate means loss of benefits for the time of refusal until refusal stops. If a person who refuses to participate begins a rehab plan within two months, completes the plan and works for at least 30 days, they shall receive a lump sum of 25% of their forfeited benefits.	There was considerable public testimony in opposition to this section because people felt, (1) it gave too much power to the RSA and rehab specialist, (2) it made "too many hoops" for an injured worker to jump through when a miss on any of them would mean a loss of rehab benefits, (3) there was no adequate way for a worker to argue in their defense if they were determined to be "noncooperative".	AS 23.30.041(n) is amended to read "noncooperation means unreasonable failure to" AS 23.30.041(n)(2) is amended by deleting "average" and inserting "passing grades". AS 23.30.041 is amended by adding a new subsection (to provide an appeal process in the determination of noncooperation.
Goals for Rehab Plan	AS 23.30.041 (g) sets priority goals for the plan as, (1) on the job training, (2) vocational training, (3) academic training, (4) self employment, or (5) any combination of the above.	AS 23.30.041(i) defines priority goals for the plan as restoring a workers to gainful employment (1) at the same job or similar job with the same employer or industry, (2) a job useing the same skills at a different industry, () 3 a job using different skills but the same level of academic training, (4) a job requiring higher academic skills.	There was testimony in oppostion to changing the goal of the plan from a goal of "gainful employment".	
Time Limits	AS 23.30.041 (j) establishes a time limit on rehab so that (1) reemployment benefits may not exceed 2 years, (2) an employee or employer must ask for an eligibility evaluation within 60 days of injury, (3) determination for eligibility must be complete within 30 days of referral, (4) a rehab specialist must be selected within 10 days of being determined eligible.		There was concern expressed that the two year cut-off was arbitrary and unfair, particularly to the more seriously injured worker who may need substantial rehabilitation. There was concern expressed that 60 days was too soon in some cases and that the language should be amended to allow for extenuating circumstances.	AS 23.30.041 (c) is amended to provide that a worker must request a rehab evaluation within 90 days instead of the 60 days under proposed legislation.

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(5) Vocational Rehabilitation Services Time Limits	AS 23.30.041 (j) cont'd. (5) plan must be approved by all parties within 90 days. (6) plan begins when doctor determines that worker is medically ready and		There was considerable public comment that the time limits established under this section are too tight and that more time should be allowed or that language should be added to give the RSA a mandate to allow more time when needed.	
Standard to uphold a RSA decision	As 23.30.041 (j) (7) provides that the Board will uphold a decision by the RSA unless "abuse of discretion" can be demonstrated.		Several participants testified that the "abuse of discretion" standard would be impossible to prove and that an injured party would not have an adequate ability to protest or address a grievance.	
Cost of Plan nd Benefits nder REhab	AS 23.30.041(k) provides that the cost of the plan may not exceed $10,000. If a worker reaches medical stability before completion of the plan, temporary total disability payments cease and permanent impairment benefits will be paid at TTD rates. If PPD benefits are exhausted before the plan is complete, the employer shall pay wages not less that 60% of the workers' pre-injury spendable weekly wage, not to exceed $525/week until completion of the plan. (k) cont'd.. Any permanent impairment benefits remaining after completion of the plan shall be paid in a lump sum. Fees paid to rehab specialists shall be paid by employer and are not included in the $10,000 limit on the cost of the plan.		There was concern expressed that the $10,000 limit was too low. Several participants expressed concern about the cut-off in TTD after medical stability, specifically because a worker will begin to assume some of the costs of the rehab plan in some cases.	

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5) Vocational ehabilitation ervices	AS 23.30.041(l) provides that only a rehab specialist may accept a case. A non-specialist may work under the direct supervision of a specialist.	See below on definition of rehab specialists.		
Definitions	AS 23.30.041 (m) is the definitions section including:			
	(1) "employability" means the ability to but not necessarily the opportunity to engage in remunerative employment.	AS 23.30.041(i) defines a priority for restoring a worker to "gainful employment".	There was considerable public testimony in oppostion to the:definition of (1) employability as the ability to hold a job as opposed the the current standard of actual having a job ("gainful employment")and	
	(2) "labor market" is the area that offers employment opportunities in the following priority: (a) area of residence, (b) area of last employemnt, (c) the state, (d) other states.		(2) the expanded definition of "labor market" that is used to determine whether a worker is eligible for rehab services.	
	(3) "physical capacity" (4) "physical demands" (5) "reemployment benefits			
	(6) "rehabilation specialist" as a person who holds at least a CIRS certificate or the equivalent or better.		Several professional groups objected to the definition of a specialist and asked that the licenses and degrees of other specialists be included in the definition and that a new section be added making a "grandmother" clause to allow currently practicing rehab specialists to continue to practice.	AS 23.30.041(p)(6) is amended to include "a certified rehabilitation counselor" under the definition of a "rehabilitation specialist".
	(7) "remunerative employability" as employment with wages equal to or greater than 50% of the gross hourly wages prior to injury, adjusted by the applicable area of residence.		There was considerable public testimony that the 60% standard for post-injury wages was too low and was unfair. Participants requested that the standard be amended so that the 60% could not be less than minimum wage.	

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6) Exclusiveness of Liability	Excludes workers' comp benefits for workers who make a false statement about a preexisting injury under AS 23.30.20(b)		Fairbanks United suggested that this section be amended to make the employer immune from liability when a worker is denied benefits under this section.	
) MEDICAL "Doctor Shopping"	AS 23.30.095 (a) is amended to provide that an employee can make only one change in the choice of treating physician without written permission of the employer. Referral to a specialist by a treating physician is not considered a choice. Notice of change in treating physician must be made to employer before change is made.	No limit on number of changes in the choice of doctor by either employee or employer although a changes is supposed to occur only through regulations developed by the Board.	Public comment pointed out that "doctor shopping" was as much a problem with employers as it was with employees and that an employers choice for a physician to perform IME's should be limited in the same way an employees choice is under the proposed legislation.	
'Continuous id Multiple reatments"	AS 23.30.095 (c) is amended to provide that claims for continuing and multiple treatments are not valid unless they were submitted in a written plan before treatment commences that is completed and signed by treating physician and mailed to employer one week before beginning of treatment. Initial treatment plan shall not exceed more than 20 visits in first 60 days. If more than 20 visits in 60 days or more than 4/month after first 60 days, a physician shall document the need for services in excess of the guidelines in the plan.		Fairbanks United suggested that this approach won't work, will increase costs, and should be deleted from the bill. Participants, particularly patients of chiropractors and the doctors themselves, objected to the limits on continuing and/or multiple treatments as arbitrary, unfair, and discriminatory against a specific medical practitioner. Chiropractors submitted eight pages of suggested amendmens to this section of the bill.	AS 23.30.095(e) is amended to provide that an IME requested by an employer every 60 (30) days is considered reasonable.

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(7) MEDICAL Cont'd. "Independent Medical Exams" IME's	AS 23.30.095(e) is amended to provide that an employers request for an IME within 14 days of injury and every 30 days thereafter is reasonable and that a worker is non-cooperative if they refuse to submit to an IME.	"refusal to submit to any exam".	Several participants expressed concern that employers would abuse the non-cooperation provisions to force workers to comply with unnecessary and painful tests. Suggested amendments included providing that only "reasonable" exams shall be required if they are the accepted method to detect the degree of injury and are related to the actual injury being examined. Fairbanks United suggested deleting this amended language altogether. Participants expressed concern that an employer would use the presumption of reasonableness under AS 23.30.095(e) to force workers to submit to painful, humiliating and unnecessary tests in order to coerce them into an early settlement.	AS 23.30.095(e) is further amended to add the phrase "unless medically necessary, the physician shall use existing diagnostic data to complete the examination".
"Medical Fees"	AS 23.30.095(f) is amended to require that medical fees shall not exceed "usual, customary, and reasonable fees" for treatment or services in the community, as determined by the Board.	Fees limited to "charges that prevail in the same community for similar treatment of injured persons with a like standard of living"	This section was strongly supported by participants, including the Alaska Medical Association.	AS 23.30.095(f) is amended by adding language that makes it clear than an employee cannot be required to pay for medical services.
"Medical eview Committee"	AS 23.30.095(j) is repealed and reenacted to authorize the Board to appoint or contract with a medical review committee or anyone to assist and advise them on medical issues.	Board shall adopt and use a schedule to determine the existance and degree of a permanent impairment consistent with the AMA guide lines.	Some participants expressed concern that this would allow the Board to hire "outsiders" and that they should be limited to advisory boards and committees that are located in Alaska. Fairbanks United testified that this section should remain as it is in current law.	

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7) MEDICAL Cont'd. "Second IME"	AS 23.30.095(k) provides that when there is a conflict between the employers' IME and the employees' treating physician, the Baord will select a physician from the rotating roster to perform a second IME whose opinion will be presumed to be correct unless rebutted by clear and convincing evidence. AS 23.30.095(k) cont'd Second IME is immune from civil liability for their opinion except in cases of fraud.	Current law is silent on this question but current practice is for the Board to try and weigh the various opinions of physicians and make a judgement as to who is correct. This practice requires the Board to basically make a medical decision without the proper training and experience to do so.	Members of the pubic and some physicians objected to the second IME's opinon having the presumption of correctness and suggested that all three physicians opinions (treating, physician, employer's IME, and Boards' IME) should have the same weight and be judged by the Board on an equal basis. Fairbanks United suggested an independent multi-discipline panel of Board certified physicians should be used to provide an independent exam. Several participants expressed concern that the "fraud" standard was to restrictive and impossible to prove and suggested that the section include "fraud, misrepresentation, and gross negligence"	AS 23.30.095(k) is further amended to provide that a person may not seek damages against the second IME except for "fraud or gross incompetence".
) Stress Claims	AS 23.30.120 (c) is amended to provide that the presumption of compensibility under workers' comp does not apply to mental injuries caused by "stress" AS 23.265 (17) provides that a compensable injury does not include mental injury caused by stress unless (a) the stress was unusual and extraordinary compared to other workers doing the same or similar job and (b) work related stress was the predominant cause of the injury measured by actual events and not by an employees perception of events.	Current law is silent on the question of "stress" claims and the Courts have ruled in at least one case than an employees perception of events may be grounds for a stress claim and that the injury does not have to depend on an objective analysis of actual events. In additon, there is a presumption of compensability whenever an injury is job-related.	The majority of public testimony supported making an exception to the "presumption of conpensibility" in "stress" claims because (1) stress claims are becomming more frequent and (2) an employer can not defend against a "stress" claim, particularly when it can be based on a workers' perception of events. Some members of the public and at least one Senator expressed concern that some stress injuries resulting from racial or sexual harrassment may be precluded under the definition. Fairbanks United suggested using a "preponderence of evidence" test in this section and requested a better definition of "mental injury".	AS 23.30.125(f) is amended to provide that a finding of facts by the Board in a "stress" injury case is conclusive "unless the court specifically finds that a reasonable person could not have reached the conclusion made by the Board."

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(9) Payments of benefits in a conflict.	AS 23.30.155(d) is amended to provide that when there is a conflict over which employer/carrier is obligated to pay, but there is no conflict over whether the injury at question is compensible, the last employer shall immediately pay benefits to the workers. The employer or carrier ultimately deemed responsible will reimburse thepayee with interest.		Public testimony supported this change.	AS 23.30.155(c) is amended to provide that an insurer/adjuster (employer) is responsible for submitting certain reports to the Board. Several other changes are included to make the section consistent with this change. AS 23.30.155(c) is further amended to provide a penalties section for violation of this section. As 23.30.155(m) is amended to require the reports to be submitted by an insurer or adjuster as opposed to the employer. AS 23.30.155(m) is further amended to add a penalty provision for failure to submit reports so that "if the annual report is not filed by March 1 of each year, the insurer or adjuster shall pay a civil penalty of $100 for the first day the annual report is late, and $10 for each additional day the report is late". AS 23.30.155 is amended by adding a new subsection (n) to provide that the notification and penalty sections don't apply to self-insureds.
(10) Rates of Compensation	AS 23.30.175(a) provides that weekly compensation benefits may not be more than $700 or less than $154/week for employees with a previous wage history and not less than $110/week for workers without a wage history (or accurate history).	AS 23.30.175(a) provides that weekly compensation benefits may not be more than $1,100 or less than $110/week unless the Board determines that the workers' spendable weekly wage before the injury was less, in which case the $110/week may be decreased.	Generally, the public supported this change when they understood it. Several people said they didn't understand why the higher limit was lowered by $400 and the lower limit was raised by $44. (Majority of workers are on the low end of the scale with less than 5% qualifying for weekly benefits in excess of $700/week.) Fairbanks United supported this change but asked that someone monitor injured workers to see if they opt out of disability in order to collect unemployment benefits, which may be greater.	AS 23.30.175 (a) is amended by adding language "if the employer can verify that the employee's spendable weekly wages are less than $154, the employer may adjust the weekly rate of compensation to the employee's weekly spendable wages without an order of the Board".

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(11) Adjustment of benefits by COLA	AS 23.30.175 (b) (1-4) provides that weekly benefits for workers not residing in Alaska be adjusted by the COLA of their resident state.	AS 23.30.175(c) provides that benefits of workers not residing in Alaska be adjusted by the difference between the average weekly wage for a particular craft/job within the jurisdiction of the state where the worker now resides and the average weekly wage for the same or similar job in Alaska.	Generally, public testimony supported this change although there was some concern expressed about an accurate and reliable source of COLA information.	AS 23.30.175 (b)(1) is amended to read "...by the ratio of the cost of living of the area in which the recipient resides to the cost of living in this state." AS 23.30.175(b)(3) is amended to read "if the gross (average) weekly earnings (wage) of the recipient.....".
(12) Permanent Total Disability payments (PPD)	AS 23.30.180 (a) is amended to include a definition of "market for employee's services" as (1) area of residence (2) are of last employment and (3) the state. AS 23.30.180(b) provides that failure to acheive remunerative employability under AS 23.30.041 (m) does not, in itself, constitute PTD.	AS 23.30 180(a) provides that PTD payments shall be 80% of the injured workers spendable weekly wage for the continuance of the disability.	Several participants objected to the expanded definition of labor market and expressed concern that it would force workers' to leave their home and communities if there was any job in the state that they could qualify for.	AS 23.30.180 is amended by adding a new sentence to prevent a person from improperly receiving both PPD and PTD payments. AS 23.30.180 (3) is amended to read the "state (area) of residence" and a new (4) is added to read "the state of Alaska".
(13) Total emporary Disbility payments (TTD)	AS 23.30.185 if amended to provide that TTD benefits will not be paid after medical stability and shall not exceed two years in any case.		Participants asked that the section be amended to allow for TTD benefits after medical stability and in excess of two years under unusual or extenuating circumstances.	

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(14) Permanent Partial Disability Payment (PPD) "Whole Man" Value	AS 23.30.190(a) repeals the current method of computing PPD and replaces it with a formula to determine benefits based on a "whole man" value of $240,000 adjusted by the percentage of net impairment, payable in a lump sum.	AS 23.30.190 (a) provides that compensation for PPD is 80% of workers spendable weekly wage plus any TTD and TPD benefits to be paid as follows - (1) through (18) lists compensation by body part, (19) provides that in addition to comp, the Board may award up to $10,000 for disfigurement or loss of use or functions of body parts not listed in the schedule, (21) provides that benefits be based on loss of each body part when there a loss of more than one.	There was substantial public testimony that his change in the method for determining PPD was (1) arbitrary and unfair, (2) it would increase litigation because the sliding scale used to determine benefits by the percentage of disability was poorly constructed so that a worker with a 10% disability would receive half the benefits that a worker with an 11% disability would receive, (3) the lower levels were too low and did not constitute fair compensation, (4) scheduling injuries in this manner provides no mechanism for judging the effect of a permanent disability on the actual job a worker held (for instance, an attorney with a 40% disability may suffer less ill effects in seeking reemployment than a heavy construction worker with a 15% disability.)	AS 23.30.190 (a) is amended to adjust the sliding scale by adding a new schedule of adjustment factors to smooth out the curve.
"AMA guidelines"	AS 23.30.190(b) provides that the determination of the percent of disability will be based on AMA guidelines and shall not be rounded to the next five percent. Also provides that the Board <u>may</u> adopt a supplemental guideline for rating injuries not included under AMA guidelines.	AS 23.30.190(b) provides that the total comp under this section cannot exceed $60,000.	Fairbanks United asked that the <u>may</u> in (b) be changed to <u>shall</u>.	AS 23.30.190(b) is amended to read that the Board "may adopt (and use a supplemental) <u>a suplementary recognized</u> schedule for injuries that cannot be rated by use of the AMA guide.
Lower limit on Compensation for PPD	AS 23.30.190 (c) provides that an injured worker will not receive less than <u>$250.00</u>			
"Combination of prior and current injuries"	AS 23.30.190(d) provides that an impairment rating is reduced by any permanent impairment that existed before the compensated injury although, if the total of the past and current injury equal PTD the Board is not precluded from making a determination of PTD.	AS 23.30.205 (a)and(b) addresses the circumstance of a combination of prior and current injuries and provides that benefits shall be paid out of the second injury fund after 104 weeks. (c) through (f) of this section provide for reporting requirements to the second injury fund, defines what constitutes a pre-existing condition and provides guidelines for reporting when proper notice was not given.		

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(15) Temporary Partial Disability payments (TPD)	AS 23.30.200 provides that TPD benefits may not be paid in excess of 2 years.	TTP benefits may not be paid in ecesss of five years and are caluclated under AS 23.30. 200.	Some participants expressed concern that the 2 year cut-off may be too soon in some unusual circumstances and that the language should be amended to allow for that.	
"Determining wage earyning cap- capacity and spendable weekly wages).	AS 23.30.200 is amended by including a new (b) to read that the wage-earning capacity of a worker is determined by the actual spendable weekly wage of the employee if it 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 impairment, usual employment, and other factors or circumstances.	AS 23.30.200 provides that TPD benefits shall be 80% of the difference between the injured workers SWW before injury and their wage-earning capacity after injury. AS 23.30.210 provides a method for determining the wage-earning capacity of a worker by actual SWW if the SWW fairly and reasonably represents the true wage-earning capacity. If not, the Board may set the wage earning capacity	Several participants testified that conflicts over the determination of spendable weekly wage cause a substantial amount of litigation	
	AS 23.30.220(a)(2) is amended to allow the Board the ability to set the SWW if the employee had no earnings during the preceeding calendar year or was voluntarily absent from the labor market for 18 months or more of the two preceeding calendar years. However, in no case may the compensation exceed the employee's earnings at the time of injury	AS 23.30.220(a)(2) authorizes the Board to set the SWW if they determine that the gross weekly earnings at the time of injury cannot be fairly calculated under AS 23.30.229(a)(1).	Some participants expressed concern that the language in this section could result in an unfair determination of a workers' SWW if they had no (or inadequate) work history and had only worked part of a week when they were injured. Since this section prohibits a workers' benefits from exceeding their weekly wage, the concern is that their SWW will be based on the partial work week at the time of injury.	The Senate CS amends this section to provide that the SWW may be based on the projected weekly wage of the worker at the time of injury.

ISSUE	HB 352/SB 322	CURRENT LAW	PUBLIC TESTIMONY	PROPOSED (Senate) CS
(16) Determination of gross earnings.	AS 23.30.225 includes a new section requiring that vested pension and profit sharing benefits be included as part of a workers' wage for the purposes of determining gross earnings.	Vested benefits are not considered in determining gross earnings under current law.	Participants supported this change although some expressed concern that only vested beneftis were included. This section was included in the bill in response to the Hagland decision.	
(17) Discrimination	AS 23.30.247 (a) prohibits an employer from discriminating against a worker who has filed a workers' compensation claim in the past.	Current law is silent on the question of discrimination for previous filings.	Participants supported this change although some expressed concern over how it would be implemented and enforced and whether it would actually protect workers from retribution for filing compensation claims.	
(18) Medical Stability	AS 23.30.265(34) defines "medical stability" as the date after which further objectively measurable improvements from the incapacity caused by the injury is not reasonably expected to result from additional care or treatment, notwithstanding additional care or the possibility of improvement or deterioration resulting from the passage of time. Medical stability is presumed in the absence of improvement for a period of 45 days. The finding of medical stability may be rebutted with clear and convincing evidence.		There was some public testimony in opposition to this definition because of fear that it did not adequately address a situation where continuing treatment may prevent further problems or deterioration but will not produce any additional positive healing results. Fairbanks United asked for a better definition of medical stability.	

OTHER ISSUES:

1. Mandated rate decrease - Several participants asked the Committee to include language in the bill that would mandate a rate decrease for workers' clmpensation premiums for the second half of 1988 by at least 10%.

2. Unemployment Compensation - Several participants suggested amending the proposed bills to provide that an injured worker who was eligible for unemployment compensation can collect unemployment benefits when their workers' compensation benefits are exhausted and they have still been unable to find employment.

3. Mandated reporting requirements - Numerous participants, particularly legislators, expressed dismay at the lack of usuable statistical data on Alaska's workers compensation system. A change proposed in AS 23.30.040(b) (HB 352) would require all information related to paid claims in Alaska (costs of claim benefit by type such as PPD or TPD, payments for medical and rehab services, payments for legal fees for both employer/ee etc.) to be submitted annually (instead of annually on the date of the injury, as it is under current law).

4. On-going task force - Several participants, including Fairbanks United, asked that a group or task force be appointed to make an on-going study of Alaska's workers' compensation system to monitor the current system, the effects of newly adopted legislation, and to make recommendations for future changes.

5. "All states rider" - Several participants complained that non-resident firms (particularly in the construction industry) are not required to pay Alaska workers' compensation rates because they have purchased an "all states rider" on their home state policy which covers them for Alaska compensation at a cost considerably less than what resident firms must pay. Several participants asked that pending legislation be amended to specifically require that all companies with employees working in Alaska must pay the same rates for workers' compensation premiums (by classification and risk type) as Alaskan businesses do and that a stiff penalty clause should be included for companies who are found to be in violation of the requirement for Alaska workers' compensation.

6. "Alaska money" - Some participants complained that they receive workers' compensation benefits by checks drawn on "outside" banks which results in constant delays in getting their checks credited locally. They asked for a requirement under law that compensation benefits be paid by checks drawn on local banks.

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March 7, 1988

M E M O R A N D U M:

To: Members, House Labor and Commerce Committee

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

Re: Proposed CS for CS SB 322 (L&C) - Workers' Compensation Legislation

In response to testimony offered during the numerous public hearings we have hosted on workers' compensation legislation and on the basis of the work of the House Labor and Commerce subcommittee on HB 352/SB322, I've asked legal services to prepare a proposed committee substitute for your consideration with the following changes from the version of the measure that passed the Senate:

1. Include a mandated rate decrease for workers' compensation premiums of no less than 10%, effective July 1, 1988 through January 1, 1990. (Attachment #1)

2. Add intent language under Section 1 recognizing that prevention of on-the-job injuries is a primary goal of the Legislature and that the workers' compensation should include incentives for improving workplace safety.

   Add a new Section mandating that insurers shall offer a rebate of not less than 5% of the annual premium costs to any employer that had no safety violations during the year covered by the premium.

3. Amend penalties under AS 23.30.075 (b) to require a mandatory fine of $10,000 for failure to carry workers' compensation insurance, in addition to any other fines, penalties or liabilities authorized under law.

4. Amend language governing the contents of the annual report to the Division of Workers' Compensation by insurers to include the number of claims filed and the percent of claims controverted during the year for which the annual report was submitted.

   Include language to require the Board (in addition to assessing any penalties under AS 23.30.155 (f), to notify the Division of Insurance when they determine that a carrier's controversions are excessive, frivolous, or designed to unfairly deny employees benefits that are due them. Upon receipt of a notice from the

Board, the Division of Insurance will initiate an investigation of the carrier for violation of the unfair claims settlement act.

5. Amend (AS 23.30.180) to delete (3) and (4) so that in determining PTD, the labor market is defined as within a workers area of residence or last area of employment.

6. Amend language governing the co..tents of the annual report to break out the costs of legal fees to reflect the fees paid to both the plaintiff and defense attorney, including all other costs associated with litigation.

7. Amend Section 9 (AS 23.30.040(c) to read: "The employee shall request an eligibility evaluation within 90 days after the employee gives the employer notice of injury unless the administrator determines the employee has unusual and extenuating physical limitations, including when an employee suffered an injury in which the employee does not know or could not have reasonably known that they would be unable to return to their previous occupation as a result of their injury that prevent the employee from making a timely request."

8. Amend Section 11 (AS 23.30.095(a) to provide that an employers choice of physician for an IME is limited to no more than one change in choice, as is an employees right of choice under the proposed legislation.

9. Amend Section 32 (AS 23.30.220(a) (2) to delete the word "voluntary" and to change the 18 months standard on page 26, line 12 to 12 months.

10. Amend Section 41 (effective date) so that this act applies to any "stress" injury that occurred on or after the date of adoption of this bill by the Legislature.

11. Include language requiring that an IME must be in the same speciality as the treating physician unless the Board unanimously agrees, on a case by case basis, to authorize an IME by a physician who is not within the same speciality of the employees physician.

12. Amend Section 21 (AS 23.30.155(c) (page 19, line 3) to provide that penalties assessed under this subsection shall be increased by (20) 30 percent.

13. Include new language amending AS 23.30.155 (f) (governing penalties for unfair denial of claims) to increase penalties from 20 percent, under current law, to 25 percent.

14. Amend Section 29 (AS 23.30.190(b) to change "may" to "shall" on page 24, line 27.

15. Include a new section requiring that benefits paid to recipients residing in Alaska be paid by checks drawn on Alaska banks or other

method of payment that is accepted as immediately redeemable by a bank in this state.

16. Amend AS 23.30.041(k) (Page 9, line 14) to read: (k) "Benefits related to the reemployment plan may not extend past two years from date of plan approval (ACCEPTANCE), at which time the benefits.....". OR

17. Amend Section 13 (AS 23.30.095(e) to reinstate the deleted language and to add new language so that it reads: "AUTHORIZED TO PRACTICE MEDICINE UNDER THE LAWS OF THE jurisdiction in which the physician resides (STATE IN WHICH THE EMPLOYEE MAY BE FOUND)".

In addition to the changes in the proposed CS listed above, following are proposed amendments that the Committee may wish to consider for inclusion in the final committee substitute.

1. Include a new section to allow the time period for determining the base period for unemployment compensation to begin after temporary benefits under workers' compensation have ceased if the worker is (1) eligible for unemployment compensation by having paid into the system while they were employed and (2) are "ready, willing, and able" to work but have not been able to find a job. (See attachment #2 - copy of Washington State law).

   The Department of Labor has been asked to determine whether this addition will require a fiscal note for SB 322 that may result in a further referral to the House Finance Committee.

2. Add a new section to repeal and reenact AS 23.30.110(C) so that it reads as per attachment #3. The proposed language is in response to public testimony that there has been a significant increase in the amount of time between filing a case and obtaining a formal hearing before the Board. The Division response if that the time lag is caused by attorney requests for a continuance after a case has been scheduled and comes before the Board. The result is that the hearing time is wasted because another case cannot be scheduled on such short notice. The attorney response to the Divisions' response is that they have to request a hearing when they receive a case even if they aren't ready to proceed to hearing because it takes so long to get a hearing scheduled. The Divisions response to the attorney response if that it wouldn't take so long to get a hearing scheduled if they didn't have so many continuances.!

   The proposed language in attachment #3 addresses this problem in a way that will not unfairly impact the employer or employee and will help the Board to manage their hearing schedule in a more responsive and efficient manner.

DRAFT LETTER OF INTENT FOR HCS CS SB 322 (L&C) - WORKERS' COMPENSATION LEGISLATION

(EXISTING LETTER OF INTENT ADOPTED BY THE SENATE) LETTER OF INTENT FOR CS SB 322 (L&C)

With an actuarial analysis concluding that this bill will provide a two percent savings in hard costs and an unquantifiable amount of soft dollar savings, it is the intent of the Alaska State Senate that, upon passage of this bill, the Division of Insurance request new rate filing reflecting a decution in workers' compensation premiums.

PROPOSED LETTER OF INTENT FOR HCS CS SB 322 (L&C)

The legislature recognizes that the increasing costs of workers' compensation insurance is creating a great hardship on Alaska's workers, our employers, and the insurance carriers that serve our businesses.

It is the intent of the Legislature in adopting this legislation to enable a more efficient, fair, and cost effective delivery of services under Alaska's workers compensation system. To accomplish this, SB 322 demands significant concessions from employees and employers. It is the intent of the legislature in adopting this measure that each party to the workers' compensation system in Alaska, including workers, employers, and workers' compensation insurance carriers, initiate actions necessary to reduce the number of work related injuries, to assure prompt and fair compensation to injured workers, and to create incentives for prompt and fair settlement of disputes regarding workers' compensation claims.

With an acturarial analysis that concludes that this legislaton will provide at least a two percent savings in hard costs and with public testimony before this body that the measure will bring about significant soft dollar savings, it is the intent of the legislature that, upon passage of this bill, the Division of Insurance request a new rate filing reflecting a reduction from current rates in workers' compensation premiums of no less than 10 percent as of July 1, 1988 and that this rate be maintained through January 1, 1990.

#7

A M E N D M E N T

Offered in the HOUSE By Donley

TO: HB 352

Page 27, after line 3:

Insert a new bill section to read:

"* Sec. 36. Notwithstanding AS 21.39.030, an insurer providing workers' compensation insurance in the state shall provide at least a 10 percent reduction in the premium rate charged within the state for workers' compensation insurance, for the period beginning July 1, 1988, and ending January 1, 1990."

Renumber remaining bill sections accordingly.

Page 27, line 4:

Delete "This Act applies only"

Insert "Sections 1 - 35 of this Act apply"

for any payment) on account of death, provided the individual in its employ

(1) has not the option to receive instead of provisions for such death benefits, any part of such payment, or, if such death benefit is insured, any part of the premium (or contributions to premiums) paid by his employing unit; and

(2) has not the right under the provisions of the plan or system or policy of insurance providing for such death benefits to assign such benefits or to receive a cash consideration in lieu of such benefits, either upon his withdrawal from the plan or system providing for such benefits or upon termination of such plan or system or policy of insurance or of his services with such employing unit. [1951 c 265 § 5; 1949 c 214 § 6; 1945 c 35 § 35; Rem. Supp. 1949 § 9998–173. Prior: 1943 c 127 § 13; 1941 c 253 § 14.]

Severability——1951 c 265: See note following RCW 50.98.070.

50.04.350 Wages, remuneration——Excepted payments. The term "wages" shall not include the payment by an employing unit (without deduction from the remuneration of the individual in its employ) of the tax imposed upon an individual in employment under section 1400 of the federal internal revenue code, as amended, or any amount paid to a person in the military service for any pay period during which he performs no service for the employer: *Provided, however,* That prior to January 1, 1952, the term "wages" shall not include dismissal payments which an employing unit is not legally required to make. [1951 c 265 § 2; 1945 c 35 § 36; Rem. Supp. 1945 § 9998–174. Prior: 1943 c 127 § 13; 1941 c 253 § 14.]

Severability——1951 c 265: See note following RCW 50.98.070.

50.04.355 Wages, remuneration——Average annual wage——Average weekly wage——Average annual wage for contributions purposes. On or before the fifteenth day of June of each year an "average annual wage", an "average weekly wage", and an "average annual wage for contributions purposes" shall be computed from information for the preceding calendar year including corrections thereof reported within three months after the close of that year by all employers as defined in RCW 50.04.080. The "average annual wage" is the quotient derived by dividing total remuneration reported by all employers by the average number of workers reported for all months and if the result is not a multiple of one dollar, rounding the result to the next lower multiple of one dollar. The "average annual wage" thus obtained shall be divided by fifty-two and if the result is not a multiple of one dollar, rounding the result to the next lower multiple of one dollar to determine the "average weekly wage". The "average annual wage" for contribution purposes is the quotient derived by dividing total remuneration reported by all employers subject to contributions by the average number of workers reported for all months by these same employers and if the result is not a multiple of one dollar, rounding the result to the next lower multiple of one dollar. [1977 ex.s. c 33 § 2; 1975 1st ex.s. c 228 § 1; 1973 6.]

Effective dates——Construction—— lowing RCW 50.04.030.

Effective date——1975 1st ex.s. amendatory act are necessary for t public peace, health, and safety, the and its existing public institutions, Sunday following signature by the g 19.]

Effective date——1973 c 73: See note following RCW 50.04.030.

Effective date——1970 ex.s. c 2: See note following RCW 50.04.020.

50.04.360 Week. "Week" means any period of seven consecutive calendar days ending at midnight as the commissioner may by regulation prescribe. [1945 c 35 § 37; Rem. Supp. 1945 § 9998–175. Prior: 1943 c 127 § 13; 1941 c 253 § 14; 1939 c 214 § 16; 1937 c 162 § 19.]

Chapter 50.06
TEMPORARY TOTAL DISABILITY

Sections

50.06.010 Purpose. This chapter is enacted for the purpose of providing the protection of the unemployment compensation system to workers who have suffered a temporary total disability compensable under industrial insurance and is a recognition by this legislature of the economic hardship confronting those workers who have not been promptly reemployed after a prolonged period of temporary total disability. [1975 1st ex.s. c 228 § 7.]

Effective date——1975 1st ex.s. c 228: See note following RCW 50.04.355.

50.06.020 Allowable beneficiaries. Only individuals who have suffered a temporary total disability and have received compensation under the industrial insurance laws of this state, any other state or the United States for a period of not less than thirteen consecutive calendar weeks by reason of such temporary total disability shall be allowed the benefits of this chapter. [1975 1st ex.s. c 228 § 8.]

Effective date——1975 1st ex.s. c 228: See note following RCW 50.04.355.

50.06.030 Application for initial determination of disability——Special base year——Special individual benefit year. An application for initial determination made pursuant to this chapter, to be considered timely, must be filed in writing with the employment security department within twenty-six weeks following the week

of which the period of temporary total disability commenced. Notice from the department of labor and industries shall satisfy this requirement. The records of the agency supervising the award of compensation shall be conclusive evidence of the fact of temporary disability and the beginning date of such disability. The employment security department shall process and issue an initial determination of entitlement or nonentitlement as the case may be.

For the purpose of this chapter, a special base year is established for an individual consisting of the first four of the last five completed calendar quarters immediately prior to the first day of the calendar week in which the individual's temporary total disability commenced, and a special individual benefit year is established consisting of the entire period of disability and a fifty-two consecutive week period commencing with the first day of the calendar week immediately following the week or part thereof with respect to which the individual received his final temporary total disability compensation under the applicable industrial insurance laws except that no special benefit year shall have a duration in excess of three hundred twelve calendar weeks: *Provided however*, That such special benefit year will not be established unless the criteria contained in RCW 50.04.030 has been met, except that an individual meeting the disability and filing requirements of this chapter and who has an unexpired benefit year established which would overlap the special benefit year provided by this chapter, notwithstanding the provisions in RCW 50.04.030 relating to the establishment of a subsequent benefit year and RCW 50.40.010 relating to waiver of rights, may elect to establish a special benefit year under this chapter: *Provided further*, that the unexpired benefit year shall be terminated with the beginning of the special benefit year if the individual elects to establish such special benefit year. [1975 1st ex.s. c 228 § 9.]

Effective date——1975 1st ex.s. c 228: See note following RCW 50.04.355.

50.06.040 Laws and regulations governing amounts payable and right to benefits. The individual's weekly benefit amount and maximum amount payable during the special benefit year shall be governed by the provision contained in RCW 50.20.120. The individual's basic and continuing right to benefits shall be governed by the general laws and regulations relating to the payment of unemployment compensation benefits to the extent that they are not in conflict with the provisions of this chapter. [1975 1st ex.s. c 228 § 10.]

Effective date——1975 1st ex.s. c 228: See note following RCW 50.04.355.

50.06.050 Use of wages and time worked for prior claims——Effect. The fact that wages, hours or weeks worked during the special base year may have been used in the computation of a prior valid claim for unemployment compensation shall not affect a claim for benefits made pursuant to the provisions of this chapter; however, wages, hours and weeks worked used in computing entitlement on a claim filed pursuant to this chapter shall not be available or used for establishing entitlement [1975 1st ex.s. c 228 § 11.]

Effective date——1975 1st ex.s. c 228: See note following RCW 50.04.355.

50.06.900 Chapter prospective. This chapter shall be available only to individuals who suffer a temporary total disability, compensable by an industrial insurance program, after the effective date of this chapter. [1975 1st ex.s. c 228 § 12.]

Effective date——1975 1st ex.s. c 228: See note following RCW 50.04.355.

50.06.910 Partial invalidity of chapter. Should any part of this chapter be declared unconstitutional by the final decision of any court or declared out of conformity by the United States secretary of labor, the commissioner shall immediately discontinue the payment of benefits based on this chapter, declare it inoperative and report that fact to the governor and the legislature. [1975 1st ex.s. c 228 § 13.]

Effective date——1975 1st ex.s. c 228: See note following RCW 50.04.355.

Chapter 50.08
ESTABLISHMENT OF DEPARTMENT

Sections

Displaced homemaker act, departmental participation: RCW 28B.04.080.

50.08.010 Employment security department established. There is established the employment security department for the state, to be administered by a commissioner. The commissioner shall be appointed by the governor with the consent of the senate, and shall hold office at the pleasure of, and receive such compensation for his services as may be fixed by, the governor. [1953 ex.s. c 8 § 3; 1947 c 215 § 8; 1945 c 35 § 38; Rem. Supp. 1947 § 9998-176. Prior: 1939 c 19 § 1; 1937 c 162 § 12.]

50.08.020 Divisions established. There are hereby established in the employment security department two coordinate divisions to be known as the unemployment compensation division, and the Washington state employment service division, each of which shall be administered by a full time salaried supervisor who shall be an assistant to the commissioner and shall be appointed by him. Each division shall be responsible to the commissioner for the dispatch of its distinctive functions. Each division shall be a separate administrative unit with respect to personnel, budget, and duties, except insofar as the commissioner may find that such separation is impracticable.

It is hereby further provided that the governor in his discretion may delegate any or all of the organization, administration and functions of the said Washington state employment service division to any federal agency,

"Application for initial determination" defined: RCW 50.20.140.

"Claim for benefits" defined: RCW 50.20.140.

"Claim for waiting period" defined: RCW 50.20.140.

50.04.020 Base year. "Base year" with respect to each individual, shall mean the first four of the last five completed calendar quarters immediately preceding the first day of the individual's benefit year. [1970 ex.s. c 2 § 1; 1945 c 35 § 3; Rem. Supp. 1945 § 9998–142. Prior: 1943 c 127 § 13; 1939 c 214 § 19; 1937 c 162 § 19.]

Effective date——1970 ex.s. c 2: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect April 5, 1970: *Provided*, That sections 3 and 8 of this 1970 amendatory act shall not take effect until January 1, 1971." [1970 1st ex.s. c 2 § 25.] This act is codified in RCW 50.04.020, 50.04.030, 50.04.320, 50.20.010, 50.20.120, 50.04.355, 50.20.150, 50.24.010, 50.29.010 through 50.29.080 and 50.29.140, 50.04.323, 50.20.030, 50.20.050, 50.20.060 and 50.20.127; sections 3 and 8 are codified in RCW 50.04.320 and 50.24.010.

50.04.030 Benefit year. "Benefit year" with respect to each individual, means the fifty–two consecutive week period beginning with the first day of the calendar week in which the individual files an application for an initial determination and thereafter the fifty–two consecutive week period beginning with the first day of the calendar week in which the individual next files an application for an initial determination after the expiration of the individual's last preceding benefit year: *Provided, however,* That the foregoing limitation shall not be deemed to preclude the establishment of a new benefit year under the laws of another state pursuant to any agreement providing for the interstate combining of employment and wages and the interstate payment of benefits nor shall this limitation be deemed to preclude the commissioner from backdating an initial application at the request of the claimant either for the convenience of the department of employment security or for any other reason deemed by the commissioner to be good cause.

An individual's benefit year shall be extended to be fifty–three weeks when at the expiration of fifty–two weeks the establishment of a new benefit year would result in the use of a quarter of wages in the new base year that had been included in the individual's prior base year.

No benefit year will be established unless it is determined that the individual earned wages in "employment" in not less than six hundred eighty hours of the individual's base year: *Provided, however,* That a benefit [illegible] establishment of a prior [illegible] year unless the individual earned wages in "employment" during the last two quarters of the new base [illegible] of not less than six times the weekly benefit amount computed for the individual's new benefit year.

If the wages of an individual are not based upon a fixed duration of time or if the individual's wages are paid at irregular intervals or in such manner as not to extend regularly over the period of employment, the wages for any week shall be determined in such manner as the commissioner may by regulation prescribe. Such regulation shall, so far as possible, secure results reasonably similar to those which would prevail if the individual were paid his or her wages at regular intervals. [1977 ex.s. c 33 § 1; 1973 c 73 § 1; 1970 ex.s. c 2 § 2; 1949 c 214 § 1; 1945 c 35 § 4; Rem. Supp. 1949 § 9998–143. Prior: 1943 c 127 § 13; 1939 c 214 § 19; 1937 c 162 § 19.]

Effective dates——Construction——1977 ex.s. c 33: "The provisions of this 1977 amendatory act are necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions and shall take effect ninety days after adjournment sine die of the 1977 Extraordinary Session (forty–fifth legislature) of the Washington State Legislature: *Provided*, That the first paragraph of section 1 of this 1977 amendatory act shall take effect immediately and the remaining portion of section 1 of this 1977 amendatory act and all of section 2 of this 1977 amendatory act shall take effect commencing with benefit years beginning on and after October 1, 1978; section 7 of this 1977 amendatory act shall take effect commencing with benefit years beginning on and after July 3, 1977." [1977 ex.s. c 33 § 11.]

Reviser's note: The various sections of this 1977 amendatory act [1977 ex.s. c 33] referred to in the above section are codified as follows: Section 1 as RCW 50.04.030; section 2 as RCW 50.04.355; section 3 as RCW 50.12.070; section 4 as RCW 50.20.050; section 5 as RCW 50.20.060; section 6 as RCW 50.20.100; section 7 as RCW 50.20.120; section 8 as RCW 50.20.095.

Effective dates——1973 c 73: "Sections 7, 8, 10, 11, and 12 of this 1973 amendatory act are necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect immediately. Sections 1, 2, 3, 4, 5, 6, and 9 of this 1973 amendatory act shall take effect on July 1, 1973." [1973 c 73 § 13.]

Reviser's note: The effective date of sections 7, 8, 10, 11, and 12 was March 8, 1973. The effective date of sections 1, 2, 3, 4, 6 and 9 was July 1, 1973. Section 5 referred to above was vetoed.

Effective date——1970 ex.s. c 2: See note following RCW 50.04.020.

50.04.040 Benefits. "Benefits" means the compensation payable to an individual, as provided in this title, with respect to his unemployment. [1945 c 35 § 5; Rem. Supp. 1945 § 9998–144. Prior: 1943 c 127 § 13; 1941 c 253 § 14; 1939 c 219 § 19; 1937 c 162 § 19.]

50.04.050 Calendar quarter. "Calendar quarter" means the period of three consecutive calendar months ending on March 31st, June 30th, September 30th, or December 31st. [1945 c 35 § 6; Rem. Supp. 1945 § 9998–145. Prior: 1943 c 127 § 13; 1939 c 214 § 19; 1937 c 162 § 19.]

50.04.060 Commissioner. "Commissioner" means the administrative head of the state employment security department referred to in this title. [1947 c 215 § 1; 1945 c 35 § 7; Rem. Supp. 1947 § 9998–146. Prior:

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AS 23.30.110(c) is repealed and reenacted to read:

(c) Before a hearing is scheduled, the party seeking a hearing shall file a request for a hearing together with an affidavit stating that the party has completed all necessary discovery, has obtained all evidence it needs for the hearing, and will not seek a continuance or request the hearing record remain open at the conclusion of the hearing. Within 10 days the opposing party must notify the board if it is not ready for a hearing. If the opposing party notifies the board that it is not ready for hearing, the board or a board designee will conduct a pre-hearing conference within 30 days, and determine the hearing date. If no opposition is filed, a hearing will be scheduled no later than 60 days after the receipt of the request and affidavit. The parties shall be given at least 10 days' notice of the hearing, either personally or by certified mail. Once a hearing has been scheduled, no continuances will be permitted. The board shall close the hearing record at the end of the hearing; any evidence or arguments filed after the conclusion of the hearing will be excluded from the record. The only exception will be in case of surprise as determined by the board. The board may then extend the time to file additional evidence or argument. The parties cannot stipulate to leave the hearing record open. The parties may not stipulate to change the date, cancel, postpone, or continue the hearing, except for cases of illness of a party or its representative or because of a conflict with a matter scheduled by a state or federal court. If the parties reach a settlement agreement less than 14 days before the hearing, the parties shall appear at the time of the scheduled hearing to state the terms of the settlement agreement. Within 30 days after the hearing record closes, the board shall file its decision. If the employer controverts a claim on a board prescribed controversion notice and the employee does not request a hearing within two years following the filing of the controversion notice, the claim is denied.

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March 7, 1988

M E M O R A N D U M:

To: Members, House Labor and Commerce Committee

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

Re: Proposed CS for CS SB 322 (L&C) - Workers' Compensation Legislation

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2. Add intent language under Section 1 recognizing that prevention of on-the-job injuries is a primary goal of the Legislature and that the workers' compensation should include incentives for improving workplace safety.

   Add a new Section mandating that insurers shall offer a rebate of not less than 5% of the annual premium costs to any employer that had no safety violations during the year covered by the premium.

3. Amend penalties under AS 23.30.075 (b) to require a mandatory fine of $10,000 for failure to carry workers' compensation insurance, in addition to any other fines, penalties or liabilities authorized under law.

4. Amend language governing the contents of the annual report to the Division of Workers' Compensation by insurers to include the number of claims filed and the percent of claims controverted during the year for which the annual report was submitted.

   Include language to require the Board (in addition to assessing any penalties under AS 23.30.155 (f), to notify the Division of Insurance when they determine that a carrier's controversions are excessive, frivolous, or designed to unfairly deny employees benefits that are due them. Upon receipt of a notice from the

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Board, the Division of Insurance will initiate an investigation of the carrier for violation of the unfair claims settlement act.

5. Amend (AS 23.30.180) to delete (3) and (4) so that in determining PTD, the labor market is defined as within a workers area of residence or last area of employment.

6. Amend language governing the contents of the annual report to break out the costs of legal fees to reflect the fees paid to both the plaintiff and defense attorney, including all other costs associated with litigation.

7. Amend Section 9 (AS 23.30.040(c) to read: "The employee shall request an eligibility evaluation within 90 days after the employee gives the employer notice of injury unless the administrator determines the employee has unusual and extenuating physical limitations, including when an employee suffered an injury in which the employee does not know or could not have reasonably known that they would be unable to return to their previous occupation as a result of their injury that prevent the employee from making a timely request."

8. Amend Section 11 (AS 23.30.095(a) to provide that an employers choice of physician for an IME is limited to no more than one change in choice, as is an employees right of choice under the proposed legislation.

9. Amend Section 32 (AS 23.30.220(a) (2) to delete the word "voluntary" and to change the 18 months standard on page 26, line 12 to 12 months.

10. Amend Section 41 (effective date) so that this act applies to any "stress" injury that occurred on or after the date of adoption of this bill by the Legislature.

11. Include language requiring that an IME must be in the same speciality as the treating physician unless the Board unanimously agrees, on a case by case basis, to authorize an IME by a physician who is not within the same speciality of the employees physician.

12. Amend Section 21 (AS 23.30.155(c) (page 19, line 3) to provide that penalties assessed under this subsection shall be increased by (20) 30 percent.

13. Include new language amending AS 23.30.155 (f) (governing penalties for unfair denial of claims) to increase penalties from 20 percent, under current law, to 25 percent.

14. Amend Section 29 (AS 23.30.190(b) to change "may" to "shall" on page 24, line 27.

15. Include a new section requiring that benefits paid to recipients residing in Alaska be paid by checks drawn on Alaska banks or other

method of payment that is accepted as immediately redeemable by a bank in this state.

16. Amend AS 23.30.041(k) (Page 9, line 14) to read: (k) "Benefits related to the reemployment plan may not extend past two years from date of plan approval (ACCEPTANCE), at which time the benefits.....".

17. Amend Section 13 (AS 23.30.095(e) to reinstate the deleted language and to add new language so that it reads: "AUTHORIZED TO PRACTICE MEDICINE UNDER THE LAWS OF THE jurisdiction in which the physician resides (STATE IN WHICH THE EMPLOYEE MAY BE FOUND)".

In addition to the changes in the proposed CS listed above, following are proposed amendments that the Committee may wish to consider for inclusion in the final committee substitute.

1. Include a new section to allow the time period for determining the base period for unemployment compensation to begin after temporary benefits under workers' compensation have ceased if the worker is (1) eligible for unemployment compensation by having paid into the system while they were employed and (2) are "ready, willing, and able" to work but have not been able to find a job. (See attachment #2 - copy of Washington State law).

   The Department of Labor has been asked to determine whether this addition will require a fiscal note for SB 322 that may result in a further referral to the House Finance Committee.

2. Add a new section to repeal and reenact AS 23.30.110(C) so that it reads as per attachment #3. The proposed language is in response to public testimony that there has been a significant increase in the amount of time between filing a case and obtaining a formal hearing before the Board. The Division response if that the time lag is caused by attorney requests for a continuance after a case has been scheduled and comes before the Board. The result is that the hearing time is wasted because another case cannot be scheduled on such short notice. The attorney response to the Divisions' response is that they have to request a hearing when they receive a case even if they aren't ready to proceed to hearing because it takes so long to get a hearing scheduled. The Divisions response to the attorney response if that it wouldn't take so long to get a hearing scheduled if they didn't have so many continuances.!

   The proposed language in attachment #3 addresses this problem in a way that will not unfairly impact the employer or employee and will help the Board to manage their hearing schedule in a more responsive and efficient manner.

DRAFT LETTER OF INTENT FOR
HCS CS SB 322 (L&C) - WORKERS' COMPENSATION LEGISLATION

(EXISTING LETTER OF INTENT ADOPTED BY THE SENATE)
LETTER OF INTENT FOR CS SB 322 (L&C)

With an actuarial analysis concluding that this bill will provide a two percent savings in hard costs and an unquantifiable amount of soft dollar savings, it is the intent of the Alaska State Senate that, upon passage of this bill, the Division of Insurance request new rate filing reflecting a decution in workers' compensation premiums.

PROPOSED LETTER OF INTENT FOR HCS CS SB 322 (L&C)

The legislature recognizes that the increasing costs of workers' compensation insurance is creating a great hardship on Alaska's workers, our employers, and the insurance carriers that serve our businesses.

It is the intent of the Legislature in adopting this legislation to enable a more efficient, fair, and cost effective delivery of services under Alaska's workers compensation system. To accomplish this, SB 322 demands significant concessions from employees and employers. It is the intent of the legislature in adopting this measure that each party to the workers' compensation system in Alaska, including workers, employers, and workers' compensation insurance carriers, initiate actions necessary to reduce the number of work related injuries, to assure prompt and fair compensation to injured workers, and to create incentives for prompt and fair settlement of disputes regarding workers' compensation claims.

With an acturarial analysis that concludes that this legislaton will provide at least a two percent savings in hard costs and with public testimony before this body that the measure will bring about significant soft dollar savings, it is the intent of the legislature that, upon passage of this bill, the Division of Insurance request a new rate filing reflecting a reduction from current rates in workers' compensation premiums of no less than 10 percent as of July 1, 1988 and that this rate be maintained through January 1, 1990.

#1

A M E N D M E N T

Offered in the HOUSE By Donley

TO: HB 352

Page 27, after line 3:

Insert a new bill section to read:

"* Sec. 36. Notwithstanding AS 21.39.030, an insurer providing workers' compensation insurance in the state shall provide at least a 10 percent reduction in the premium rate charged within the state for workers' compensation insurance, for the period beginning July 1, 1988, and ending January 1, 1990."

Renumber remaining bill sections accordingly.

Page 27, line 4:

Delete "This Act applies only"

Insert "Sections 1 - 35 of this Act apply"

for any payment) on account of death, provided the individual in its employ

(1) has not the option to receive instead of provisions for such death benefits, any part of such payment, or, if such death benefit is insured, any part of the premium (or contributions to premiums) paid by his employing unit; and

(2) has not the right under the provisions of the plan or system or policy of insurance providing for such death benefits to assign such benefits or to receive a cash consideration in lieu of such benefits, either upon his withdrawal from the plan or system providing for such benefits or upon termination of such plan or system or policy of insurance or of his services with such employing unit. [1951 c 265 § 5; 1949 c 214 § 6; 1945 c 35 § 35; Rem. Supp. 1949 § 9998–173. Prior: 1943 c 127 § 13; 1941 c 253 § 14.]

Severability——1951 c 265: See note following RCW 50.98.070.

50.04.350 Wages, remuneration——Excepted payments. The term "wages" shall not include the payment by an employing unit (without deduction from the remuneration of the individual in its employ) of the tax imposed upon an individual in employment under section 1400 of the federal internal revenue code, as amended, or any amount paid to a person in the military service for any pay period during which he performs no service for the employer: *Provided, however,* That prior to January 1, 1952, the term "wages" shall not include dismissal payments which an employing unit is not legally required to make. [1951 c 265 § 2; 1945 c 35 § 36; Rem. Supp. 1945 § 9998–174. Prior: 1943 c 127 § 13; 1941 c 253 § 14.]

Severability——1951 c 265: See note following RCW 50.98.070.

50.04.355 Wages, remuneration——Average annual wage——Average weekly wage——Average annual wage for contributions purposes. On or before the fifteenth day of June of each year an "average annual wage", an "average weekly wage", and an "average annual wage for contributions purposes" shall be computed from information for the preceding calendar year including corrections thereof reported within three months after the close of that year by all employers as defined in RCW 50.04.080. The "average annual wage" is the quotient derived by dividing total remuneration reported by all employers by the average number of workers reported for all months and if the result is not a multiple of one dollar, rounding the result to the next lower multiple of one dollar. The "average annual wage" thus obtained shall be divided by fifty–two and if the result is not a multiple of one dollar, rounding the result to the next lower multiple of one dollar to determine the "average weekly wage". The "average annual wage" for contribution purposes is the quotient derived by dividing total remuneration reported by all employers subject to contributions by the average number of workers reported for all months by these same employers and if the result is not a multiple of one dollar, rounding the result to the next lower multiple of one dollar. [1977 ex.s. c 33 § 2; 1975 1st ex.s. c 228 § 1; 1973 6.]

Effective dates——Construction—— lowing RCW 50.04.030.

Effective date——1975 1st ex.s. amendatory act are necessary for t public peace, health, and safety, the and its existing public institutions, Sunday following signature by the g 19.]

Effective date——1973 c 73: See note following RCW 50.04.030.

Effective date——1970 ex.s. c 2: See note following RCW 50.04.020.

50.04.360 Week. "Week" means any period of seven consecutive calendar days ending at midnight as the commissioner may by regulation prescribe. [1945 c 35 § 37; Rem. Supp. 1945 § 9998–175. Prior: 1943 c 127 § 13; 1941 c 253 § 14; 1939 c 214 § 16; 1937 c 162 § 19.]

Chapter 50.06
TEMPORARY TOTAL DISABILITY

Sections

50.06.010 Purpose. This chapter is enacted for the purpose of providing the protection of the unemployment compensation system to workers who have suffered a temporary total disability compensable under industrial insurance and is a recognition by this legislature of the economic hardship confronting those workers who have not been promptly reemployed after a prolonged period of temporary total disability. [1975 1st ex.s. c 228 § 7.]

Effective date——1975 1st ex.s. c 228: See note following RCW 50.04.355.

50.06.020 Allowable beneficiaries. Only individuals who have suffered a temporary total disability and have received compensation under the industrial insurance laws of this state, any other state or the United States for a period of not less than thirteen consecutive calendar weeks by reason of such temporary total disability shall be allowed the benefits of this chapter. [1975 1st ex.s. c 228 § 8.]

Effective date——1975 1st ex.s. c 228: See note following RCW 50.04.355.

50.06.030 Application for initial determination of disability——Special base year——Special individual benefit year. An application for initial determination made pursuant to this chapter, to be considered timely, must be filed in writing with the employment security department within twenty–six weeks following the week

menced. Notice from the department of labor and industries shall satisfy this requirement. The records of the agency supervising the award of compensation shall be conclusive evidence of the fact of temporary disability and the beginning date of such disability. The employment security department shall process and issue an initial determination of entitlement or nonentitlement as the case may be.

For the purpose of this chapter, a special base year is established for an individual consisting of the first four of the last five completed calendar quarters immediately prior to the first day of the calendar week in which the individual's temporary total disability commenced, and a special individual benefit year is established consisting of the entire period of disability and a fifty-two consecutive week period commencing with the first day of the calendar week immediately following the week or part thereof with respect to which the individual received his final temporary total disability compensation under the applicable industrial insurance laws except that no special benefit year shall have a duration in excess of three hundred twelve calendar weeks: *Provided however*, That such special benefit year will not be established unless the criteria contained in RCW 50.04.030 has been met, except that an individual meeting the disability and filing requirements of this chapter and who has an unexpired benefit year established which would overlap the special benefit year provided by this chapter, notwithstanding the provisions in RCW 50.04.030 relating to the establishment of a subsequent benefit year and RCW 50.40.010 relating to waiver of rights, may elect to establish a special benefit year under this chapter: *Provided further*, that the unexpired benefit year shall be terminated with the beginning of the special benefit year if the individual elects to establish such special benefit year. [1975 1st ex.s. c 228 § 9.]

Effective date——1975 1st ex.s. c 228: See note following RCW 50.04.355.

50.06.040 Laws and regulations governing amounts payable and right to benefits. The individual's weekly benefit amount and maximum amount payable during the special benefit year shall be governed by the provision contained in RCW 50.20.120. The individual's basic and continuing right to benefits shall be governed by the general laws and regulations relating to the payment of unemployment compensation benefits to the extent that they are not in conflict with the provisions of this chapter. [1975 1st ex.s. c 228 § 10.]

Effective date——1975 1st ex.s. c 228: See note following RCW 50.04.355.

50.06.050 Use of wages and time worked for prior claims——Effect. The fact that wages, hours or weeks worked during the special base year may have been used in the computation of a prior valid claim for unemployment compensation shall not affect a claim for benefits made pursuant to the provisions of this chapter; however, wages, hours and weeks worked used in computing entitlement on a claim filed pursuant to this chapter shall not be available or used for establishing entitlement [1975 1st ex.s. c 228 § 11.]

Effective date——1975 1st ex.s. c 228: See note following RCW 50.04.355.

50.06.900 Chapter prospective. This chapter shall be available only to individuals who suffer a temporary total disability, compensable by an industrial insurance program, after the effective date of this chapter. [1975 1st ex.s. c 228 § 12.]

Effective date——1975 1st ex.s. c 228: See note following RCW 50.04.355.

50.06.910 Partial invalidity of chapter. Should any part of this chapter be declared unconstitutional by the final decision of any court or declared out of conformity by the United States secretary of labor, the commissioner shall immediately discontinue the payment of benefits based on this chapter, declare it inoperative and report that fact to the governor and the legislature. [1975 1st ex.s. c 228 § 13.]

Effective date——1975 1st ex.s. c 228: See note following RCW 50.04.355.

Chapter 50.08
ESTABLISHMENT OF DEPARTMENT

Sections

Displaced homemaker act, departmental participation: RCW 28B.04.080.

50.08.010 Employment security department established. There is established the employment security department for the state, to be administered by a commissioner. The commissioner shall be appointed by the governor with the consent of the senate, and shall hold office at the pleasure of, and receive such compensation for his services as may be fixed by, the governor. [1953 ex.s. c 8 § 3; 1947 c 215 § 8; 1945 c 35 § 38; Rem. Supp. 1947 § 9998-176. Prior: 1939 c 19 § 1; 1937 c 162 § 12.]

50.08.020 Divisions established. There are hereby established in the employment security department two coordinate divisions to be known as the unemployment compensation division, and the Washington state employment service division, each of which shall be administered by a full time salaried supervisor who shall be an assistant to the commissioner and shall be appointed by him. Each division shall be responsible to the commissioner for the dispatch of its distinctive functions. Each division shall be a separate administrative unit with respect to personnel, budget, and duties, except insofar as the commissioner may find that such separation is impracticable.

It is hereby further provided that the governor in his discretion may delegate any or all of the organization, administration and functions of the said Washington state employment service division to any federal agency.

"Application for initial determination" defined: RCW 50.20.140.

"Claim for benefits" defined: RCW 50.20.140.

"Claim for waiting period" defined: RCW 50.20.140.

50.04.020 Base year. "Base year" with respect to each individual, shall mean the first four of the last five completed calendar quarters immediately preceding the first day of the individual's benefit year. [1970 ex.s. c 2 § 1; 1945 c 35 § 3; Rem. Supp. 1945 § 9998–142. Prior: 1943 c 127 § 13; 1939 c 214 § 19; 1937 c 162 § 19.]

Effective date——1970 ex.s. c 2: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect April 5, 1970: *Provided*, That sections 3 and 8 of this 1970 amendatory act shall not take effect until January 1, 1971." [1970 1st ex.s. c 2 § 25.] This act is codified in RCW 50.04.020, 50.04.030, 50.04.320, 50.20.010, 50.20.120, 50.04.355, 50.20.150, 50.24.010, 50.29.010 through 50.29.080 and 50.29.140, 50.04.323, 50.20.030, 50.20.050, 50.20.060 and 50.20.127; sections 3 and 8 are codified in RCW 50.04.320 and 50.24.010.

50.04.030 Benefit year. "Benefit year" with respect to each individual, means the fifty–two consecutive week period beginning with the first day of the calendar week in which the individual files an application for an initial determination and thereafter the fifty–two consecutive week period beginning with the first day of the calendar week in which the individual next files an application for an initial determination after the expiration of the individual's last preceding benefit year: *Provided, however,* That the foregoing limitation shall not be deemed to preclude the establishment of a new benefit year under the laws of another state pursuant to any agreement providing for the interstate combining of employment and wages and the interstate payment of benefits nor shall this limitation be deemed to preclude the commissioner from backdating an initial application at the request of the claimant either for the convenience of the department of employment security or for any other reason deemed by the commissioner to be good cause.

An individual's benefit year shall be extended to be fifty–three weeks when at the expiration of fifty–two weeks the establishment of a new benefit year would result in the use of a quarter of wages in the new base year that had been included in the individual's prior base year.

No benefit year will be established unless it is determined that the individual earned wages in "employment" in not less than six hundred eighty hours of the individual's base year: *Provided, however,* That a benefit unless the individual earned wages in "employment" during the last two quarters of the new base year of not less than six times the weekly benefit amount computed for the individual's new benefit year.

If the wages of an individual are not based upon a fixed duration of time or if the individual's wages are paid at irregular intervals or in such manner as not to extend regularly over the period of employment, the wages for any week shall be determined in such manner as the commissioner may by regulation prescribe. Such regulation shall, so far as possible, secure results reasonably similar to those which would prevail if the individual were paid his or her wages at regular intervals. [1977 ex.s. c 33 § 1; 1973 c 73 § 1; 1970 ex.s. c 2 § 2; 1949 c 214 § 1; 1945 c 35 § 4; Rem. Supp. 1949 § 9998–143. Prior: 1943 c 127 § 13; 1939 c 214 § 19; 1937 c 162 § 19.]

Effective dates——Construction——1977 ex.s. c 33: "The provisions of this 1977 amendatory act are necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions and shall take effect ninety days after adjournment sine die of the 1977 Extraordinary Session (forty-fifth legislature) of the Washington State Legislature: *Provided*, That the first paragraph of section 1 of this 1977 amendatory act shall take effect immediately and the remaining portion of section 1 of this 1977 amendatory act and all of section 2 of this 1977 amendatory act shall take effect commencing with benefit years beginning on and after October 1, 1978; section 7 of this 1977 amendatory act shall take effect commencing with benefit years beginning on and after July 3, 1977." [1977 ex.s. c 33 § 11.]

Reviser's note: The various sections of this 1977 amendatory act [1977 ex.s. c 33] referred to in the above section are codified as follows: Section 1 as RCW 50.04.030; section 2 as RCW 50.04.355; section 3 as RCW 50.12.070; section 4 as RCW 50.20.050; section 5 as RCW 50.20.060; section 6 as RCW 50.20.100; section 7 as RCW 50.20.120; section 8 as RCW 50.20.095.

Effective dates——1973 c 73: "Sections 7, 8, 10, 11, and 12 of this 1973 amendatory act are necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect immediately. Sections 1, 2, 3, 4, 5, 6, and 9 of this 1973 amendatory act shall take effect on July 1, 1973." [1973 c 73 § 13.]

Reviser's note: The effective date of sections 7, 8, 10, 11, and 12 was March 8, 1973. The effective date of sections 1, 2, 3, 4, 6 and 9 was July 1, 1973. Section 5 referred to above was vetoed.

Effective date——1970 ex.s. c 2: See note following RCW 50.04.020.

50.04.040 Benefits. "Benefits" means the compensation payable to an individual, as provided in this title, with respect to his unemployment. [1945 c 35 § 5; Rem. Supp. 1945 § 9998–144. Prior: 1943 c 127 § 13; 1941 c 253 § 14; 1939 c 219 § 19; 1937 c 162 § 19.]

50.04.050 Calendar quarter. "Calendar quarter" means the period of three consecutive calendar months ending on March 31st, June 30th, September 30th, or December 31st. [1945 c 35 § 6; Rem. Supp. 1945 § 9998–145. Prior: 1943 c 127 § 13; 1939 c 214 § 19; 1937 c 162 § 19.]

50.04.060 Commissioner. "Commissioner" means the administrative head of the state employment security department referred to in this title. [1947 c 215 § 1; 1945 c 35 § 7; Rem. Supp. 1947 § 9998–146. Prior:

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AS 23.30.110(c) is repealed and reenacted to read:

(c) Before a hearing is scheduled, the party seeking a hearing shall file a request for a hearing together with an affidavit stating that the party has completed all necessary discovery, has obtained all evidence it needs for the hearing, and will not seek a continuance or request the hearing record remain open at the conclusion of the hearing. Within 10 days the opposing party must notify the board if it is not ready for a hearing. If the opposing party notifies the board that it is not ready for hearing, the board or a board designee will conduct a pre-hearing conference within 30 days, and determine the hearing date. If no opposition is filed, a hearing will be scheduled no later than 60 days after the receipt of the request and affidavit. The parties shall be given at least 10 days' notice of the hearing, either personally or by certified mail. Once a hearing has been scheduled, no continuances will be permitted. The board shall close the hearing record at the end of the hearing; any evidence or arguments filed after the conclusion of the hearing will be excluded from the record. The only exception will be in case of surprise as determined by the board. The board may then extend the time to file additional evidence or argument. The parties cannot stipulate to leave the hearing record open. The parties may not stipulate to change the date, cancel, postpone, or continue the hearing, except for cases of illness of a party or its representative or because of a conflict with a matter scheduled by a state or federal court. If the parties reach a settlement agreement less than 14 days before the hearing, the parties shall appear at the time of the scheduled hearing to state the terms of the settlement agreement. Within 30 days after the hearing record closes, the board shall file its decision. If the employer controverts a claim on a board prescribed controversion notice and the employee does not request a hearing within two years following the filing of the controversion notice, the claim is denied.

DRAFT LETTER OF INTENT FOR
HCS CS SB 322 (L&C) - WORKERS' COMPENSATION LEGISLATION

(EXISTING LETTER OF INTENT ADOPTED BY THE SENATE)
LETTER OF INTENT FOR CS SB 322 (L&C)

With an actuarial analysis concluding that this bill will provide a two percent savings in hard costs and an unquantifiable amount of soft dollar savings, it is the intent of the Alaska State Senate that, upon passage of this bill, the Division of Insurance request new rate filing reflecting a decution in workers' compensation premiums.

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Offered in the HOUSE By Donley

TO: HB 352

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Renumber remaining bill sections accordingly.

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(1) has not the option to receive instead of provisions for such death benefits, any part of such payment, or, if such death benefit is insured, any part of the premium (or contributions to premiums) paid by his employing unit; and

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Chapter 50.06
TEMPORARY TOTAL DISABILITY

Sections

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50.06.030 Application for initial determination of disability——Special base year——Special individual benefit year. An application for initial determination made pursuant to this chapter, to be considered timely, must be filed in writing with the employment security department within twenty–six weeks following the week

menced. Notice from the department of labor and industries shall satisfy this requirement. The records of the agency supervising the award of compensation shall be conclusive evidence of the fact of temporary disability and the beginning date of such disability. The employment security department shall process and issue an initial determination of entitlement or nonentitlement as the case may be.

For the purpose of this chapter, a special base year is established for an individual consisting of the first four of the last five completed calendar quarters immediately prior to the first day of the calendar week in which the individual's temporary total disability commenced, and a special individual benefit year is established consisting of the entire period of disability and a fifty-two consecutive week period commencing with the first day of the calendar week immediately following the week or part thereof with respect to which the individual received his final temporary total disability compensation under the applicable industrial insurance laws except that no special benefit year shall have a duration in excess of three hundred twelve calendar weeks: *Provided however*, That such special benefit year will not be established unless the criteria contained in RCW 50.04.030 has been met, except that an individual meeting the disability and filing requirements of this chapter and who has an unexpired benefit year established which would overlap the special benefit year provided by this chapter, notwithstanding the provisions in RCW 50.04.030 relating to the establishment of a subsequent benefit year and RCW 50.40.010 relating to waiver of rights, may elect to establish a special benefit year under this chapter: *Provided further*, that the unexpired benefit year shall be terminated with the beginning of the special benefit year if the individual elects to establish such special benefit year. [1975 1st ex.s. c 228 § 9.]

Effective date——1975 1st ex.s. c 228: See note following RCW 50.04.355.

50.06.040 Laws and regulations governing amounts payable and right to benefits. The individual's weekly benefit amount and maximum amount payable during the special benefit year shall be governed by the provision contained in RCW 50.20.120. The individual's basic and continuing right to benefits shall be governed by the general laws and regulations relating to the payment of unemployment compensation benefits to the extent that they are not in conflict with the provisions of this chapter. [1975 1st ex.s. c 228 § 10.]

Effective date——1975 1st ex.s. c 228: See note following RCW 50.04.355.

50.06.050 Use of wages and time worked for prior claims——Effect. The fact that wages, hours or weeks worked during the special base year may have been used in the computation of a prior valid claim for unemployment compensation shall not affect a claim for benefits made pursuant to the provisions of this chapter; however, wages, hours and weeks worked used in computing entitlement on a claim filed pursuant to this chapter shall not be available or used for establishing entitlement

Effective date——1975 1st ex.s. c 228: See note following RCW 50.04.355.

50.06.900 Chapter prospective. This chapter shall be available only to individuals who suffer a temporary total disability, compensable by an industrial insurance program, after the effective date of this chapter. [1975 1st ex.s. c 228 § 12.]

Effective date——1975 1st ex.s. c 228: See note following RCW 50.04.355.

50.06.910 Partial invalidity of chapter. Should any part of this chapter be declared unconstitutional by the final decision of any court or declared out of conformity by the United States secretary of labor, the commissioner shall immediately discontinue the payment of benefits based on this chapter, declare it inoperative and report that fact to the governor and the legislature. [1975 1st ex.s. c 228 § 13.]

Effective date——1975 1st ex.s. c 228: See note following RCW 50.04.355.

Chapter 50.08
ESTABLISHMENT OF DEPARTMENT

Sections

Displaced homemaker act, departmental participation: RCW 28B.04.080.

50.08.010 Employment security department established. There is established the employment security department for the state, to be administered by a commissioner. The commissioner shall be appointed by the governor with the consent of the senate, and shall hold office at the pleasure of, and receive such compensation for his services as may be fixed by, the governor. [1953 ex.s. c 8 § 3; 1947 c 215 § 8; 1945 c 35 § 38; Rem. Supp. 1947 § 9998-176. Prior: 1939 c 19 § 1; 1937 c 162 § 12.]

50.08.020 Divisions established. There are hereby established in the employment security department two coordinate divisions to be known as the unemployment compensation division, and the Washington state employment service division, each of which shall be administered by a full time salaried supervisor who shall be an assistant to the commissioner and shall be appointed by him. Each division shall be responsible to the commissioner for the dispatch of its distinctive functions. Each division shall be a separate administrative unit with respect to personnel, budget, and duties, except insofar as the commissioner may find that such separation is impracticable.

It is hereby further provided that the governor in his discretion may delegate any or all of the organization, administration and functions of the said Washington state employment service division to any federal agency.

"Application for initial determination" defined: RCW 50.20.140.

"Claim for benefits" defined: RCW 50.20.140.

"Claim for waiting period" defined: RCW 50.20.140.

50.04.020 Base year. "Base year" with respect to each individual, shall mean the first four of the last five completed calendar quarters immediately preceding the first day of the individual's benefit year. [1970 ex.s. c 2 § 1; 1945 c 35 § 3; Rem. Supp. 1945 § 9998–142. Prior: 1943 c 127 § 13; 1939 c 214 § 19; 1937 c 162 § 19.]

Effective date——1970 ex.s. c 2: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect April 5, 1970: *Provided*, That sections 3 and 8 of this 1970 amendatory act shall not take effect until January 1, 1971." [1970 1st ex.s. c 2 § 25.] This act is codified in RCW 50.04.020, 50.04.030, 50.04.320, 50.20.010, 50.20.120, 50.04.355, 50.20.150, 50.24.010, 50.29.010 through 50.29.080 and 50.29.140, 50.04.323, 50.20.030, 50.20.050, 50.20.060 and 50.20.127; sections 3 and 8 are codified in RCW 50.04.320 and 50.24.010.

50.04.030 Benefit year. "Benefit year" with respect to each individual, means the fifty–two consecutive week period beginning with the first day of the calendar week in which the individual files an application for an initial determination and thereafter the fifty–two consecutive week period beginning with the first day of the calendar week in which the individual next files an application for an initial determination after the expiration of the individual's last preceding benefit year: *Provided, however,* That the foregoing limitation shall not be deemed to preclude the establishment of a new benefit year under the laws of another state pursuant to any agreement providing for the interstate combining of employment and wages and the interstate payment of benefits nor shall this limitation be deemed to preclude the commissioner from backdating an initial application at the request of the claimant either for the convenience of the department of employment security or for any other reason deemed by the commissioner to be good cause.

An individual's benefit year shall be extended to be fifty–three weeks when at the expiration of fifty–two weeks the establishment of a new benefit year would result in the use of a quarter of wages in the new base year that had been included in the individual's prior base year.

No benefit year will be established unless it is determined that the individual earned wages in "employment" in not less than six hundred eighty hours of the individual's base year: *Provided, however,* That a benefit

[illegible] individual earned wages in "employment" during the last two quarters of the new base [illegible] of not less than six times the weekly benefit amount computed for the individual's new benefit year.

If the wages of an individual are not based upon a fixed duration of time or if the individual's wages are paid at irregular intervals or in such manner as not to extend regularly over the period of employment, the wages for any week shall be determined in such manner as the commissioner may by regulation prescribe. Such regulation shall, so far as possible, secure results reasonably similar to those which would prevail if the individual were paid his or her wages at regular intervals. [1977 ex.s. c 33 § 1; 1973 c 73 § 1; 1970 ex.s. c 2 § 2; 1949 c 214 § 1; 1945 c 35 § 4; Rem. Supp. 1949 § 9998–143. Prior: 1943 c 127 § 13; 1939 c 214 § 19; 1937 c 162 § 19.]

Effective dates——Construction——1977 ex.s. c 33: "The provisions of this 1977 amendatory act are necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions and shall take effect ninety days after adjournment sine die of the 1977 Extraordinary Session (forty–fifth legislature) of the Washington State Legislature: *Provided*, That the first paragraph of section 1 of this 1977 amendatory act shall take effect immediately and the remaining portion of section 1 of this 1977 amendatory act and all of section 2 of this 1977 amendatory act shall take effect commencing with benefit years beginning on and after October 1, 1978; section 7 of this 1977 amendatory act shall take effect commencing with benefit years beginning on and after July 3, 1977." [1977 ex.s. c 33 § 11.]

Reviser's note: The various sections of this 1977 amendatory act [1977 ex.s. c 33] referred to in the above section are codified as follows: Section 1 as RCW 50.04.030; section 2 as RCW 50.04.355; section 3 as RCW 50.12.070; section 4 as RCW 50.20.050; section 5 as RCW 50.20.060; section 6 as RCW 50.20.100; section 7 as RCW 50.20.120; section 8 as RCW 50.20.095.

Effective dates——1973 c 73: "Sections 7, 8, 10, 11, and 12 of this 1973 amendatory act are necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect immediately. Sections 1, 2, 3, 4, 5, 6, and 9 of this 1973 amendatory act shall take effect on July 1, 1973." [1973 c 73 § 13.]

Reviser's note: The effective date of sections 7, 8, 10, 11, and 12 was March 8, 1973. The effective date of sections 1, 2, 3, 4, 6 and 9 was July 1, 1973. Section 5 referred to above was vetoed.

Effective date——1970 ex.s. c 2: See note following RCW 50.04.020.

50.04.040 Benefits. "Benefits" means the compensation payable to an individual, as provided in this title, with respect to his unemployment. [1945 c 35 § 5; Rem. Supp. 1945 § 9998–144. Prior: 1943 c 127 § 13; 1941 c 253 § 14; 1939 c 219 § 19; 1937 c 162 § 19.]

50.04.050 Calendar quarter. "Calendar quarter" means the period of three consecutive calendar months ending on March 31st, June 30th, September 30th, or December 31st. [1945 c 35 § 6; Rem. Supp. 1945 § 9998–145. Prior: 1943 c 127 § 13; 1939 c 214 § 19; 1937 c 162 § 19.]

50.04.060 Commissioner. "Commissioner" means the administrative head of the state employment security department referred to in this title. [1947 c 215 § 1; 1945 c 35 § 7; Rem. Supp. 1947 § 9998–146. Prior:

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AS 23.30.110(c) is repealed and reenacted to read:

(c) Before a hearing is scheduled, the party seeking a hearing shall file a request for a hearing together with an affidavit stating that the party has completed all necessary discovery, has obtained all evidence it needs for the hearing, and will not seek a continuance or request the hearing record remain open at the conclusion of the hearing. Within 10 days the opposing party must notify the board if it is not ready for a hearing. If the opposing party notifies the board that it is not ready for hearing, the board or a board designee will conduct a pre-hearing conference within 30 days, and determine the hearing date. If no opposition is filed, a hearing will be scheduled no later than 60 days after the receipt of the request and affidavit. The parties shall be given at least 10 days' notice of the hearing, either personally or by certified mail. Once a hearing has been scheduled, no continuances will be permitted. The board shall close the hearing record at the end of the hearing; any evidence or arguments filed after the conclusion of the hearing will be excluded from the record. The only exception will be in case of surprise as determined by the board. The board may then extend the time to file additional evidence or argument. The parties cannot stipulate to leave the hearing record open. The parties may not stipulate to change the date, cancel, postpone, or continue the hearing, except for cases of illness of a party or its representative or because of a conflict with a matter scheduled by a state or federal court. If the parties reach a settlement agreement less than 14 days before the hearing, the parties shall appear at the time of the scheduled hearing to state the terms of the settlement agreement. Within 30 days after the hearing record closes, the board shall file its decision. If the employer controverts a claim on a board prescribed controversion notice and the employee does not request a hearing within two years following the filing of the controversion notice, the claim is denied.

DRAFT LETTER OF INTENT FOR HCS CS SB 322 (L&C) - WORKERS' COMPENSATION LEGISLATION

(EXISTING LETTER OF INTENT ADOPTED BY THE SENATE) LETTER OF INTENT FOR CS SB 322 (L&C)

With an actuarial analysis concluding that this bill will provide a two percent savings in hard costs and an unquantifiable amount of soft dollar savings, it is the intent of the Alaska State Senate that, upon passage of this bill, the Division of Insurance request new rate filing reflecting a decution in workers' compensation premiums.

PROPOSED LETTER OF INTENT FOR HCS CS SB 322 (L&C)

The legislature recognizes that the increasing costs of workers' compensation insurance is creating a great hardship on Alaska's workers, our employers, and the insurance carriers that serve our businesses.

It is the intent of the Legislature in adopting this legislation to enable a more efficient, fair, and cost effective delivery of services under Alaska's workers compensation system. To accomplish this, SB 322 demands significant concessions from employees and employers. It is the intent of the legislature in adopting this measure that each party to the workers' compensation system in Alaska, including workers, employers, and workers' compensation insurance carriers, initiate actions necessary to reduce the number of work related injuries, to assure prompt and fair compensation to injured workers, and to create incentives for prompt and fair settlement of disputes regarding workers' compensation claims.

With an acturarial analysis that concludes that this legislaton will provide at least a two percent savings in hard costs and with public testimony before this body that the measure will bring about significant soft dollar savings, it is the intent of the legislature that, upon passage of this bill, the Division of Insurance request a new rate filing reflecting a reduction from current rates in workers' compensation premiums of no less than 10 percent as of July 1, 1988 and that this rate be maintained through January 1, 1990.

#1

A M E N D M E N T

Offered in the HOUSE By Donley

TO: HB 352

Page 27, after line 3:

Insert a new bill section to read:

"* Sec. 36. Notwithstanding AS 21.39.030, an insurer providing workers' compensation insurance in the state shall provide at least a 10 percent reduction in the premium rate charged within the state for workers' compensation insurance, for the period beginning July 1, 1988, and ending January 1, 1990."

Renumber remaining bill sections accordingly.

Page 27, line 4:

Delete "This Act applies only"

Insert "Sections 1 - 35 of this Act apply"

for any payment) on account of death, provided the individual in its employ

(1) has not the option to receive instead of provisions for such death benefits, any part of such payment, or, if such death benefit is insured, any part of the premium (or contributions to premiums) paid by his employing unit; and

(2) has not the right under the provisions of the plan or system or policy of insurance providing for such death benefits to assign such benefits or to receive a cash consideration in lieu of such benefits, either upon his withdrawal from the plan or system providing for such benefits or upon termination of such plan or system or policy of insurance or of his services with such employing unit. [1951 c 265 § 5; 1949 c 214 § 6; 1945 c 35 § 35; Rem. Supp. 1949 § 9998–173. Prior: 1943 c 127 § 13; 1941 c 253 § 14.]

Severability——1951 c 265: See note following RCW 50.98.070.

50.04.350 Wages, remuneration——Excepted payments. The term "wages" shall not include the payment by an employing unit (without deduction from the remuneration of the individual in its employ) of the tax imposed upon an individual in employment under section 1400 of the federal internal revenue code, as amended, or any amount paid to a person in the military service for any pay period during which he performs no service for the employer: *Provided, however,* That prior to January 1, 1952, the term "wages" shall not include dismissal payments which an employing unit is not legally required to make. [1951 c 265 § 2; 1945 c 35 § 36; Rem. Supp. 1945 § 9998–174. Prior: 1943 c 127 § 13; 1941 c 253 § 14.]

Severability——1951 c 265: See note following RCW 50.98.070.

50.04.355 Wages, remuneration——Average annual wage——Average weekly wage——Average annual wage for contributions purposes. On or before the fifteenth day of June of each year an "average annual wage", an "average weekly wage", and an "average annual wage for contributions purposes" shall be computed from information for the preceding calendar year including corrections thereof reported within three months after the close of that year by all employers as defined in RCW 50.04.080. The "average annual wage" is the quotient derived by dividing total remuneration reported by all employers by the average number of workers reported for all months and if the result is not a multiple of one dollar, rounding the result to the next lower multiple of one dollar. The "average annual wage" thus obtained shall be divided by fifty-two and if the result is not a multiple of one dollar, rounding the result to the next lower multiple of one dollar to determine the "average weekly wage". The "average annual wage" for contribution purposes is the quotient derived by dividing total remuneration reported by all employers subject to contributions by the average number of workers reported for all months by these same employers and if the result is not a multiple of one dollar, rounding the result to the next lower multiple of one dollar. [1977 ex.s. c 33 § 2; 1975 1st ex.s. c 228 § 1; 1973 6.]

Effective dates——Construction—— lowing RCW 50.04.030.

Effective date——1975 1st ex.s. c amendatory act are necessary for t public peace, health, and safety, the and its existing public institutions, : Sunday following signature by the g 19.]

Effective date——1973 c 73: See note following RCW 50.04.030.

Effective date——1970 ex.s. c 2: See note following RCW 50.04.020.

50.04.360 Week. "Week" means any period of seven consecutive calendar days ending at midnight as the commissioner may by regulation prescribe. [1945 c 35 § 37; Rem. Supp. 1945 § 9998–175. Prior: 1943 c 127 § 13; 1941 c 253 § 14; 1939 c 214 § 16; 1937 c 162 § 19.]

Chapter 50.06
TEMPORARY TOTAL DISABILITY

Sections

50.06.010 Purpose. This chapter is enacted for the purpose of providing the protection of the unemployment compensation system to workers who have suffered a temporary total disability compensable under industrial insurance and is a recognition by this legislature of the economic hardship confronting those workers who have not been promptly reemployed after a prolonged period of temporary total disability. [1975 1st ex.s. c 228 § 7.]

Effective date——1975 1st ex.s. c 228: See note following RCW 50.04.355.

50.06.020 Allowable beneficiaries. Only individuals who have suffered a temporary total disability and have received compensation under the industrial insurance laws of this state, any other state or the United States for a period of not less than thirteen consecutive calendar weeks by reason of such temporary total disability shall be allowed the benefits of this chapter. [1975 1st ex.s. c 228 § 8.]

Effective date——1975 1st ex.s. c 228: See note following RCW 50.04.355.

50.06.030 Application for initial determination of disability——Special base year——Special individual benefit year. An application for initial determination made pursuant to this chapter, to be considered timely, must be filed in writing with the employment security department within twenty-six weeks following the week

[in which the period of temporary ... commenced. Notice from the department of labor and industries shall satisfy this requirement. The records of the agency supervising the award of compensation shall be conclusive evidence of the fact of temporary disability and the beginning date of such disability. The employment security department shall process and issue an initial determination of entitlement or nonentitlement as the case may be.

For the purpose of this chapter, a special base year is established for an individual consisting of the first four of the last five completed calendar quarters immediately prior to the first day of the calendar week in which the individual's temporary total disability commenced, and a special individual benefit year is established consisting of the entire period of disability and a fifty-two consecutive week period commencing with the first day of the calendar week immediately following the week or part thereof with respect to which the individual received his final temporary total disability compensation under the applicable industrial insurance laws except that no special benefit year shall have a duration in excess of three hundred twelve calendar weeks: *Provided however*, That such special benefit year will not be established unless the criteria contained in RCW 50.04.030 has been met, except that an individual meeting the disability and filing requirements of this chapter and who has an unexpired benefit year established which would overlap the special benefit year provided by this chapter, notwithstanding the provisions in RCW 50.04.030 relating to the establishment of a subsequent benefit year and RCW 50.40.010 relating to waiver of rights, may elect to establish a special benefit year under this chapter: *Provided further*, that the unexpired benefit year shall be terminated with the beginning of the special benefit year if the individual elects to establish such special benefit year. [1975 1st ex.s. c 228 § 9.]

Effective date——1975 1st ex.s. c 228: See note following RCW 50.04.355.

50.06.040 Laws and regulations governing amounts payable and right to benefits. The individual's weekly benefit amount and maximum amount payable during the special benefit year shall be governed by the provision contained in RCW 50.20.120. The individual's basic and continuing right to benefits shall be governed by the general laws and regulations relating to the payment of unemployment compensation benefits to the extent that they are not in conflict with the provisions of this chapter. [1975 1st ex.s. c 228 § 10.]

Effective date——1975 1st ex.s. c 228: See note following RCW 50.04.355.

50.06.050 Use of wages and time worked for prior claims——Effect. The fact that wages, hours or weeks worked during the special base year may have been used in the computation of a prior valid claim for unemployment compensation shall not affect a claim for benefits made pursuant to the provisions of this chapter; however, wages, hours and weeks worked used in computing entitlement on a claim filed pursuant to this chapter shall not be available or used for establishing entitlement [1975 1st ex.s. c 228 § 11.]

Effective date——1975 1st ex.s. c 228: See note following RCW 50.04.355.

50.06.900 Chapter prospective. This chapter shall be available only to individuals who suffer a temporary total disability, compensable by an industrial insurance program, after the effective date of this chapter. [1975 1st ex.s. c 228 § 12.]

Effective date——1975 1st ex.s. c 228: See note following RCW 50.04.355.

50.06.910 Partial invalidity of chapter. Should any part of this chapter be declared unconstitutional by the final decision of any court or declared out of conformity by the United States secretary of labor, the commissioner shall immediately discontinue the payment of benefits based on this chapter, declare it inoperative and report that fact to the governor and the legislature. [1975 1st ex.s. c 228 § 13.]

Effective date——1975 1st ex.s. c 228: See note following RCW 50.04.355.

Chapter 50.08
ESTABLISHMENT OF DEPARTMENT

Sections

Displaced homemaker act, departmental participation: RCW 28B.04.080.

50.08.010 Employment security department established. There is established the employment security department for the state, to be administered by a commissioner. The commissioner shall be appointed by the governor with the consent of the senate, and shall hold office at the pleasure of, and receive such compensation for his services as may be fixed by, the governor. [1953 ex.s. c 8 § 3; 1947 c 215 § 8; 1945 c 35 § 38; Rem. Supp. 1947 § 9998-176. Prior: 1939 c 19 § 1; 1937 c 162 § 12.]

50.08.020 Divisions established. There are hereby established in the employment security department two coordinate divisions to be known as the unemployment compensation division, and the Washington state employment service division, each of which shall be administered by a full time salaried supervisor who shall be an assistant to the commissioner and shall be appointed by him. Each division shall be responsible to the commissioner for the dispatch of its distinctive functions. Each division shall be a separate administrative unit with respect to personnel, budget, and duties, except insofar as the commissioner may find that such separation is impracticable.

It is hereby further provided that the governor in his discretion may delegate any or all of the organization, administration and functions of the said Washington state employment service division to any federal agency.

"Application for initial determination" defined: RCW 50.20.140.

"Claim for benefits" defined: RCW 50.20.140.

"Claim for waiting period" defined: RCW 50.20.140.

50.04.020 Base year. "Base year" with respect to each individual, shall mean the first four of the last five completed calendar quarters immediately preceding the first day of the individual's benefit year. [1970 ex.s. c 2 § 1; 1945 c 35 § 3; Rem. Supp. 1945 § 9998–142. Prior: 1943 c 127 § 13; 1939 c 214 § 19; 1937 c 162 § 19.]

Effective date——1970 ex.s. c 2: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect April 5, 1970: *Provided*, That sections 3 and 8 of this 1970 amendatory act shall not take effect until January 1, 1971." [1970 1st ex.s. c 2 § 25.] This act is codified in RCW 50.04.020, 50.04.030, 50.04.320, 50.20.010, 50.20.120, 50.04.355, 50.20.150, 50.24.010, 50.29.010 through 50.29.080 and 50.29.140, 50.04.323, 50.20.030, 50.20.050, 50.20.060 and 50.20.127; sections 3 and 8 are codified in RCW 50.04.320 and 50.24.010.

50.04.030 Benefit year. "Benefit year" with respect to each individual, means the fifty–two consecutive week period beginning with the first day of the calendar week in which the individual files an application for an initial determination and thereafter the fifty–two consecutive week period beginning with the first day of the calendar week in which the individual next files an application for an initial determination after the expiration of the individual's last preceding benefit year: *Provided, however*, That the foregoing limitation shall not be deemed to preclude the establishment of a new benefit year under the laws of another state pursuant to any agreement providing for the interstate combining of employment and wages and the interstate payment of benefits nor shall this limitation be deemed to preclude the commissioner from backdating an initial application at the request of the claimant either for the convenience of the department of employment security or for any other reason deemed by the commissioner to be good cause.

An individual's benefit year shall be extended to be fifty–three weeks when at the expiration of fifty–two weeks the establishment of a new benefit year would result in the use of a quarter of wages in the new base year that had been included in the individual's prior base year.

No benefit year will be established unless it is determined that the individual earned wages in "employment" in not less than six hundred eighty hours of the individual's base year: *Provided, however*, That a benefit

ment" during the last two quarters of the new base year of not less than six times the weekly benefit amount computed for the individual's new benefit year.

If the wages of an individual are not based upon a fixed duration of time or if the individual's wages are paid at irregular intervals or in such manner as not to extend regularly over the period of employment, the wages for any week shall be determined in such manner as the commissioner may by regulation prescribe. Such regulation shall, so far as possible, secure results reasonably similar to those which would prevail if the individual were paid his or her wages at regular intervals. [1977 ex.s. c 33 § 1; 1973 c 73 § 1; 1970 ex.s. c 2 § 2; 1949 c 214 § 1; 1945 c 35 § 4; Rem. Supp. 1949 § 9998–143. Prior: 1943 c 127 § 13; 1939 c 214 § 19; 1937 c 162 § 19.]

Effective dates——Construction——1977 ex.s. c 33: "The provisions of this 1977 amendatory act are necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions and shall take effect ninety days after adjournment sine die of the 1977 Extraordinary Session (forty–fifth legislature) of the Washington State Legislature: *Provided*, That the first paragraph of section 1 of this 1977 amendatory act shall take effect immediately and the remaining portion of section 1 of this 1977 amendatory act and all of section 2 of this 1977 amendatory act shall take effect commencing with benefit years beginning on and after October 1, 1978; section 7 of this 1977 amendatory act shall take effect commencing with benefit years beginning on and after July 3, 1977." [1977 ex.s. c 33 § 11.]

Reviser's note: The various sections of this 1977 amendatory act [1977 ex.s. c 33] referred to in the above section are codified as follows: Section 1 as RCW 50.04.030; section 2 as RCW 50.04.355; section 3 as RCW 50.12.070; section 4 as RCW 50.20.050; section 5 as RCW 50.20.060; section 6 as RCW 50.20.100; section 7 as RCW 50.20.120; section 8 as RCW 50.20.095.

Effective dates——1973 c 73: "Sections 7, 8, 10, 11, and 12 of this 1973 amendatory act are necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect immediately. Sections 1, 2, 3, 4, 5, 6, and 9 of this 1973 amendatory act shall take effect on July 1, 1973." [1973 c 73 § 13.]

Reviser's note: The effective date of sections 7, 8, 10, 11, and 12 was March 8, 1973. The effective date of sections 1, 2, 3, 4, 6 and 9 was July 1, 1973. Section 5 referred to above was vetoed.

Effective date——1970 ex.s. c 2: See note following RCW 50.04.020.

50.04.040 Benefits. "Benefits" means the compensation payable to an individual, as provided in this title, with respect to his unemployment. [1945 c 35 § 5; Rem. Supp. 1945 § 9998–144. Prior: 1943 c 127 § 13; 1941 c 253 § 14; 1939 c 219 § 19; 1937 c 162 § 19.]

50.04.050 Calendar quarter. "Calendar quarter" means the period of three consecutive calendar months ending on March 31st, June 30th, September 30th, or December 31st. [1945 c 35 § 6; Rem. Supp. 1945 § 9998–145. Prior: 1943 c 127 § 13; 1939 c 214 § 19; 1937 c 162 § 19.]

50.04.060 Commissioner. "Commissioner" means the administrative head of the state employment security department referred to in this title. [1947 c 215 § 1; 1945 c 35 § 7; Rem. Supp. 1947 § 9998–146. Prior:

#3

AS 23.30.110(c) is repealed and reenacted to read:

(c) Before a hearing is scheduled, the party seeking a hearing shall file a request for a hearing together with an affidavit stating that the party has completed all necessary discovery, has obtained all evidence it needs for the hearing, and will not seek a continuance or request the hearing record remain open at the conclusion of the hearing. Within 10 days the opposing party must notify the board if it is not ready for a hearing. If the opposing party notifies the board that it is not ready for hearing, the board or a board designee will conduct a pre-hearing conference within 30 days, and determine the hearing date. If no opposition is filed, a hearing will be scheduled no later than 60 days after the receipt of the request and affidavit. The parties shall be given at least 10 days' notice of the hearing, either personally or by certified mail. Once a hearing has been scheduled, no continuances will be permitted. The board shall close the hearing record at the end of the hearing; any evidence or arguments filed after the conclusion of the hearing will be excluded from the record. The only exception will be in case of surprise as determined by the board. The board may then extend the time to file additional evidence or argument. The parties cannot stipulate to leave the hearing record open. The parties may not stipulate to change the date, cancel, postpone, or continue the hearing, except for cases of illness of a party or its representative or because of a conflict with a matter scheduled by a state or federal court. If the parties reach a settlement agreement less than 14 days before the hearing, the parties shall appear at the time of the scheduled hearing to state the terms of the settlement agreement. Within 30 days after the hearing record closes, the board shall file its decision. If the employer controverts a claim on a board prescribed controversion notice and the employee does not request a hearing within two years following the filing of the controversion notice, the claim is denied.

#1

A M E N D M E N T

Offered in the HOUSE By Donley

TO: HB 352

Page 27, after line 3:

Insert a new bill section to read:

"* Sec. 36. Notwithstanding AS 21.39.030, an insurer providing workers' compensation insurance in the state shall provide at least a 10 percent reduction in the premium rate charged within the state for workers' compensation insurance, for the period beginning July 1, 1988, and ending January 1, 1990."

Renumber remaining bill sections accordingly.

Page 27, line 4:

Delete "This Act applies only"

Insert "Sections 1 - 35 of this Act apply"

for any payment) on account of death, provided the individual in its employ

(1) has not the option to receive instead of provisions for such death benefits, any part of such payment, or, if such death benefit is insured, any part of the premium (or contributions to premiums) paid by his employing unit; and

(2) has not the right under the provisions of the plan or system or policy of insurance providing for such death benefits to assign such benefits or to receive a cash consideration in lieu of such benefits, either upon his withdrawal from the plan or system providing for such benefits or upon termination of such plan or system or policy of insurance or of his services with such employing unit. [1951 c 265 § 5; 1949 c 214 § 6; 1945 c 35 § 35; Rem. Supp. 1949 § 9998–173. Prior: 1943 c 127 § 13; 194[illegible] c 253 § 14.]

Severability——1951 c 265: See note following RCW 50.98.070.

50.04.350 Wages, remuneration——Excepted payments. The term "wages" shall not include the payment by an employing unit (without deduction from the remuneration of the individual in its employ) of the tax imposed upon an individual in employment under section 1400 of the federal internal revenue code, as amended, or any amount paid to a person in the military service for any pay period during which he performs no service for the employer: *Provided, however,* That prior to January 1, 1952, the term "wages" shall not include dismissal payments which an employing unit is not legally required to make. [1951 c 265 § 2; 1945 c 35 § 36; Rem. Supp. 1945 § 9998–174. Prior: 1943 c 127 § 13; 1941 c 253 § 14.]

Severability——1951 c 265: See note following RCW 50.98.070.

50.04.355 Wages, remuneration——Average annual wage——Average weekly wage——Average annual wage for contributions purposes. On or before the fifteenth day of June of each year an "average annual wage", an "average weekly wage", and an "average annual wage for contributions purposes" shall be computed from information for the preceding calendar year including corrections thereof reported within three months after the close of that year by all employers as defined in RCW 50.04.080. The "average annual wage" is the quotient derived by dividing total remuneration reported by all employers by the average number of workers reported for all months and if the result is not a multiple of one dollar, rounding the result to the next lower multiple of one dollar. The "average annual wage" thus obtained shall be divided by fifty-two and if the result is not a multiple of one dollar, rounding the result to the next lower multiple of one dollar to determine the "average weekly wage". The "average annual wage" for contribution purposes is the quotient derived by dividing total remuneration reported by all employers subject to contributions by the average number of workers reported for all months by these same employers and if the result is not a multiple of one dollar, rounding the result to the next lower multiple of one dollar. [1977 ex.s. c 33 § 2; 1975 1st ex.s. c 228 § 1; 1973 [illegible] 6.]

Effective dates——Construction—— [illegible] lowing RCW 50.04.030.

Effective date——1975 1st ex.s. c [illegible] amendatory act are necessary for t[illegible] public peace, health, and safety, the [illegible] and its existing public institutions, [illegible] Sunday following signature by the g[illegible] 19.]

Effective date——1973 c 73: See note following RCW 50.04.030.

Effective date——1970 ex.s. c 2: See note following RCW 50.04.020.

50.04.360 Week. "Week" means any period of seven consecutive calendar days ending at midnight as the commissioner may by regulation prescribe. [1945 c 35 § 37; Rem. Supp. 1945 § 9998–175. Prior: 1943 c 127 § 13; 1941 c 253 § 14; 1939 c 214 § 16; 1937 c 162 § 19.]

Chapter 50.06
TEMPORARY TOTAL DISABILITY

Sections

50.06.010 Purpose. This chapter is enacted for the purpose of providing the protection of the unemployment compensation system to workers who have suffered a temporary total disability compensable under industrial insurance and is a recognition by this legislature of the economic hardship confronting those workers who have not been promptly reemployed after a prolonged period of temporary total disability. [1975 1st ex.s. c 228 § 7.]

Effective date——1975 1st ex.s. c 228: See note following RCW 50.04.355.

50.06.020 Allowable beneficiaries. Only individuals who have suffered a temporary total disability and have received compensation under the industrial insurance laws of this state, any other state or the United States for a period of not less than thirteen consecutive calendar weeks by reason of such temporary total disability shall be allowed the benefits of this chapter. [1975 1st ex.s. c 228 § 8.]

Effective date——1975 1st ex.s. c 228: See note following RCW 50.04.355.

50.06.030 Application for initial determination of disability——Special base year——Special individual benefit year. An application for initial determination made pursuant to this chapter, to be considered timely, must be filed in writing with the employment security department within twenty-six weeks following the week

in which the period of temporary total disability commenced. Notice from the department of labor and industries shall satisfy this requirement. The records of the agency supervising the award of compensation shall be conclusive evidence of the fact of temporary disability and the beginning date of such disability. The employment security department shall process and issue an initial determination of entitlement or nonentitlement as the case may be.

For the purpose of this chapter, a special base year is established for an individual consisting of the first four of the last five completed calendar quarters immediately prior to the first day of the calendar week in which the individual's temporary total disability commenced, and a special individual benefit year is established consisting of the entire period of disability and a fifty-two consecutive week period commencing with the first day of the calendar week immediately following the week or part thereof with respect to which the individual received his final temporary total disability compensation under the applicable industrial insurance laws except that no special benefit year shall have a duration in excess of three hundred twelve calendar weeks: *Provided however*, That such special benefit year will not be established unless the criteria contained in RCW 50.04.030 has been met, except that an individual meeting the disability and filing requirements of this chapter and who has an unexpired benefit year established which would overlap the special benefit year provided by this chapter, notwithstanding the provisions in RCW 50.04.030 relating to the establishment of a subsequent benefit year and RCW 50.40.010 relating to waiver of rights, may elect to establish a special benefit year under this chapter: *Provided further*, that the unexpired benefit year shall be terminated with the beginning of the special benefit year if the individual elects to establish such special benefit year. [1975 1st ex.s. c 228 § 9.]

Effective date——1975 1st ex.s. c 228: See note following RCW 50.04.355.

50.06.040 Laws and regulations governing amounts payable and right to benefits. The individual's weekly benefit amount and maximum amount payable during the special benefit year shall be governed by the provision contained in RCW 50.20.120. The individual's basic and continuing right to benefits shall be governed by the general laws and regulations relating to the payment of unemployment compensation benefits to the extent that they are not in conflict with the provisions of this chapter. [1975 1st ex.s. c 228 § 10.]

Effective date——1975 1st ex.s. c 228: See note following RCW 50.04.355.

50.06.050 Use of wages and time worked for prior claims——Effect. The fact that wages, hours or weeks worked during the special base year may have been used in the computation of a prior valid claim for unemployment compensation shall not affect a claim for benefits made pursuant to the provisions of this chapter; however, wages, hours and weeks worked used in computing entitlement on a claim filed pursuant to this chapter shall not be available or used for establishing entitlement [1975 1st ex.s. c 228 § 11.]

Effective date——1975 1st ex.s. c 228: See note following RCW 50.04.355.

50.06.900 Chapter prospective. This chapter shall be available only to individuals who suffer a temporary total disability, compensable by an industrial insurance program, after the effective date of this chapter. [1975 1st ex.s. c 228 § 12.]

Effective date——1975 1st ex.s. c 228: See note following RCW 50.04.355.

50.06.910 Partial invalidity of chapter. Should any part of this chapter be declared unconstitutional by the final decision of any court or declared out of conformity by the United States secretary of labor, the commissioner shall immediately discontinue the payment of benefits based on this chapter, declare it inoperative and report that fact to the governor and the legislature. [1975 1st ex.s. c 228 § 13.]

Effective date——1975 1st ex.s. c 228: See note following RCW 50.04.355.

Chapter 50.08
ESTABLISHMENT OF DEPARTMENT

Sections

Displaced homemaker act, departmental participation: RCW 28B.04.080.

50.08.010 Employment security department established. There is established the employment security department for the state, to be administered by a commissioner. The commissioner shall be appointed by the governor with the consent of the senate, and shall hold office at the pleasure of, and receive such compensation for his services as may be fixed by, the governor. [1953 ex.s. c 8 § 3; 1947 c 215 § 8; 1945 c 35 § 38; Rem. Supp. 1947 § 9998-176. Prior: 1939 c 19 § 1; 1937 c 162 § 12.]

50.08.020 Divisions established. There are hereby established in the employment security department two coordinate divisions to be known as the unemployment compensation division, and the Washington state employment service division, each of which shall be administered by a full time salaried supervisor who shall be an assistant to the commissioner and shall be appointed by him. Each division shall be responsible to the commissioner for the dispatch of its distinctive functions. Each division shall be a separate administrative unit with respect to personnel, budget, and duties, except insofar as the commissioner may find that such separation is impracticable.

It is hereby further provided that the governor in his discretion may delegate any or all of the organization, administration and functions of the said Washington state employment service division to any federal agency.

50.04.020 Base year. "Base year" with respect to each individual, shall mean the first four of the last five completed calendar quarters immediately preceding the first day of the individual's benefit year. [1970 ex.s. c 2 § 1; 1945 c 35 § 3; Rem. Supp. 1945 § 9998–142. Prior: 1943 c 127 § 13; 1939 c 214 § 19; 1937 c 162 § 19.]

Effective date——1970 ex.s. c 2: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect April 5, 1970: *Provided*, That sections 3 and 8 of this 1970 amendatory act shall not take effect until January 1, 1971." [1970 1st ex.s. c 2 § 25.] This act is codified in RCW 50.04.020, 50.04.030, 50.04.320, 50.20.010, 50.20.120, 50.04.355, 50.20.150, 50.24.010, 50.29.010 through 50.29.080 and 50.29.140, 50.04.323, 50.20.030, 50.20.050, 50.20.060 and 50.20.127; sections 3 and 8 are codified in RCW 50.04.320 and 50.24.010.

50.04.030 Benefit year. "Benefit year" with respect to each individual, means the fifty–two consecutive week period beginning with the first day of the calendar week in which the individual files an application for an initial determination and thereafter the fifty–two consecutive week period beginning with the first day of the calendar week in which the individual next files an application for an initial determination after the expiration of the individual's last preceding benefit year: *Provided, however*, That the foregoing limitation shall not be deemed to preclude the establishment of a new benefit year under the laws of another state pursuant to any agreement providing for the interstate combining of employment and wages and the interstate payment of benefits nor shall this limitation be deemed to preclude the commissioner from backdating an initial application at the request of the claimant either for the convenience of the department of employment security or for any other reason deemed by the commissioner to be good cause.

An individual's benefit year shall be extended to be fifty–three weeks when at the expiration of fifty–two weeks the establishment of a new benefit year would result in the use of a quarter of wages in the new base year that had been included in the individual's prior base year.

No benefit year will be established unless it is determined that the individual earned wages in "employment" in not less than six hundred eighty hours of the individual's base year: *Provided, however*, That a benefit year unless the individual earned wages in "employment" during the last two quarters of the new base year of not less than six times the weekly benefit amount computed for the individual's new benefit year.

If the wages of an individual are not based upon a fixed duration of time or if the individual's wages are paid at irregular intervals or in such manner as not to extend regularly over the period of employment, the wages for any week shall be determined in such manner as the commissioner may by regulation prescribe. Such regulation shall, so far as possible, secure results reasonably similar to those which would prevail if the individual were paid his or her wages at regular intervals. [1977 ex.s. c 33 § 1; 1973 c 73 § 1; 1970 ex.s. c 2 § 2; 1949 c 214 § 1; 1945 c 35 § 4; Rem. Supp. 1949 § 9998–143. Prior: 1943 c 127 § 13; 1939 c 214 § 19; 1937 c 162 § 19.]

Effective dates——Construction——1977 ex.s. c 33: "The provisions of this 1977 amendatory act are necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions and shall take effect ninety days after adjournment sine die of the 1977 Extraordinary Session (forty–fifth legislature) of the Washington State Legislature: *Provided*, That the first paragraph of section 1 of this 1977 amendatory act shall take effect immediately and the remaining portion of section 1 of this 1977 amendatory act and all of section 2 of this 1977 amendatory act shall take effect commencing with benefit years beginning on and after October 1, 1978; section 7 of this 1977 amendatory act shall take effect commencing with benefit years beginning on and after July 3, 1977." [1977 ex.s. c 33 § 11.]

Reviser's note: The various sections of this 1977 amendatory act [1977 ex.s. c 33] referred to in the above section are codified as follows: Section 1 as RCW 50.04.030; section 2 as RCW 50.04.355; section 3 as RCW 50.12.070; section 4 as RCW 50.20.050; section 5 as RCW 50.20.060; section 6 as RCW 50.20.100; section 7 as RCW 50.20.120; section 8 as RCW 50.20.095.

Effective dates——1973 c 73: "Sections 7, 8, 10, 11, and 12 of this 1973 amendatory act are necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect immediately. Sections 1, 2, 3, 4, 5, 6, and 9 of this 1973 amendatory act shall take effect on July 1, 1973." [1973 c 73 § 13.]

Reviser's note: The effective date of sections 7, 8, 10, 11, and 12 was March 8, 1973. The effective date of sections 1, 2, 3, 4, 6 and 9 was July 1, 1973. Section 5 referred to above was vetoed.

Effective date——1970 ex.s. c 2: See note following RCW 50.04.020.

50.04.040 Benefits. "Benefits" means the compensation payable to an individual, as provided in this title, with respect to his unemployment. [1945 c 35 § 5; Rem. Supp. 1945 § 9998–144. Prior: 1943 c 127 § 13; 1941 c 253 § 14; 1939 c 219 § 19; 1937 c 162 § 19.]

50.04.050 Calendar quarter. "Calendar quarter" means the period of three consecutive calendar months ending on March 31st, June 30th, September 30th, or December 31st. [1945 c 35 § 6; Rem. Supp. 1945 § 9998–145. Prior: 1943 c 127 § 13; 1939 c 214 § 19; 1937 c 162 § 19.]

50.04.060 Commissioner. "Commissioner" means the administrative head of the state employment security department referred to in this title. [1947 c 215 § 1; 1945 c 35 § 7; Rem. Supp. 1947 § 9998–146. Prior:

#3

AS 23.30.110(c) is repealed and reenacted to read:

(c) Before a hearing is scheduled, the party seeking a hearing shall file a request for a hearing together with an affidavit stating that the party has completed all necessary discovery, has obtained all evidence it needs for the hearing, and will not seek a continuance or request the hearing record remain open at the conclusion of the hearing. Within 10 days the opposing party must notify the board if it is not ready for a hearing. If the opposing party notifies the board that it is not ready for hearing, the board or a board designee will conduct a pre-hearing conference within 30 days, and determine the hearing date. If no opposition is filed, a hearing will be scheduled no later than 60 days after the receipt of the request and affidavit. The parties shall be given at least 10 days' notice of the hearing, either personally or by certified mail. Once a hearing has been scheduled, no continuances will be permitted. The board shall close the hearing record at the end of the hearing; any evidence or arguments filed after the conclusion of the hearing will be excluded from the record. The only exception will be in case of surprise as determined by the board. The board may then extend the time to file additional evidence or argument. The parties cannot stipulate to leave the hearing record open. The parties may not stipulate to change the date, cancel, postpone, or continue the hearing, except for cases of illness of a party or its representative or because of a conflict with a matter scheduled by a state or federal court. If the parties reach a settlement agreement less than 14 days before the hearing, the parties shall appear at the time of the scheduled hearing to state the terms of the settlement agreement. Within 30 days after the hearing record closes, the board shall file its decision. If the employer controverts a claim on a board prescribed controversion notice and the employee does not request a hearing within two years following the filing of the controversion notice, the claim is denied.

SB 322 CONFERENCE COMMITTEE

Topics under conference:

1) Board IME - more weight than other medical opinions
House CS - page 18, line 20
Senate CS - page 16, line 23

2) Fines for late reporting - "or $100, whichever is greater."
House CS - page 22, line 16 and 26
NOT IN SENATE CS

3) Hearing Preparation - whether to reinsert "all", "all", and "fully"
House CS - page 19, lines 13 and 14
NOT IN SENATE CS

4) Checks drawn on in-state banks
House CS - page 24, line 13
NOT IN SENATE CS

5) Stress language - perceptions/misperceptions
House CS - page 31, line 28
Senate CS - page 29, line 10

Topics under limited free conference:

1) Workplace Safety Program - new language?
   House CS - page 2, line 27
   NOT IN SENATE CS

2) Fine for lack of coverage - $10,000
   House CS - page 14, line 6

3) Determination of gross weekly earnings - delete "projected"
   House CS - page ~~30~~ 29, line 2
   Senate CS - page 26, line 18

4) Rate Reduction or freeze
   House CS - page 32, line 22
   NOT IN SENATE CS

5) Assigned Risk Pool
   House CS - page 2, line 18
   NOT IN SENATE CS

Sund

PROPOSED LANGUAGE FOR RATE REDUCTION

"Notwithstanding AS 21.39.030, rates filed by rating organizations for use in the state of Alaska may not be increased before Jan. 1, 1990.

OK

Sund

PROPOSED LANGUAGE FOR ASSIGNED RISK POOL

Version A -
New businesses subject to surcharge for three years
No surcharge without exp. mod. debit
Surcharge = 30%

"An insurer may not impose a surcharge for assigned risk pool insurance unless the insured has not been in business in the state for three full years or the insured has received an experience modification debit. The amount of the surcharge shall be equal to 30 percent of the premium after consideration of the experience modification debit. The assigned risk pool premium for insureds who have or are entitled to an experience modification credit shall not exceed that derived from the application of standard rates for the insured's classification adjusted for the experience modification credit."

Version B -
No surcharge without exp. mod. debit - including new business
Surcharge = 25%

"An insurer may not impose a surcharge for assigned risk pool insurance unless the insured has received an experience modification debit. The amount of the surcharge shall be equal to 25 percent of the premium after consideration of the experience modification debit. The assigned risk pool premium for insureds who have or are entitled to an experience modification credit shall not exceed that derived from the application of standard rates for the insured's classification adjusted for the experience modification credit."

Version C -
New business subject to surcharge for two years
No surcharge without exp. mod. debit
Surcharge = 20%

"An insurer may not impose a surcharge for assigned risk pool insurance unless the insured has not been in business in the state for two full years or the insured has received an experience modification debit. The amount of the surcharge shall be equal to 20 percent of the premium after consideration of the experience modification debit. The assigned risk pool premium for insureds who have or are entitled to an experience modification credit shall not exceed that derived from the application of standard rates for the insured's classification adjusted for the experience modification credit."

Variables to play with: Number of years for new business and percent of surcharge.

PROPOSED ALTERNATIVE LANGUAGE
SECTION 2
Page 2, Lines 18-25

Kelly

Replace language on lines 19 through 25 with the following:

"(c) An insurer may impose a surcharge not to exceed 25 percent of premium for assigned risk pool insurance provided that no surcharge may be applied to the first $2,500 of premium in any policy year."

Comment:

This provision provides a limit on pool surcharge by premium size. Only that portion of premium in excess of $2,500 would be subject to surcharge. This provision has the advantage of being relatively simple to administer.

Alaska Independent Insurance Agents & Brokers, Inc.

FAX # (907) 262-2736

FACSIMILE COVER PAGE

DATE 5/3/88

COMPANY Senators, [redacted], Fisher, Szymanski, Representatives, Sund Menard & Navarre

LOCATION Juneau, AK.

TELECOPIER # 586-9548 Rm 204 Phone # 465-3764 Rep. Navarre
586-9544 Senator Fisher

ATTENTION: Whomever

FROM: Patrick S. Cowan, Executive Director, AIIAB, Inc.

REGARDING: Workers Compensation, Proposed Legislation

NUMBER OF PAGES 1 INCLUDING THIS COVER PAGE.

MESSAGE: Our position on the proposed Legislation, now in Pre-Conference Committee is as follows: We Support the Senate version of the Workers Compensation Committee without any of the amendments offered by the House. If some sort of a compromise is necessary, we support the AIA's position on these amendments.

There is no way we can support any Legislative mandated rate decreases. In order to provide the best insurance product to the public, the free enterprise system must be allowed to work.

The Legislation as passed by the Senate was a compromise bill offered by Labor & Management, the people that this bill is going to affect. We suggest that you pass the Senate version as presented and allow the free market system to take care of rate decreases as they actually occur in the marketplace. Respectfully submitted,

Patrick S. Cowan

IF YOU DO NOT RECEIVE ALL THE PAGES, PLEASE CALL US BACK, AS SOON AS POSSIBLE.

P.O. Box 1547 • Soldotna, AK 99669 • (907) 262-4136

STATE OF ALASKA
1988 LEGISLATIVE SESSION

BILL VERSION : HCS SCS SB322(L&C)
PUBLISH DATE :

FISCAL NOTE

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

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

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

* Second Injury Fund

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

(See Attached)

Prepared by: Jacque McClintock
Phone : 465-2790
Division: Worker's Compensation
Date : 3/16/88

Approved by Commissioner: Jim Sampson
Date: 3/16/88
Agency: Department of Labor

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

Analysis of Fiscal Note

For HCS SCS SB 322(L&C)

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

1. Additional Information Requirements

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

2. Annual Cost of Living Survey

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

Assumptions:

1. An effective date of July 1, 1988.

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

KENAI PENINSULA BOROUGH
144 N. BINKLEY • SOLDOTNA, ALASKA 99669
PHONE (907) 262-4441

DON GILMAN
MAYOR

TELECOPIER COVER LETTER

DATE: 5-2-88

PLEASE DELIVER THE FOLLOWING PAGES TO:

NAME: John Ringstad

FIRM: C/o Tim Kelly - Labor & Commerce Committee

CITY: Juneau

TELEPHONE NUMBER: _____ TELECOPY NUMBER: _____

FROM: Don Gilman - Kenai Peninsula Borough Mayor

DESCRIPTION OF MATERIAL: _____

TOTAL NUMBER OF PAGES (INCLUDING COVER LETTER): 3

If you do not receive all the pages, please call back as soon as possible.

Phone: (907) 262-4441, ext. 224

Operator: Liz

We are transmitting from a CANON FAX-520.

Telecopier # (907) 262-1892

KENAI PENINSULA CAUCUS

RESOLUTION 88-6

A RESOLUTION SUPPORTING APPROVAL OF VARIOUS REFORMS TO THE WORKERS COMPENSATION INSURANCE STATUTES AS CONTAINED IN SB 322, BUT OPPOSING ANY LEGISLATIVE MANDATE TO REDUCE WORKERS COMPENSATION INSURANCE PREMIUMS

WHEREAS, the Kenai Peninsula Caucus represents Kenai Peninsula municipal governments and Chambers of Commerce and serves to promote the physical, social and economic well being of the Kenai Peninsula Borough; and,

WHEREAS, Workers Compensation premiums have risen by up to 68% for some Alaskan businesses, and the average premium increase in 1988 is 25%, which effects both public and private sectors of the Alaskan economy; and,

WHEREAS, a group of Alaskan citizens, representative of both labor and management formed a task force called the WCCA to focus on Workers Compensation Reform; and,

WHEREAS, the WCCA has focused on specific aspects of Workers Compensation law which, if changed will save employers millions of dollars and make the system better serve both the employee and the employer; and,

WHEREAS, our Legislators in the second half of the Fifteenth Legislature have an excellent opportunity to make actual, favorable Workers Compensation Reform, working with the WCCA; and,

WHEREAS, the WCCA has proposed legislative amendments contained in Senate Bill 322 to work out REAL rate reductions based on sound actuarial information; now, therefore,

BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE KENAI PENINSULA CAUCUS:

Section 1: Kenai Peninsula Caucus respectfully requests the Alaska State Legislature to enact various reforms to the Workers Compensation Insurance Statutes as contained in Senate Bill 322 and to work with the WCCA and the Division of Insurance to work out real rate reductions based on actuarial information.

Section 2. Kenai Peninsula Caucus respectfully requests the Alaska State Legislature **NOT** to attempt to mandate incorrect, unsound rate reductions, that will most certainly create the opposite in the market place.

Section 3. The Kenai Peninsula Caucus supports statutory language based on the original findings of the WCCA and opposes efforts of special interest groups to change the original intent.

Section 4. The Secretary is authorized to send a copy of this Resolution to the Honorable Steve Cowper, Governor of the State of Alaska, to all State Legislators who represent the Kenai Peninsula Borough and to the House Labor and Commerce Committee members of the Alaska State Legislature.

Resolution 88-6 Kenai Peninsula Caucus

ADOPTED this 4th day of April, 1988.

Betty J. Glick

Betty J. Glick, President

ATTEST:

Mitchel Robinson, Secretary

National
Council
on Compensation
Insurance

Stanley V. Sparks
Director
Government, Consumer
and Industry Affairs

April 5, 1988

RECEIVED
APR 07 1988
Department of Commerce and
Economic Development
Division of Insurance

Honorable Paul Roller
Director of Insurance
State of Alaska
Department of Commerce and Economic Development
Division of Insurance
State Office Building - 9th Floor
Pouch D
Juneau, Alaska 99811

Re: Senate Bill 322

Dear Director Roller:

The Alaska Classification and Rating Committee met via telephone conference call on April 4, 1988 to discuss the progress of the workers compensation insurance reform legislation which is pending in Juneau. By unanimous decision the Committee in effect acknowledged that the potential overall cost savings contained in the existing version of SB 322 amounted to 5.7 percent. Accordingly, if the bill is enacted in its present form, the Committee will direct NCCI to file a law amendment rate filing in Alaska which provides for an overall rate decrease of 5.7 percent on new, renewal and outstanding policies effective as of July 1, 1988.

The Committee wishes to make it clear that such a mid-term rate adjustment would not in any way interfere or preclude the normal review of Alaska experience and the making of an appropriate 1/1/89 rate filing based upon that experience.

Sincerely,

Stanley V. Sparks

Stanley V. Sparks
Director
Government, Consumer
and Industry Affairs

SVS/gls

cc: Alaska Classification and Rating Committee
Don Koch
R. Fein
M. Mulvaney

AS 23.30.110(c) is repealed and reenacted to read:

(c) Before a hearing is scheduled, the party seeking a hearing shall file a request for a hearing together with an affidavit stating that the party has completed all necessary discovery, has obtained all evidence it needs for the hearing, and will not seek a continuance or request the hearing record remain open at the conclusion of the hearing. Within 10 days the opposing party must notify the board if it is not ready for a hearing. If the opposing party notifies the board that it is not ready for hearing, the board or a board designee will conduct a pre-hearing conference within 30 days, and determine the hearing date. If no opposition is filed, a hearing will be scheduled no later than 60 days after the receipt of the request and affidavit. The parties shall be given at least 10 days' notice of the hearing, either personally or by certified mail. Once a hearing has been scheduled, no continuances will be permitted. The board shall close the hearing record at the end of the hearing; any evidence or arguments filed after the conclusion of the hearing will be excluded from the record. The only exception will be in case of surprise as determined by the board. The board may then extend the time to file additional evidence or argument. The parties cannot stipulate to leave the hearing record open. The parties may not stipulate to change the date, cancel, postpone, or continue the hearing, except for cases of illness of a party or its representative or because of a conflict with a matter scheduled by a state or federal court. If the parties reach a settlement agreement less than 14 days before the hearing, the parties shall appear at the time of the scheduled hearing to state the terms of the settlement agreement. Within 30 days after the hearing record closes, the board shall file its decision. If the employer controverts a claim on a board prescribed controversion notice and the employee does not request a hearing within two years following the filing of the controversion notice, the claim is denied.

HOUSE LABOR AND COMMERCE COMMITTEE

ALASKA STATE LEGISLATURE P.O. BOX Y, JUNEAU 99811

Chairman - Representative Dave Donley (907) 465-3892

March 15, 1988

M E M O R A N D U M

To: Members, House Labor and Commerce Committee

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

Re: Proposed HCS for CS SB 322 (L&C)

Following is a brief synopsis of the changes proposed in the House Labor and Commerce Committee Substitute for SB 322 - relating to workers' compensation. The changes include:

1. A mandated rate decrease for workers' compensation premiums of no less than 6%, effective July 1, 1988 through January 1, 1990. (Page 33, line 7, Section 44)

2. Additional intent language under section 1 (Page 2, line 4, paragraph (d)) regarding workplace safety with two new sections (Page 2, beginning on line 7) mandating a 10% rebate for employers in an assigned risk pool and a 5% rebate for employers not in an assigned risk pool if they have a safety program that meets the standards established under the occupational safety code and have had no OSHA violations subject to fines during the period covered by the annual premium.

3. Raising the mandatory fine for failure to carry workers' compensation insurance from $1,000 to $10,000. (Page 13, line 22)

4. Amend language governing contents of insurers annual report to the Division of Workers' Compensation to include the number of claims filed and the percent of claims controverted during the year for which the annual report was submitted. (Page 22, line 16)

   Include language to require the Board to notify the Division of Insurance when they determine that a carrier's controversions are frivolous or unfairly deny employees benefits that are due them. Upon receipt of a notice from the Board, the Division of Insurance will initiate an investigation of the carrier for violation of the unfair claims settlement act. (Page 23, line 15, paragraph (o))

5. Amend language governing the contents of the annual report to break out the costs of legal fees to reflect the fees paid to both the plaintiff and defense attorney, including all other costs associated with litigation. (Page 22, line 17)

6. Amend Section 11 (AS 23.30.095(a) to provide that an employers choice of physician for an IME is limited to no more than one

change in choice, as is an employees right of choice under the proposed legislation. (Page 16, line 6)

7. Amend Section 41 (effective date) so that this act applies to any "stress" injury that occurred on or after the date of adoption of this bill by the Legislature. (Page 33, line 21, Section 47)

8. Include language requiring that an IME must be in the same speciality as the treating physician unless the Board agrees, on a case by case basis, to authorize an IME by a physician who is not within the same speciality of the employees physician. (Page 18, line 2)

9. Amend Section 21 (AS 23.30.155(c) (Page 19, line 3) to provide that penalties assessed under this subsection (penalties for failing to file notification of changes in payment of benefits on time) shall be increased to (20) 25 percent.

10. PROPOSED AMENDMENT - The attached amendment would increase the penalty for late payment of compensation under AS 23.30.155(e) from (20) to 25%, to make this subsection consistent with other proposed changes in AS 23.30.155.

11. Include new language amending AS 23.30.155 (f) (governing penalties for unfair denial of claims) to increase penalties from (20 percent), under current law, to 25 percent. (Page 22, line 7).

12. Amend Section 29 (AS 23.30.190(b) to change "may" to "shall" on page 27, line 29.

13. Include a new section requiring that benefits paid to recipients residing in Alaska be paid by checks drawn on Alaska banks or other method of payment that is accepted as immediately redeemable by a bank in this state. (Page 23, paragraph (p))

14. Amend AS 23.30.041(k) (Page 9, line 14) to read: (k) "Benefits related to the reemployment plan may not extend past two years from date of plan approval or acceptance at which time the benefits.....". (Page 10, line 3)

15. Amend Section 13 (AS 23.30.095(e) to reinstate the deleted language and to add new language so that it reads: "AUTHORIZED TO PRACTICE MEDICINE UNDER THE LAWS OF THE jurisdiction in which the physician resides (STATE IN WHICH THE EMPLOYEE MAY BE FOUND)". (Page 16, line 4)

16. Add a new section to repeal and reenact AS 23.30.110(C) in response to public testimony that there has been a significant increase in the amount of time between filing a case and obtaining a formal hearing before the Board. (Page 19, line 2, paragraph (c))

17. Include a "grandfather" clause (Page 33, Section 45) to authorize current rehab specialists who do not have the credentials required under the bill to be able to practice for one year after adoption

of this act at which time they have to have gained the required credentials or are barred from practicing independently as a rehab specialist.

REPLACE

INSURER PROVIDING INSURANCE

SHALL ESTABLISH, MAINTAIN

& USE FOR INSURED

W/P SAFETY PROG

DESIGNED TO REDUCE LOSSES

& QUALITY THESE INSUREDS

FOR EXPERIENCE RATING

CREDITS.

PROPOSED ALTERNATIVE LANGUAGE
SECTION 2
Page 2, Lines 18-25

Replace language on lines 19 through 25 with the following:

"(c) An insurer may impose a surcharge not to exceed 25 percent of premium for assigned risk pool insurance provided that no surcharge may be applied to the first $2,500 of premium in any policy year."

Comment:

This provision provides a limit on pool surcharge by premium size. Only that portion of premium in excess of $2,500 would be subject to surcharge. This provision has the advantage of being relatively simple to administer.

1) Section 1 (e); it is the legislature's intent to enforce the law.
H - Judiciary version

2) Section 2 - 21.89.015; delete the workplace safety program; it may increase short term rates and may have no effect.
open NEW LANGUAGE

3) Section 11 - 23.30.075(b); increasing the fine for not carrying compensation insurance; $10,000 is excessive.
open H- JUD

4) Section 17 - 23.30.095(k); the board's IME should have a more weighted opinion than either of the biased medical opinions. H- JUD
open either clear & convincing or this goes

5) Section 19 - 23.30.110(c); the language for scheduling the hearing needs tightening; re-insert the "all, all, fully".
open H-JUD

6) Sections 25 & 26; fines of 25% or $100 whichever is less; the minimum of $100 can be excessive on smaller payments; delete the "or $100, whichever is less".
delete or $100 - YES

7) Section 27 - 23.30.155(m); penalty of $1,000 if insurer does not fully complete the form; could be excess as written; change to "may be fined up to $1,000".
H - Judiciary version

8) Section 28 - 23.30.155(p); payments must be on in state banks; this won't solve the problem being addressed.
delete

9) Section 36 - 23.30.220(a)2; to determine the weekly wage of someone out of work the previous 2 years; the original language better fits the intent of this section.
H - Judiciary version

10) Section 40 - 23.30.265(17); the stress section; re-insert the phrase "rather than misperceptions by the employee"; this is needed to tighten this section.
insert rather than perceptions by the employee
H-JUD

11) Section 44; mandatory rate reduction; delete mandated reduction; accept the 5.7% reduction; insert language to prevent increases for 18 months.
1) should increases be allowed for bad experience - y
2) do they get rebate on half yr premiums paid - credits
NEW LANGUAGE

12) Assigned risk pool amendment adopted 4/25; delete this section; if this is workable, it will likely increase overall costs.
open NEW LANGUAGE

13) √projected weekly wage
√delete projected

Alaska National
INSURANCE COMPANY
A policy of service and protection

April 18, 1988

The Honorable John Sund, Chairman
House Judiciary Committee
House of Representatives
Juneau, AK 99801

Dear Mr. Sund:

After observing two days of hearings in Juneau, I thought it would be appropriate to summarize our position on several issues which, I believe, need clarification to your Committee.

Mandated Rate Reduction or Freeze

On its face, the approach of an arbitrary mandated rate reduction or freeze is offensive to almost anyone in business. We believe that if there is a real reduction in the cost of claims, it will show up quickly in the reduction of premiums. Pricing in our industry is, admittedly, cyclical and this frustrates all of us because its beyond our control. However, our industry is sensitive to supply and demand. If prices for insurance become too high, competition forces them down, often too far.

Understandably, your Committee members express frustration with the "actuarially shrouded mystery" of the pricing process. The fact is that prices for workers' compensation are determined prospectively based on past experience. We don't know what that past experience will be under a prescribed law or set of rules until we've experienced it. Frankly, we're skeptical that out-of-state actuaries or rating organizations can make an accurate determination of how benefit changes will affect future experience, if for no other reason, than that they don't have adequate information regarding the cost components of past payouts against which to apply the projected impact of benefit changes.

As you know, the Alaska Classification and Rating (C & R) Committee adopted a 5.7% rate decrease for the original Senate Bill 322. The majority of the projected savings represented the so-called unquantifiable "soft dollar" items in the bill. Only time will tell if that decision was appropriate or in the proper amount.

7001 Jewel Lake Road • Anchorage, Alaska 99502 • Telephone (907) 248-2642 • Telex (090) 25-456 • FAX 248-4100

As Dick Cattanach reminded the Committee, everyone was willing to bet insurance industry surplus in 1983 that the original Rehabilitation Law would provide savings. As we well know, such confident appraisals were woefully wrong. Is it unreasonable for the insurance industry to view current favorable forecasts with caution?

The impact of these decisions can be substantial and of long lasting effect. One must remember that it is not to the advantage of the public for the insurance industry to take an optimistic view and jeopardize the solvency of carriers writing business in Alaska.

Alaska National Insurance Company paid $465,000 to the Alaska Insurance Guaranty Association for claims of seven insolvent insurance carriers during 1987. This assessment did not include any amount for the Pacific Marine Insurance Companies. The potential future assessment for those companies is very real and will have an impact for years to come.

The insurance industry has a responsibility to keep its house in good financial order to be in a position to honor all claims as they become due far into the future.

We believe the mandated approach will not be received well by national companies and market availability will diminish. A loss of business in Alaska for national companies would not even be noticed in their financial statements. A public company which must demonstrate an upward earnings curve to its stockholders will not think twice about reallocating its capital (and related underwriting capacity) away from states with an adverse and uncertain legislative environment to one based upon the free enterprise system.

Finally, the mandated rate decrease was compared to other limitations placed upon the medical, rehab and legal professions. I contend that the analogy is groundless. The difference is that the insurance industry exposure is geometrically greater and limitless while the others have well defined limits.

For example, the medical profession is asked to use an usual and customary schedule. Few would agree that a physician would actually lose money using that approach. He theoretically may limit his gross fees but his bottom line will never become negative. The rehab limit may be $10,000 but no-one will exceed that amount and lose money.

However, if the optimists are wrong and the bill doesn't decrease costs, there is no cap on the amount of money an insurance company can lose. Whether it be a miscalculation on the benefit provisions, increased litigation, constitutional reversals of provisions, etc., the insurance industry will foot the bill unconditionally - without any limit. I truly believe an independent observer would not call these separate financial limitations comparable.

Safety Program Rebates

This provision has many of the defects cited for the mandatory rate decrease. In addition, the following points need to be made.

The system currently provides for incentives to employers who have good loss experience. In fact, the incentives far exceed the reduction proposed by this amendment. The workers' compensation rating process includes an individual rate reduction (or increase) based upon individual loss experience. Alaska National wrote one account with a rate credit of 68% based upon loss experience. Rate credits in the 10% to 20% range are not unusual.

Also, the current system is readily measurable. Proper and consistent measurement of safety violations is just not workable. It will place undue pressure on safety inspectors and will result in numerous inequities between employers.

The true measure of an employer's safety program is his actual loss experience. The system is effective, it's fair and it's working now.

At Alaska National, we currently have four full-time professional safety engineers and are looking to hire a fifth. Their assignment is to evaluate safety conditions (or lack thereof) at our insureds' place of business, make recommendations and assist in the development of good safety programs.

Assigned Risk Pool

It appeared to me that your Committee did not receive a good explanation of how an employer ends up in the Assigned Risk Pool. The impression was left that the insurance carrier makes an unilateral decision to place an employer in the Pool.

In fact, the process works like this: An insurance broker or agent will submit an application on behalf of an employer to an insurance carrier. That insurance carrier will evaluate the application based upon its own individual underwriting criteria (which may vary widely by carrier). The carrier may reject the application for a variety of reasons such as high exposure business, poor safety history, bad loss experience, reinsurance restrictions, little or no prior history, etc.

At that point or earlier on a simultaneous basis, the broker or agent will search out other insurance carriers to attempt to find a carrier willing to insure the account. The insurance carriers have no knowledge (unless told by the brokers) that the broker is shopping the account with other insurance carriers. The underwriting decision is made individually and independently by each insurance carrier based upon its own underwriting standards and guidelines. If the broker is unable to place the account, then the employer as a final resort may obtain coverage in the Assigned Risk Pool.

Six insurance companies act as servicing carriers to process the business, issue policies and adjust all claims. All statistics related to business placed in the Pool are reported to the National Council on Compensation Insurance.

In response to recent questions about the equity of the surcharge under certain situations and conditions, the Alaska Classification and Rating Committee at its meeting on April 14, 1988, took steps to begin gathering past data for insureds placed in the Pool.

The National Council on Compensation Insurance collects premium and loss data from the six servicing carriers. The C & R Committee intends to obtain the appropriate data, evaluate it and come up with any needed changes to correct inequities in the system. While I cannot speak for the C & R Committee, it is my understanding that the Committee will summarize its findings, so advise the Division of Insurance as well as the interested legislators and take any action necessary to make corrective changes.

In absence of an orderly evaluation of the actual data, I believe it would be imprudent to adopt legislative provisions which may not address the proper issues.

Conclusion

Alaska National, perhaps to it disadvantage, initially attempted to maintain a low profile in the current political process. Our viewpoint has always been that it is the province of the legislature to make the social and economic determination of the appropriate benefit structure. We, in turn, attempt to implement the law in good faith and at the appropriate price. We believe that it is improper for the insurance industry to attempt to influence the outcome of legislative workers' compensation benefits.

While we do not agree with all of the provisions of original Senate Bill 322, we believe it represents a legislative compromise that, if its intent is followed, will result in savings.

If we can provide further information, we will be pleased to offer our assistance. Thank you for your consideration.

Yours truly,

James E. Pfeifer
President

cc: Senator Tim Kelly
Representative Dave Donley

JEP/rlj

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

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

MEMORANDUM February 19, 1988

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

TO: Senator Tim Kelly
Chairman
Senate Labor and Commerce Committee

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

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

Section 1 - Establishes the legislative intent of the bill.

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

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

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

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

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

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

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

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

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

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

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

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

Section 14 - Establishes a fee standard for medical treatment.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 37 - Definition of medical stability.

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

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

Section 40 - Applicability section.

Section 41 - Effective date.

MFF:bb
WKB3/008

TO: Senate President
House Speaker

FROM: SB 322 Conference Committee
Sen. Tim Kelly, Senate Chair
Rep. John Sund, House Chair

DATE: May 2, 1988

RE: Limited powers of free conference

Members of the SB 322 conference committee request limited powers of free conference on the following items:

1) Assigned Risk Pool
House CS - Section 2; page 2, line 18

2) Workplace Safety Program
House CS - Section 3; page 2, line 27

3) Fine for failure to carry workers' comp. insurance
House CS - Section 12; page 14, line 6

4) Determination of gross weekly earnings
House CS - Section 38; page 30, line 2
Senate CS - Section 32; page 26, line 18

5) Rate Reduction
House CS - Section 46; page 32, line 22

Sen. Tim Kelly

Rep. John Sund

Sen. Paul Fischer

Rep. Mike Navarre

Sen. Mike Szymanski

Rep. Curt Menard

4/25/98 not read

Section 1
Version A

AMENDMENT

Offered in the HOUSE By Sur

TO: HCS CSSB 322(L&C)

Page 1, lines 14 - 17:

Delete "The legislature declares that the workers' compensation must not be construed by the courts in favor of any party. It is specific intent of the legislature that workers' compensation case decided on their merits, except when otherwise provided by statute."

Not read

Section 1
version B

AMENDMENT

Offered in the HOUSE By Sund

TO: HCS CSSB 322(L&C)

Page 1, lines 15 - 21:

Delete all material and insert:

"be fairly and impartially construed by the courts. In order achieve that goal, it is the intent of the legislature that the p ponderance of the evidence standard be used in determining the comp sability of a workers' compensation claim. "Preponderance of evidence" means evidence that when weighed with that opposed to has more convincing force and a greater probability of truth. W weighing the evidence, the test is not the relative number of witne es, but the relative convincing force of the evidence."

Sec. 1 Version C Failed

5-1514Lii
Ford

A M E N D M E N T

Offered in the HOUSE By Sund

TO: HCS CSSB 322(L&C)

Page 1, lines 14 - 21:

Delete all material.

Reletter following subsections accordingly.

4/19/88

5-1514Xb
Ford

Sec. 2

AMENDMENT

Offered in the HOUSE

By Sund

TO: HCS CSSB 322 (Judiciary)

Page 2, line 27, after "program":

Insert "; an insurer may charge a fee separate from the premium for services provided under this paragraph."

Failed

Section #13

AMENDMENT version A

Offered in the HOUSE

By S

TO: HCS CSSB 322(L&C)

Page 15, line 6:

Delete "amended"

Insert "repealed and reenacted"

Page 15, lines 7 - 27:

Delete all material and insert:

"(c) A claim for treatment is not valid and enforceable aga the employer unless

(1) if the claim is for medical or surgical treatment, physician giving the treatment or the employee receiving it furnis to the employer and the board notice of the injury and treatm within 14 days after the treatment is received; the board shall exc the failure to furnish notice within 14 days when the board finds to be in the interests of justice to do so, and the board may, u application of a party in interest, make an award for the reasona value of the medical or surgical treatment obtained by the employ and

(2) if a claim is for a course of treatment requir continuing and multiple treatments of a similar nature, the treatme are carried out under a written treatment plan prescribed before t commencement of the course of treatment and the plan is completed a

 (Continued)

4/18/88

signed by the attending physician and mailed to the employer wi
one week of the beginning of treatment; the treatment plan must
clude objectives, modalities, and frequency of treatment; the ini
treatment plan may not include more than 20 outpatient visits in
first 60 days; if more than 20 outpatient visits are required wi
the first 60 days, or more than four outpatient visits a month a
the first 60 days, the physician shall document the need for serv
in excess of the guidelines in the written treatment plan."

Section 13
Version B

Failed

AMENDMENT

Offered in the HOUSE By Sur

TO: HCS CSSB 322(L&C)

Page 15, line 6:

Delete "amended"

Insert "repealed and reenacted"

Page 15, lines 7 - 27:

Delete all material and insert:

"(c) A claim for treatment is not valid and enforceable aga the employer unless

(1) if the claim is for medical or surgical treatment, physician giving the treatment or the employee receiving it furni to the employer and the board notice of the injury and treat within 14 days after the treatment is received; the board shall ex the failure to furnish notice within 14 days when the board find to be in the interests of justice to do so, and the board may, application of a party in interest, make an award for the reason value of the medical or surgical treatment obtained by the emplc and

(2) if a claim is for a course of treatment requi continuing and multiple treatments of a similar nature, the treatm are carried out under a written treatment plan prescribed before commencement of the course of treatment and the plan is completed

signed by the attending physician and mailed to the employer wi
one week of the beginning of treatment; the treatment plan must
clude objectives, modalities, and frequency of treatment."

Section #13
Version C

AMENDMENT

Offered in the HOUSE

By Sund

TO: HCS CSSB 322(L&C)

Page 15, line 7, after "treatment":

Delete "is"

Insert "<u>, or treatment requiring continuing and multiple treatments of a similar nature are</u> [IS]"

Page 15, lines 16 - 27, after "employee.":

Delete all material.

Sec. 13

AS 23.30.095(c)

Ch. #1

PROPOSAL I

(c) A claim for medical or surgical treatment, or treatment requiring continuing and multiple treatments of a similar nature is not valid and enforceable against the employer unless, within 14 days following treatment, the physician or provider 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 treatment so obtained by the employee. When a claim is made for a course of treatment requiring continuing and multiple treatments of a similar nature, in addition to the notice the physician or provider must furnish a written treatment plan if the course of treatment will require more than 20 outpatient visits in the first 60 days. The treatment plan must be furnished to the employee and the employer within 14 days after treatment begins. The treatment plan must include objectives, modalities, frequency of treatments, and reasons for the frequency of treatments. If the treatment plan is not furnished in the time provided, neither the employer nor the employee may be required to pay for treatments that exceed the frequency standard set out in this subsection.

Sec 13

PROPOSAL II

(c) A claim for medical or surgical treatment, or treatment requiring continuing and multiple treatments of a similar nature is not valid and enforceable against the employer unless, within 14 days following treatment, the physician or provider 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 treatment so obtained by the employee. When a claim is made for a course of treatment requiring continuing and multiple treatments of a similar nature, in addition to the notice the physician or provider must furnish a treatment plan if the course of treatment will require more frequent outpatient visits than the standard treatment frequency for the nature and degree of the injury and the type of treatment. The treatment plan must be furnished to the employee and the employer within 14 days after treatment begins. The treatment plan must include objectives, modalities, frequency of treatments, and reasons for the frequency of treatments. If the treatment plan is not furnished in the time provided, neither the employer nor the employee may be required to pay for treatments that exceed the frequency standard.

Sec 13

PROPOSAL III

(c) A claim for medical or surgical treatment, or treatment requiring continuing and multiple treatments of a similar nature is not valid and enforceable against the employer unless, within 14 days following treatment, the physician or provider 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 treatment so obtained by the employee. When a claim is made for a course of treatment requiring continuing and multiple treatments of a similar nature, in addition to the notice the physician or provider must furnish a treatment plan if the course of treatment will require more frequent outpatient visits than the standard treatment frequency for the nature and degree of the injury and the type of treatments. The treatment plan must be furnished to the employee and the employer within 14 days after treatment begins. The treatment plan must include objectives, modalities, frequency of treatments, and reasons for the frequency of treatments. If the treatment plan is not furnished in the time provided, neither the employer nor the employee may be required to pay for treatments that exceed the frequency standard. The board shall adopt regulations establishing the standards for frequency of treatment.

AMEND #2
UNANIMOUS

See. 33

AMENDMENT

Offered in the HOUSE By Sund

TO: HCS CSSB 322 (Judiciary)

Page 26, line 29, through page 27, line 2:

Delete all material.

Reletter the following subsection accordingly.

TASK FORCE RECOMMENDED
AMND #3
UNAMMOUS

5-1514Xc
Ford

Sec. 36

A M E N D M E N T

Offered in the HOUSE

By Sund

TO: HCS CSSB 322(Judiciary)

Page 28, line 9, after "employee":

Insert "(A)"

Page 28, line 10, after "injury":

Insert "; (B) was absent from the labor market for six months or more of the two calendar years preceding the injury because the employee was receiving medical treatment, was enrolled as a student in a career education, undergraduate or graduate program, or was parenting a child;"

After "or":

Insert "(C)"

See 36

AMENDMENT

By Sund

Offered in the HOUSE

TO: HCS CSSB 322 (L&C)

Page 28, line 17:

Delete "at the time of injury."

Insert "for the week of the injury."

A M E N D M E N T

Offered in the HOUSE By Sund

TO: HCS CSSB 322 (Judiciary)

ADOPTED 4/21/88

Page 2, after line 17:

Insert a new bill section to read:

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

(c) An insurer may not impose a surcharge for assigned risk pool insurance unless the insured has received an experience modification debit. After the insured has received an experience modification debit, the insured may impose a surcharge if the percentage of the surcharge does not exceed ~~an amount~~ the percentage applied as an experience modification debit or 25 percent of the premium developed after application of the experience modification factor, whichever is less."

Renumber remaining bill sections accordingly.

Page 31, line 24:

Delete "sec. 7"

Insert "sec. 8"

Page 31, line 25:

Delete "sec. 27"

Insert "sec. 28"

Page 32, line 8:

Delete "sec. 9"

Insert "sec. 10"

Page 32, line 13:

Delete "secs. 7, 24, 27, 28, 40, and 44"

Insert "secs. 8, 25, 28, 29, 41, and 45"

Page 32, line 16:

Delete "Section 40"

Insert "Section 41"

Page 32, line 17:

Delete "sec. 40"

Insert "sec. 41"

Page 32, line 18:

Delete "40 and 47"

Insert "41 and 48"

Page 32, line 20:

Delete "39, and 41 - 46"

Insert "40, and 42 - 47"

Sec. 44

AMENDMENT

Offered in the HOUSE By Sur

TO: HCS CSSB 322 (Judiciary)

Page 32, line 2, after "REDUCTION.":

Insert "(a)"

Page 32, after line 6:

Insert a new subsection to read:

"(b) This section does not apply to assigned risk pool insuran under AS 21.39.155."

4/25/88

1/28

OVERVIEW - WORKERS' COMPENSATION BILL
House CS CSSB 322 (Judiciary)

This bill is some 33 pages with 50 sections covering an extremely complicated subject. Its intent is to lower workers' compensation insurance premium rates by streamlining the comp delivery system, reapportioning benefits and reducing litigation. The following are highlights of the bill.

A. INJURED WORKER-RELATED ISSUES

1. Vocational Rehabilitation
   a. Change from a mandatory to a voluntary program.
   b. Limit program to those injured workers whose injury prevents them from performing duties of their profession.
   c. Limit voc rehab programs to two years.
   d. Cap rehab plan costs to $10,000.
   e. Change purpose of rehab to make an injured worker employable versus employed.

2. Medical
   a. Subject medical payments to usual, customary and reasonable rates.
   b. Allow injured worker and employer to change treating physician and independent medical examiner respectively only once without each other's written consent.
   c. Require a written treatment plan for continuing subject to frequency guidelines to be established by the Department.
   d. Allow for a Board appointed Independent Medical Examiner (IME).

IME decision should carry more weight than employee/employer physician.

3. Compensation
   a. Change the maximum weekly benefit from 200% of statea average weekly wage, currently $1,100, to set maximum of $700.
   b. Change the minimum weekly benefit from $110 to $154 if the worker submits wage documents. Without wage documents, the minimum benefit remains $110.
   c. Allow an employee's vested pension contributions to be considered in determining weekly wage benefits and allow employers to offset comp benefits for pension benefits paid to workers.
   d. Clarify board determination of gross weekly earnings in an attempt to reduce litigation on this subject.
   e. Adjust weekly comp benefits for differences in cost of living for claimants living outside of Alaska.

4. Benefits
   a. Schedule all injuries (including presently unscheduled injuries such as back and neck) and determine the degree of disability and amount of payment based upon "whole person" concept as provided in American Medical Association guidelines. Lost earnings would not be considered. This refers only to Permanent Partial Disability payments (PPD). Temporary Total (TTD), Temporary Partial (TPD) and Permanent Total (PTD) would continue as at present.
   b. Increase the cap on PPD benefits from $60,000 to $135,000 and readjust the benefits so that the more severly injured workers receive higher benefits.
   c. Broaden market for employees' services to reduce claims for PTD due to lack of employment opportunities.
5. Other
   a. Bar an employee from making a workers' comp claim if the employee knowingly made false representations as to his physical condition, such representations were material to the hiring and they are connected to the injury.
   b. Remove the presumption of compensability for stress claims by requiring claimants to prove the mental injury resulted from work-related stress.
   c. Require the last employer to pay benefits if a claim is controverted on the grounds that another employer is liable.
   d. Prohibit discrimination in hiring, retaining or promoting an employee who has received workers' comp benefits.

B. INSURER/EMPLOYER-RELATED ISSUES
1. **Safety Program**
   a. Requires all insurers to make available to all insureds a safety program that includes consulting services and a rate reduction for successful program implementation. The cost of the services may be separate from premium rates.

2. Second Injury Fund
   a. Permits insureds to contribute to the fund annually instead of on the anniversary of each claim.
   b. Administrative costs of the fund are supported by the fund inself instead of through General Fund dollars.

3. Reporting and Penalties
   a. Clarifies reporting requirements and increases penalties for late and incomplete reports.

4. Assigned Risk Pool
   a. Restructures the pool so that not all companies are automatically charged a 20% surcharge on their premiums.
   b. Tries to make the pool more equitable in that those companies proven to be a poor risk are surcharged while those proven to be good risks are not surcharged.
   c. Reduces potential abuse of the pool as a "dumping ground" for small or new companies.

Costs spread to everyone - thereby increasing overall workers comp. rates.

5. Rate Reduction
   a. Mandates a 6% premium rate reduction for the period July 1, 1988 through Dec. 31, 1989.

Amend to include [illegible] [illegible]) precedent of mandating rate reductions (not a good policy)

arctic slope regional corp.

P.O. BOX 129 BARROW, ALASKA 99723
PHONE (907) 852-8633 OR 852-8633
PANAFAX TELECOPIER (907) 852-5733

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April 28, 1988

Representative Al Adams
Alaska House of Representatives
Pouch V
Juneau, Alaska 99811

Re: SB 322

Dear Representative Adams:

It is our understanding that the House Finance Committee will shortly be considering SB 322 relating to worker's compensation legislation and we would like to add our comments for your consideration. The Arctic Slope Regional Corporation (ASRC) is vitally concerned with the worker's compensation provisions of the state statutes and efforts to make changes in them. We supported the efforts of the Worker's Compensation Committee of Alaska (WCCA), and encourage changes designed to lower the costs of providing coverage through third party insurance companies or by self-insurance. ASRC has several operating entities that purchase worker's compensation insurance and they have experienced tremendous increases in the cost of that coverage. Our primary areas of activity are in the construction and oilfield support arenas and these increases in insurance costs have significantly impacted our profitability and ability to remain competitive.

There are several versions of SB 322 and numerous amendments that have been proposed. Our initial evaluation of the Senate passed version was positive. It seemed to be headed towards the original objective of attempting to lower the underlying costs of providing worker's compensation. It is difficult to assess, but our expectation was that our premiums for worker's compensation insurance would be stabilized or reduced somewhat. A five percent reduction suggested by others appeared to be reasonable. We have experienced an increase of over 40% in the last two years in our worker's compensation insurance premiums. Simply stopping such increases will help. However, after such tremendous increases, reductions of 5% or 6% do not appear that significant. The real question, of whether the reasons for those increases are fully understood and whether the system would be accordingly changed by the legislation as passed by the Senate, was not

totally answered by the bill. While the cooperation of management and labor has been positive, additional consideration of these issues appeared valuable. One area of particular concern to our companies has been pre-existing injuries and proper allocation of responsibility for injuries of a current claimant.

The draft (dated 4/20/88) proposed by the House Judiciary Committee, however, seems to go in the wrong direction from further consideration of the Senate bill. The voluminous offered amendments seem to lose sight of the objectives of lowering costs. They appear overly concerned with protecting the "unintended beneficiaries" of the present system - the legal, medical and rehabilitation professionals - rather than taking care of the employees and employers. Mandating specific actions of the insurance company will not make recalcitrant carriers respond, it will more likely drive them out of the market. This only further lessens competition and available coverages. The insurance companies are not without blame for the present system's problems and high cost; but don't use them as a scapegoat either.

There may well be other proposals that we have not had the opportunity to fully review and evaluate. We readily concur that the present cost of insurance and benefits is too high and needs modification. This objective should be kept carefully in mind in the last days of the session in consideration of SB 322. If differences can be worked out and the original objectives accomplished, a truly beneficial bill can be passed. If not, we are better off considering these proposals in another session.

Your consideration of our views and comments on this matter is appreciated.

Very truly yours,

Conrad Bagne

Conrad Bagne
Chief Administrative Officer
& House Counsel

CB:fc

1)Section 45; mandatory rate reduction; accept 5.7% reduction and insert language to prevent increases for 18 months.

2) Assigned risk pool; delete this section.

3) Section 18 - AS23.30.959K0; insert original language to give more weight to the board's IME.

4) Section 20 - AS23.30.110(c); tighten the language for hearings scheduling by adding back in " all, all, & fully".

5) Section 3 - AS21.89.015; delete the workplace safety program.

6) Section 41 - AS23.30.265(17); mental stress - re-insert the phrase "rather than misperceptions by the employee".

DON KOCH

? NOT LOOKING FOR RATE INCREASES IN NEAR FUTURE

5.7 % DECREASE / THIS

SEASONAL EMPLOYER ~~[illegible]~~ RE: SEMI-ANNUAL PAYMENTS
S/ ONLY HAVE 1 PMT OR NOT 2 EQUAL PMTS

PAM RULLER

ISSUES

- 2 YR LIMITS ON BENEFITS – WHAT ABOUT CRITICALLY OR CATASTROPHICALLY INJURED
- OPPOSED TO MANDATORY RATE DECREASE
- BILL BREAKS TREND OF EXISTING SYSTEM

SOME – [illegible] REQUIRING DEFENSE ATTORNEYS TO PROVIDE THEIR EXPENSES AS DO PLAINTIFF LAWYERS
TO BE DRAFTED

STAN

[illegible] RATE SETTERS
[illegible]% OF REG RATES SUBSIDIZE RISK POOL

GARY [illegible]

AK C&R COMMITTEE SENT LETTER [illegible]
TO DIV OF INS SUGGESTING 5.7% DECREASE

1/1/88 FILING

W/BEEN 12/31/86 – 1/1/95 EXPERIENCE
USED TO GET 1/1/88 FILING

86 & 87 = 1/1/89 MINUS 5.7%
87 & 88 = 1/1/90
88 & 89 1/1/91
89 & 90 1/1/92

86 W/SHOULD INCREASE
87 & SHOULD STABLE
} NET – 5.7%

SHOULD NOT BE MORE THAN +2%
W/ 86 PUSHING FOR ~~0%~~ INCREASE

NEW RATES 3/88 DONE & OUT Nov 1

Section 1

By Sund

AMENDMENT

Offered in the House

TO: HCS CSSB 322 (L&C)

Page 2, line 7:

Insert a new subsection to read:

"(e) It is the intent of the legislature in amending AS 23.30.075(b) and AS 23.30.155 that the Division of Workers' Compensation, Division of Insurance and Department of Law strictly enforce the punishment authorized under AS 23.30.075(b) and the reporting requirements in and penalties for noncompliance with AS 23.30.155, based on findings that

1) there has been a failure on the part of the state to impose the punishment authorized under AS 23.30.075(b) against those employers who fail to obtain workers' compensation insurance or to qualify as a self-insurer, and

2) there is a lack of specific data within the Division of Workers' Compensation and Division of Insurance to adequately assess the efficiency and costs of the workers' compensation system.

NO

5-1514Ls
Ford

Section 1
Version A

AMENDMENT

Offered in the HOUSE By Sund

TO: HCS CSSB 322(L&C)

Page 1, lines 14 - 17:

Delete "The legislature declares that the workers' compensation law 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."

5-1514Lt
Ford

Section 1
version B

AMENDMENT

Offered in the HOUSE By Sund

TO: HCS CSSB 322(L&C)

Page 1, lines 15 - 21:

Delete all material and insert:

"be fairly and impartially construed by the courts. In order to achieve that goal, it is the intent of the legislature that the preponderance of the evidence standard be used in determining the compensability of a workers' compensation claim. "Preponderance of the evidence" means evidence that when weighed with that opposed to it, has more convincing force and a greater probability of truth. When weighing the evidence, the test is not the relative number of witnesses, but the relative convincing force of the evidence."

5-1514Lu
Ford

Section 1

A M E N D M E N T

Offered in the HOUSE By Sund

TO: HCS CSSB 322(L&C)

Page 1, line 27:

Delete "reduce disincentives"

Insert "increase the incentives"

4/18/88

Section 2 By Sund

ASV Doxi Koch

AMENDMENT

Offered in the HOUSE

TO: HCS CSSB 322 (L&C)

Page 2, lines 8 - 22:

Delete all material and write a new Sec. 2 to read:

An insurer who provides workers' compensation insurance must establish and maintain a workplace safety rate reduction program available to all insureds. The program must include:

1) A reduction in future workers' compensation premiums based on the insured's documented, successful implementat of a safety program, and
2) The availability of consulting services to the insured to establish a workplace safety program.

Section 5

AMENDMENT

Offered in the HOUSE

By Sund

TO: HCS CSSB 322(L&C)

Page 3, line 15:

Delete "knowingly"

Insert "intentionally"

5-1514Lw
Ford

AMENDMENT

Section 4 & 5

Offered in the HOUSE

By Sund

TO: HCS CSSB 322(L&C)

Page 3, lines 10 - 13:

Delete all material. — Amendment already passed

Insert a new subsection to read:

"(m) The department shall prescribe a written notice to be provided by an employer to a prospective employee, that advises the employee of the risk of loss of workers' compensation benefits under AS 23.30.020(b) if the employee makes a false employment application."

Page 3, line 15:

Delete "An"

Insert "If an employer furnishes a prospective employee with a written job description that indicates the physical and mental demands of the job and provides the employee with a written notice prescribed by the department that describes the risk of loss of workers' compensation benefits if the employee files a false employment application, an"

5-1514Lx
Ford

Section 10

AMENDMENT

Offered in the HOUSE By Sund

TO: HCS CSSB 322(L&C)

Page 6, line 23, after "has":

Delete "unusual and extenuating physical limitations that prevent"

Insert "an unusual and extenuating circumstance that prevents"

5-1514Ldd
Ford

Section 10

A M E N D M E N T

Offered in the HOUSE

By Sund

TO: HCS CSSB 322(L&C)

Page 8, line 1:

Delete "of injury"

4/18/

Section 13

A M E N D M E N T

Offered in the HOUSE By Sund

TO: HCS CSSB 322(L&C)

Page 14, line 21:

Delete "inside the state where the employee resides to render the care"

Insert "to provide all medical and related benefits"

Page 14, line 25, after "[":

Insert "INSIDE THE STATE TO RENDER THE CARE" ??

Mike explain

5-1514Lz
Ford

Section 14

AMENDMENT version A

Offered in the HOUSE By Sund

TO: HCS CSSB 322(L&C)

Page 15, line 6:

Delete "amended"

Insert "repealed and reenacted"

Page 15, lines 7 - 27:

Delete all material and insert:

"(c) A claim for treatment is not valid and enforceable against the employer unless

(1) if the claim is for medical or surgical treatment, the physician giving the treatment or the employee receiving it furnishes to the employer and the board notice of the injury and treatment within 14 days after the treatment is received; the board shall excuse the failure to furnish notice within 14 days when the board finds it to be in the interests of justice to do so, and the board may, upon application of a party in interest, make an award for the reasonable value of the medical or surgical treatment obtained by the employee; and

(2) if a claim is for a course of treatment requiring continuing and multiple treatments of a similar nature, the treatments are carried out under a written treatment plan prescribed before the commencement of the course of treatment and the plan is 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 outpatient visits in the first 60 days; if more than 20 outpatient visits are required within the first 60 days, or more than four outpatient 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."

Section 14
Version B

AMENDMENT

Offered in the HOUSE By Sund

TO: HCS CSSB 322(L&C)

Page 15, line 6:

Delete "amended"

Insert "repealed and reenacted"

Page 15, lines 7 - 27:

Delete all material and insert:

"(c) A claim for treatment is not valid and enforceable against the employer unless

(1) if the claim is for medical or surgical treatment, the physician giving the treatment or the employee receiving it furnishes to the employer and the board notice of the injury and treatment within 14 days after the treatment is received; the board shall excuse the failure to furnish notice within 14 days when the board finds it to be in the interests of justice to do so, and the board may, upon application of a party in interest, make an award for the reasonable value of the medical or surgical treatment obtained by the employee; and

(2) if a claim is for a course of treatment requiring continuing and multiple treatments of a similar nature, the treatments are carried out under a written treatment plan prescribed before the commencement of the course of treatment and the plan is completed and

signed by the attending physician and mailed to the employer withi one week of the beginning of treatment; the treatment plan must in clude objectives, modalities, and frequency of treatment."

5-1514Lbb
Ford

Section 14
Version C

A M E N D M E N T

Offered in the HOUSE By Sund

TO: HCS CSSB 322(L&C)

Page 15, line 7, after "treatment":

Delete "is"

Insert "<u>, or treatment requiring continuing and multiple treatments of a similar nature are</u> [IS]"

Page 15, lines 16 - 27, after "employee.":

Delete all material.

4/18/88

5-1514Lcc
Ford

Section 18

NO

AMENDMENT

Offered in the HOUSE By Sund

TO: HCS CSSB 322(L&C)

Page 18, lines 8 - 11:

Delete "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."

Sections 32-33-34 TO replace earlier amendment #12

5-1514Lee
Ford

AMENDMENT

Offered in the HOUSE

By Sund

TO: HCS CSSB 322(L&C)

Page 26, lines 8 - 10:

Delete "Temporary total disability benefits may not be paid for more than two years regardless of continuance of the disability."

Page 26, line 15:

Delete "$240,000"

Insert "$135,000"

Page 26, line 18, following "considerations.":

Delete all material through page 27, line 24.

Page 28, line 19:

Delete "two [FIVE]"

Insert "five"

Page 33, line 23:

Delete "takes"

Insert "take"

April 22, 1988

The Honorable John Sund, Chairman
House Judiciary Committee
House Of Representatives
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Chairman Sund:

The Joint Management/Labor Task Force has reviewed the committee work draft dated April 20, 1988 and would like to share our concerns and comments with you and your committee.

After your ordeal of the past month, you will probably agree that Workers' Compensation is an extremely complex issue and one in which changes in one section can result in positive or negative changes in other sections of the statute. After more than a year of analysis and negotiation, the Task Force presented a compromise bill to the Senate and House Labor and Commerce Committees' which was designed to result in significant reductions in workers' compensation premiums paid by employers while at the same time increasing the benefits to injured workers.

The draft presented to the House Labor and Commerce Committee had been estimated to result in a 5.7% rate reduction effective July 1, 1988. Due to an error in the calculations of our Task Force, we presented suggested modifications to the draft legislation on April 15 and at that time, Milliman and Robertson indicated that the recommended changes when placed in the Senate version of the bill, would result in a 6% premium reduction. The Task Force believes that the cost savings are potentially greater than that proposed, but because of the difficulty in pricing many of the sections of the bill, we believe that such savings will not be realized until future experience verifies or repudiates our opinions.

With this perspective, the Task Force has reviewed the committee work draft of April 20 to determine if the modifications will likely result in changes to the costs of the legislation or changes in the labor/management balance. For the most part, we believe that the modifications proposed will not effect prices or tip the management/labor balance. We do however, believe that the following provisions will increase the costs of the legislation and reduce the potential savings of the bill.

1. Section 13; page 15, lines 19-23.

This section modifies our proposal to control the frequency of medical visits by establishing suggested limits which could be exceeded when documented by the physician. From 1983 to 1986, medical costs for workers' compensation increased from 25% of $75 million in costs to 37.5% of $153 million. To control this item, we attempted to deal with both the price and the utilization of medical services. The proposed modification would effectively neutralize our attempt to control utilization and reduce the savings resulting therefrom.

We understand the committee's reluctance to legislate limits on medical visits, and accordingly we would propose that this section be modified to allow the Workers' Compensation Board to adopt such guidelines by regulation. In this manner, the abuses could be controlled and the system would maintain the flexibility needed to react to changes in conditions and practices.

2. Section 25 and Section 26.

These sections increase the penalties associated with the failure to promptly pay compensation under the act. We understand the desire to punish employers or carriers that willfully or flagrantly fail to promptly pay their claimants, but we believe that the proposed modifications are extreme and deal with a relatively insignificant problem. We are worried that such an increase in penalties in the absence of a recognized problem sends a message to the insurance industry that we are not willing to provide a mutually supportive environment for them.

We further believe that the size of the proposed penalities will lead to more controversions by employers as they attempt to avoid the penalities. We foresee this section serving to fuel further litigation as it provides an additional economic incentives to dispute and hence will drive up the costs of the system.

We would propose that the current penalties remain as they currently exist except that the Board could increase the penalties to 50% when they deem that the employer or carrier flagrantly and willfully failed to pay claimants promptly. In this manner we would penalize the abusers of the system, while still allowing the current penalties for the relatively infrequent failures to pay in a timely manner.

3. Section 28, lines 23-25.

We would propose that this section be deleted as it relates to issues beyond the scope of workers' compensation.

4. Section 33(c)

This section should have been removed when the permanent partial impairment schedule was reduced from $240,000 to $135,000. It was originally placed in the proposal to minimize the impact of the adjustment factors on the relatively minor injuries, but the elimination of the adjustment factors removed the need for this section.

4. Section 44

We believe that the proposed modifications to the statute will result in reductions in the cost of workers compensation and believe that the insurance industry has made a good faith effort to acknowledge those reductions when they proposed a 5.7% reduction effective July 1, 1988. We do not support a mandated roll back since it will have little impact on the rate structure and might potentially encourage some carriers to withdraw from the Alaska workers' compensation market. We believe that a mandated rate reduction offers little long term economic gain and could cause irreparable harm to the workers' compensation insurance marketplace and consequently lead to higher, not lower costs.

We strongly support the work draft with our modifications and urge you to move the bill to the Finance Committee as quickly as possible. Your concerns and questions have been helpful and the bill is better because of the time your committee has invested in the issue. We are concerned however that the bill could be lost in the closing days of the session and, if so, employers and employees would be the true victims of such a consequence. For employees the legislation represents an improvement in benefits and jobs. For employers it means a reduction in premiums and survival.

Very truly yours,

Robert Anders
Co-Chairman

Mary Pierce
Co-chairman

not now

Section 1
Version A

AMENDMENT

Offered in the HOUSE

By Sur

TO: HCS CSSB 322(L&C)

Page 1, lines 14 - 17:

Delete "The legislature declares that the workers' compensation must not be construed by the courts in favor of any party. It is specific intent of the legislature that workers' compensation cases decided on their merits, except when otherwise provided by statute."

Not moved

Section 1
version B

AMENDMENT

Offered in the HOUSE By Sun

TO: HCS CSSB 322(L&C)

Page 1, lines 15 - 21:

Delete all material and insert:

"be fairly and impartially construed by the courts. In orde achieve that goal, it is the intent of the legislature that the ponderance of the evidence standard be used in determining the com sability of a workers' compensation claim. "Preponderance of evidence" means evidence that when weighed with that opposed to has more convincing force and a greater probability of truth. weighing the evidence, the test is not the relative number of witn es, but the relative convincing force of the evidence."

Sec. 1 Version C Failed

5-1514Lii
Ford

A M E N D M E N T

Offered in the HOUSE

By Sund

TO: HCS CSSB 322(L&C)

Page 1, lines 14 - 21:

Delete all material.

Reletter following subsections accordingly.

5-1514Xb
Ford

Sec. 2

A M E N D M E N T

Offered in the HOUSE

By Sund

TO: HCS CSSB 322 (Judiciary)

Page 2, line 27, after "program":

Insert "; an insurer may charge a fee separate from the premium for services provided under this paragraph."

failed

Section #13

AMENDMENT version A

Offered in the HOUSE

By S

TO: HCS CSSB 322(L&C)

Page 15, line 6:

Delete "amended"

Insert "repealed and reenacted"

Page 15, lines 7 - 27:

Delete all material and insert:

"(c) A claim for treatment is not valid and enforceable aga the employer unless

(1) if the claim is for medical or surgical treatment, physician giving the treatment or the employee receiving it furnis to the employer and the board notice of the injury and treatm within 14 days after the treatment is received; the board shall exc the failure to furnish notice within 14 days when the board finds to be in the interests of justice to do so, and the board may, u application of a party in interest, make an award for the reasona value of the medical or surgical treatment obtained by the employ and

(2) if a claim is for a course of treatment requir continuing and multiple treatments of a similar nature, the treatme are carried out under a written treatment plan prescribed before commencement of the course of treatment and the plan is completed

signed by the attending physician and mailed to the employer w
one week of the beginning of treatment; the treatment plan must
clude objectives, modalities, and frequency of treatment; the in
treatment plan may not include more than 20 outpatient visits in
first 60 days; if more than 20 outpatient visits are required wi
the first 60 days, or more than four outpatient visits a month a
the first 60 days, the physician shall document the need for serv
in excess of the guidelines in the written treatment plan."

Section #13
Version B

Failed

AMENDMENT

Offered in the HOUSE

By Su

TO: HCS CSSB 322(L&C)

Page 15, line 6:

Delete "amended"

Insert "repealed and reenacted"

Page 15, lines 7 - 27:

Delete all material and insert:

"(c) A claim for treatment is not valid and enforceable ag the employer unless

(1) if the claim is for medical or surgical treatment physician giving the treatment or the employee receiving it furn to the employer and the board notice of the injury and trea within 14 days after the treatment is received; the board shall e the failure to furnish notice within 14 days when the board fin to be in the interests of justice to do so, and the board may, application of a party in interest, make an award for the reaso value of the medical or surgical treatment obtained by the empl and

(2) if a claim is for a course of treatment requ continuing and multiple treatments of a similar nature, the treat are carried out under a written treatment plan prescribed before commencement of the course of treatment and the plan is complete

 (continued) 4/18/1

signed by the attending physician and mailed to the employer wit
one week of the beginning of treatment; the treatment plan must
clude objectives, modalities, and frequency of treatment."

Section #13
Version C

AMENDMENT

Offered in the HOUSE

By Sund

TO: HCS CSSB 322(L&C)

Page 15, line 7, after "treatment":

Delete "is"

Insert "<u>, or treatment requiring continuing and multiple treatments of a similar nature are</u> [IS]"

Page 15, lines 16 - 27, after "employee.":

Delete all material.

4/18/88

Sec. 13

Ch. #1

AS 23.30.095(c)

PROPOSAL I

(c) A claim for medical or surgical treatment, or treatment requiring continuing and multiple treatments of a similar nature is not valid and enforceable against the employer unless, within 14 days following treatment, the physician or provider 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 treatment so obtained by the employee. When a claim is made for a course of treatment requiring continuing and multiple treatments of a similar nature, in addition to the notice the physician or provider must furnish a written treatment plan if the course of treatment will require more than 20 outpatient visits in the first 60 days. The treatment plan must be furnished to the employee and the employer within 14 days after treatment begins. The treatment plan must include objectives, modalities, frequency of treatments, and reasons for the frequency of treatments. If the treatment plan is not furnished in the time provided, neither the employer nor the employee may be required to pay for treatments that exceed the frequency standard set out in this subsection.

Sec 13

PROPOSAL II

(c) A claim for medical or surgical treatment, or treatment requiring continuing and multiple treatments of a similar nature is not valid and enforceable against the employer unless, within 14 days following treatment, the physician or provider 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 treatment so obtained by the employee. When a claim is made for a course of treatment requiring continuing and multiple treatments of a similar nature, in addition to the notice the physician or provider must furnish a treatment plan if the course of treatment will require more frequent outpatient visits than the standard treatment frequency for the nature and degree of the injury and the type of treatment. The treatment plan must be furnished to the employee and the employer within 14 days after treatment begins. The treatment plan must include objectives, modalities, frequency of treatments, and reasons for the frequency of treatments. If the treatment plan is not furnished in the time provided, neither the employer nor the employee may be required to pay for treatments that exceed the frequency standard.

Sec 13

PROPOSAL III

(c) A claim for medical or surgical treatment, or treatment requiring continuing and multiple treatments of a similar nature is not valid and enforceable against the employer unless, within 14 days following treatment, the physician or provider 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 treatment so obtained by the employee. When a claim is made for a course of treatment requiring continuing and multiple treatments of a similar nature, in addition to the notice the physician or provider must furnish a treatment plan if the course of treatment will require more frequent outpatient visits than the standard treatment frequency for the nature and degree of the injury and the type of treatments. The treatment plan must be furnished to the employee and the employer within 14 days after treatment begins. The treatment plan must include objectives, modalities, frequency of treatments, and reasons for the frequency of treatments. If the treatment plan is not furnished in the time provided, neither the employer nor the employee may be required to pay for treatments that exceed the frequency standard. The board shall adopt regulations establishing the standards for frequency of treatment.

Sec. 33

AMENDMENT

Offered in the HOUSE By Sund

TO: HCS CSSB 322 (Judiciary)

Page 26, line 29, through page 27, line 2:

Delete all material.

Reletter the following subsection accordingly.

5-1514Xc
Ford

Sec. 36

AMENDMENT

Offered in the HOUSE By Sund

TO: HCS CSSB 322(Judiciary)

Page 28, line 9, after "employee":

Insert "(A)"

Page 28, line 10, after "injury":

Insert "; (B) was absent from the labor market for six months or more of the two calendar years preceding the injury because the employee was receiving medical treatment, was enrolled as a student in a career education, undergraduate or graduate program, or was parenting a child;"

After "or":

Insert "(C)"

See 36

AMENDMENT

Offered in the HOUSE

By Sund

TO: HCS CSSB 322 (L&C)

Page 28, line 17:

Delete "at the time of injury."

Insert "for the week of the injury."

A M E N D M E N T

Offered in the HOUSE By Sund

TO: HCS CSSB 322 (Judiciary)

Page 2, after line 17:

Insert a new bill section to read:

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

(c) An insurer may not impose a surcharge for assigned risk pool insurance unless the insured has received an experience modification debit. After the insured has received an experience modification debit, the insured may impose a surcharge if the percentage of the surcharge does not exceed ~~an amount~~ the percentage applied as an experience modification debit or 25 percent of the premium developed after application of the experience modification factor, whichever is less."

Renumber remaining bill sections accordingly.

Page 31, line 24:

Delete "sec. 7"

Insert "sec. 8"

Page 31, line 25:

Delete "sec. 27"

Insert "sec. 28"

Page 32, line 8:

Delete "sec. 9"

Insert "sec. 10"

Page 32, line 13:

Delete "secs. 7, 24, 27, 28, 40, and 44"

Insert "secs. 8, 25, 28, 29, 41, and 45"

Page 32, line 16:

Delete "Section 40"

Insert "Section 41"

Page 32, line 17:

Delete "sec. 40"

Insert "sec. 41"

Page 32, line 18:

Delete "40 and 47"

Insert "41 and 48"

age 32, line 20:

Delete "39, and 41 - 46"

Insert "40, and 42 - 47"

Sec. 44

A M E N D M E N T

Offered in the HOUSE

By Su

TO: HCS CSSB 322 (Judiciary)

Page 32, line 2, after "REDUCTION.":

Insert "(a)"

Page 32, after line 6:

Insert a new subsection to read:

"(b) This section does not apply to assigned risk pool insurar under AS 21.39.155."

ANCHORAGE
SCHOOL DISTRICT
4600 DeBarr Avenue
P.O. Box 196614
Anchorage, Alaska 99519-6614
AREA CODE [907] 333-9581

SCHOOL BOARD

Jean Buchanan
President

William Frick
Vice President

Carol Stolpe
Clerk

Bettye Davis
Clerk Pro Tem
Immediate Past President

Martha Roderick
Treasurer

Darryl Jordan
Assistant Treasurer

Jim Robinson
Parliamentarian
Past President

SUPERINTENDENT

William Coats, Ph.D.

May 2, 1988
Date

To: John Ringgenberg
Sen Kelly's Office
Juneau, AK

TELECOPY COVER SHEET

Telecopy consists of 3 pages including this cover sheet. If there is any problem with the transmission of this material, please call Warren Dvorak at (907) 269-2303.

BENEFITS DEPARTMENT

MANAGEMENT / LABOR JOINT TASK FORCE

5/2/88

Honorable Tim Kelly, Co-Chair
Honorable John Sund, Co-Chair
Joint Conference Committee
P. O. Box V
Juneau, Alaska 99811

Re: HOUSE CS FOR CSSB 322 (JUDICIARY)

Dear Senator Kelly and Representative Sund:

In addition to the Joint Task Force recommendations already submitted to you for making the House Judiciary Committee version acceptable to the Senate in joint conference, the following important corrections to the final House Judiciary Committee substitute of April 26, 1988 need to be made if possible:

1. **SEC. 2. AS 21. 39. 155 (c) - AMEND TO READ:**

   (c) An insurer may not impose a surcharge for assigned risk pool insurance unless the insured has not been in business in the state for 3 full years or the insured has received an experience modification debit. The amount of the surcharge shall be equal to 30% of the premium after consideration of the experience modification debit, if any. The assigned risk pool premium for insureds who have or are entitled to an experience modification credit shall not exceed that derived from the application of standard rates for the insured's risk classification adjusted for the experience modification credit.

NOTE: This amendment will prevent an employer from avoiding a surcharge in the assigned risk pool by changing the name of the business or otherwise bypassing the intent of this section. Furthermore, it gives greater protection within the pool to small employers with good worker's compensation claims experience. As far as the Task Force is concerned, the actual amount of the surcharge could even be 40% or 50% since, with this amended language, only those employers in the pool with bad claims records would be hit with the surcharge.

2. **SEC. 3. AS 21. 89. 015 - DELETE ENTIRE SECTION.**

NOTE: Insurers already provide safety programs consulting and assistance to their insureds at no charge. Indeed, many insurers will not issue insurance to an employer who does not implement a safety program. This section would increase cost by allowing the insurance companies to charge an unspecified amount for services they now provide at no cost. An employer who does not follow sound safety practices will be penalized through their premium modification factor.

3. **SEC. 10. AS 23. 30. 041 (C) - PG. 7 LINE 5:**
   Delete "circumstances" and restore "physical limitations".

4. **SEC. 14. AS 23. 30. 095 (c):**
   Replace with Sec. 14. AS 23. 30. 095 (c) contained in HCS CSSB 322 (L&C) of 3/17/88, Pg. 15. lines 6 through 27.

NOTE. "Physicians" are, by definition, licensed by the state while the term "health care providers" can contain practitioners who are neither licensed or otherwise regulated or controlled to protect the public. These should not be eligible for payment under the Worker's Compensation Act. The Judiciary Committee language in Sec. 14. refers to "the standard treatment frequency for the nature and degree of the injury and type of treatments" and such standards do not exist. It would be highly inappropriate for the Worker's Compensation Board, whose members are not physicians, to attempt to establish standards for medical treatment.

5. **SEC. 18. AS 23. 30. 095 - AMEND BY INSERTING A NEW SENTENCE AT THE END OF LINE 9, PG. 18 AS FOLLOWS:**
   The opinion of the independent medical examiner shall, in the absence of clear and convincing evidence to the contrary, be presumed to have greater weight than either of the other two opinions for the purpose of resolving a medical dispute.

NOTE: We strongly feel that this statement is necessary to give uniform guidelines for board member, who are not medical experts, in evaluating the medical merits of the other two opinions to a medical dispute. We also feel it will reduce the potential for litigation.

6. **SEC. 26. AS 23. 30. 155 (E) - RETAIN EXISTING LANGUAGE.**

7. **SEC. 27. AS 23. 30. 155 (F) - RETAIN EXISTING LANGUAGE.**

8. **SEC. 28. AS 23. 30. 155 (M) - DELETE LAST SENTENCE ON PG. 24, LINES 1,2, &3.**

NOTE: As to Sections 26 and 27, we are not aware of any problem which makes these changes necessary and they only drive up costs. In Sec. 28, we think that the $1,000 fine for incomplete filing makes no distinction between essential information such as claims data, and incidental information, which should not call for a fine. We would like to give the employers, adjustors, and insurers a chance for show their willingness to comply with the new requirements of this bill. If warranted, fines can be imposed at a later date.

9. **SEC. 41. AS 23. 30. 265 (17) - REPLACE WITH SENATE VERSION, SEC. 36, CSSB 322.**

We all greatly appreciate hard work and sincere efforts of the committee members of both legislative bodies have put forth on this most important piece of legislation. We feel these additional changes will result in a bill that will accomplish our goal of worker's compensation cost reduction will fairly providing for the need of both workers and employers. We respectfully request your concurrance with these changes in joint conference.

Sincerely,

Management / Labor Joint Task Force

Richard Cattanach

WLD/am

AS 23.30.095(c)

PROPOSAL I

(c) A claim for medical or surgical treatment, or treatment requiring continuing and multiple treatments of a similar nature is not valid and enforceable against the employer unless, within 14 days following treatment, the physician or provider 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 treatment so obtained by the employee. When a claim is made for a course of treatment requiring continuing and multiple treatments of a similar nature, in addition to the notice the physician or provider must furnish a treatment plan if the course of treatment will require more than 20 outpatient visits in the first 60 days. The treatment plan must be furnished to the employee and the employer within 14 days after treatment begins. The treatment plan must include objectives, modalities, frequency of treatments, and reasons for the frequency of treatments. If the treatment plan is not furnished in the time provided, neither the employer nor the employee may be required to pay for treatments that exceed the frequency standard set out in this subsection.

PROPOSAL II

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AMENDMENTS TO SB 322
IN HOUSE JUDICIARY COMMITTEE
DRAFT DATED 4/20/88

Amendment	Page-Line Judiciary CS	Page-Line Hse L&C CS
Rewrote "reduce disincentives" to read "increase the incentives."	1 - 27	1 - 27
Added intent language urging the Administration to enforce reporting requirements and penalties under the Workers' Compensation Act.	2 - 7	2 - 7
Rewrote the Safety Program Refund to leave the perameters of the refund open to each insurers discretion, but require that all workers' comp. insurers offer a safety program rate reduction and consulting services.	2 - 19	2 - 7
Clarified that the board retains two provider rosters -- one for rehab. specialists, one for physicians.	3 - 2	2 - 26
Deleted previous Sec. 4 which allowed the Department to write new regulations if the Supreme Court found regulations to be invalid. The Committee determined that this did not accomplish the original intent -- to make new regs. retroactive.	3 - 13	3 - 9
Rewrote the provision for semi-annual premium payments to reflect seasonal employers who make their entire yearly earnings in a few months per year.	3 - 29	3 - 29
Rewrote "unusual and extenuating physical limitations" to read "unusual and extenuating circumstance." This refers to reasons why an injured worker may extend past the 90-day limit for taking a voc. rehab. evaluation.	6 - 25	6 - 23
Clarified the reference dictionary used in vocational rehab. codes	7 - 26	7 - 24
Increased from 60 to 75 the percentage of a worker's wage at injury that the	8 - 2	7 - 28

employer can offer which would make the worker ineligible for voc. rehab.		
Deleted the typo "of injury."	8 - 4	8 - 1
Rewrote the clarification for the physician that an employee may elect by using the term "to provide all medical and related benefits" because "medical and related benefits" is in present definitions. It includes "transportation charges to the nearest point where adequate medical facilities are available."		
Rewrote AS 23.30.095(c) regarding notification and length of treatment. The new language treats continuing and multiple treatments very similar to medical and surgical treatment. It also deletes any reference to number of visits for ongoing treatment.	15 - 9	15 - 7
Deleted the reference to the board IME being in the same speciality as the employee's chosen treating physician.	17 - 27	18 - 1
Deleted the notion that the board IME's opinion carries more weight than those of the employer's and employee's physicians.	18 - 2	18 8
Left a window open for hearing continuances and allowed for a hearing request with necessary discovery and evidence, but not necessarily <u>all</u> evidence. Also deleted reference to admission of evidence after the hearing is complete.	18 - 24 19 - 4 19 - 8	19 - 5 19 - 14 19 - 16
Increased penalities for late compensation payments to 50 percent or $300, whichever is greater.	21 - 27 22 - 8	22 - 5 22 - 8
Added a penalty of $1,000 for the filing of incomplete reports.	23 - 12	23 - 12
Added that penalities for lack of reporting apply to uninsureds as well as self-insureds.	23 - 16	23 - 14
Deleted the use of certified checks for compensation payments.	23 - 26	23 - 25

Fixed an incorrect cite.	26 - 1	25 - 29
Returned Temporary Total Disability benefits to an unlimited time period.	26 - 7	26 - 8
Lowered the Permanent Partial Disability cap to $135,000.	26 - 14	26 - 15
Deleted the use of adjustment factors for figuring PPD payments and more clearly defined the whole person impairment theory.	26 - 15	26 - 18
Returned Temporary Partial Disability benefits to a five year period.	27 - 16	28 - 19
Rewrote the computation of gross weekly earnings so that earnings for anyone who is absent from the labor market for 18 months or more in two years, regardless of the reason for the absence, will be compensated based on work and work history.	28 - 10	29 - 13
Deleted the notion of "employee misperceptions" in the stress language.	31 - 8	32 - 12
Added the definition of "suitable gainful employment" to the repealers.	31 - 22	32 - 27
Changed "takes" to "take."	32 - 18	33 - 23

TO: HOUSE JUDICIARY COMMITTEE MEMBERS

FROM: Shari Kochman

DATE: April 19, 1988

RE: Proposed amendments to HCS CSSB 322 (L&C)

Attached is a new amendment packet that includes all newly drafted amendments as of the meeting of April 18, 7:00 p.m., and all previously drafted amendments that have not been addressed. Please replace your former amendment packets with this packet.

Note: The attached amendments are not numbered, but are in order by bill section.

Section 1

By Sund

AMENDMENT

Offered in the House

TO: HCS CSSB 322 (L&C)

Page 2, line 7:

Insert a new subsection to read:

"(e) It is the intent of the legislature in amending AS 23.30.07 and AS 23.30.155 that the Division of Workers' Compensation, Divis of Insurance and Department of Law strictly enforce the punishment authorized under AS 23.30.075(b) and the reporting requirements in penalties for noncompliance with AS 23.30.155, based on findings tha

1) there has been a failure on the part of the state to imp the punishment authorized under AS 23.30.075(b) against those employers who fail to obtain workers' compensation insurance or to qualify as a self-insurer, and

2) there is a lack of specific data within the Division of Workers' Compensation and Division of Insurance to adequately assess the efficiency and costs of the worker compensation system.

ADOPTED AM # 18 VWAN 4/19

5-151
Ford

Section 1

AMENDMENT

Offered in the HOUSE By Su

TO: HCS CSSB 322(L&C)

Page 1, line 27:

Delete "reduce disincentives"

Insert "increase the incentives"

Amend => 33
7-0

4/18/8

Sec. 1
Version C

5-1514L11
Ford

AMENDMENT

Offered in the HOUSE By Sund

TO: HCS CSSB 322(L&C)

Page 1, lines 14 - 21:

Delete all material.

Reletter following subsections accordingly.

4/19/88

5-1
For

Section 1
Version A

AMENDMENT

Offered in the HOUSE By

TO: HCS CSSB 322(L&C)

Page 1, lines 14 - 17:

Delete "The legislature declares that the workers' compensatic must not be construed by the courts in favor of any party. It specific intent of the legislature that workers' compensation ca decided on their merits, except when otherwise provided by statute."

Section 1
version B

AMENDMENT

Offered in the HOUSE By S

TO: HCS CSSB 322(L&C)

Page 1, lines 15 - 21:

Delete all material and insert:

"be fairly and impartially construed by the courts. In or achieve that goal, it is the intent of the legislature that the ponderance of the evidence standard be used in determining the c sability of a workers' compensation claim. "Preponderance o evidence" means evidence that when weighed with that opposed t has more convincing force and a greater probability of truth. weighing the evidence, the test is not the relative number of wit es, but the relative convincing force of the evidence."

Section 2 By Sund

AMENDMENT

Offered in the HOUSE

TO: HCS CSSB 322 (L&C)

Page 2, lines 8 - 22:

Delete all material and write a new Sec. 2 to read:

An insurer who provides workers' compensation insurance must establish and maintain a workplace safety rate reduction program available to all insureds. The program must include:

1) A reduction in future workers' compensation premium based on the insured's documented, successful imple of a safety program, and

2) The availability of consulting services to the insu to establish a workplace safety program.

Section 5

AMENDMENT

Offered in the HOUSE

By Su

TO: HCS CSSB 322(L&C)

Page 3, line 15:

Delete "knowingly"

Insert "intentionally"

DROP

AMENDMENT Section 4 & 5

Offered in the HOUSE By

TO: HCS CSSB 322(L&C)

Page 3, lines 10 - 13:

Delete all material. — Amendment already passed

Insert a new subsection to read:

"(m) The department shall prescribe a written notice t provided by an employer to a prospective employee, that advises employee of the risk of loss of workers' compensation benefits u AS 23.30.020(b) if the employee makes a false employment applicat

Page 3, line 15:

Delete "An"

Insert "If an employer furnishes a prospective employee with a wri job description that indicates the physical and mental demands of the and provides the employee with a written notice prescribed by the dep ment that describes the risk of loss of workers' compensation benefit the employee files a false employment application, an"

5-1514Lgg
Ford

Sec. 7

AMENDMENT

Offered in the HOUSE

By Sund

TO: HCS CSSB 322(L&C)

Page 3, line 29:

Delete "semiannually"

Insert "on an installment basis of not fewer than two payments"

After "insured."

Insert "Premiums paid by installment must be structured to reflect seasonal peaks in the basis of the premium."

AS AMEND
H 2D
ADOPTED HWM

Section 10

AMENDMENT

By S

Offered in the HOUSE

TO: HCS CSSB 322(L&C)

Page 6, line 23, after "has":

Delete "unusual and extenuating physical limitations that prevent"

Insert "an unusual and extenuating circumstance that prevents"

ADOPTED UNAN
AS AMND
2-1

Section 10

S-15
Ford

AMENDMENT

Offered in the HOUSE

By Su

TO: HCS CSSB 322(L&C)

Page 8, line 1:

Delete "of injury"

#22
ADOPTED UNAN

4/18/88

Section 13

AMENDMENT

Offered in the HOUSE By S

TO: HCS CSSB 322(L&C)

Page 14, line 21:

Delete "inside the state where the employee resides to rend care"

Insert "to provide all medical and related benefits"

Page 14, line 25, after "[":

Insert "INSIDE THE STATE TO RENDER THE CARE" ??

Mike explain

#23
ADOPTED
UNAN

Section 14

AMENDMENT version A

MOVED - COTTON
SUND

OPPOSED - 5

FAIL

Offered in the HOUSE B:

TO: HCS CSSB 322(L&C)

Page 15, line 6:

Delete "amended"

Insert "repealed and reenacted"

Page 15, lines 7 - 27:

Delete all material and insert:

"(c) A claim for treatment is not valid and enforceable a
the employer unless

(1) if the claim is for medical or surgical treatment
physician giving the treatment or the employee receiving it furn
to the employer and the board notice of the injury and trea
within 14 days after the treatment is received; the board shall e
the failure to furnish notice within 14 days when the board fin
to be in the interests of justice to do so, and the board may,
application of a party in interest, make an award for the reaso
value of the medical or surgical treatment obtained by the empl
and

(2) if a claim is for a course of treatment requ
continuing and multiple treatments of a similar nature, the treat
are carried out under a written treatment plan prescribed befor
commencement of the course of treatment and the plan is complete

signed by the attending physician and mailed to the employer
one week of the beginning of treatment; the treatment plan mu
clude objectives, modalities, and frequency of treatment; the
treatment plan may not include more than 20 outpatient visits
first 60 days; if more than 20 outpatient visits are required
the first 60 days, or more than four outpatient visits a month
the first 60 days, the physician shall document the need for se
in excess of the guidelines in the written treatment plan."

Section 14
Version B

AMENDMENT

MOVED - MAY W/ 1ST PART OF #C W/DRAW

MOVED B NAVARRE MAY SUND APPROVED - 4

Offered in the HOUSE By

TO: HCS CSSB 322(L&C)

Page 15, line 6:

Delete "amended"

Insert "repealed and reenacted"

Page 15, lines 7 - 27:

Delete all material and insert:

"(c) A claim for treatment is not valid and enforceable a the employer unless

(1) if the claim is for medical or surgical treatmen physician giving the treatment or the employee receiving it fur to the employer and the board notice of the injury and tre within 14 days after the treatment is received; the board shall the failure to furnish notice within 14 days when the board fi to be in the interests of justice to do so, and the board may application of a party in interest, make an award for the reas value of the medical or surgical treatment obtained by the emp and

(2) if a claim is for a course of treatment req continuing and multiple treatments of a similar nature, the trea are carried out under a written treatment plan prescribed befo commencement of the course of treatment and the plan is complet

signed by the attending physician and mailed to the employer
one week of the beginning of treatment; the treatment plan mu
clude objectives, modalities, and frequency of treatment."

Section 14
Version C

AMENDMENT

Offered in the HOUSE By Su

TO: HCS CSSB 322(L&C)

Page 15, line 7, after "treatment":

Delete "is"

Insert ", or treatment requiring continuing and multiple treatmen a similar nature are [IS]"

Page 15, lines 16 - 27, after "employee.":

Delete all material.

5-
Fo

Sec 13

AMENDMENT

Offered in the HOUSE By

TO: HCS CSSB 322(L&C)

SAM MOVED ADOPTED
Y: CSHG = 27
N: UTB

Page 18, lines 1 - 5:

Delete "A physician selected by the board under this subsectio be qualified in the same specialty as the treating physician sele the employee, unless the board or the board's panel agrees unanimous case by case basis to approve a different selection."

Rotan moves
P 18 L 21
Delete unanimously
w/o

4/15

S-1
For

Sec 18

AMENDMENT

Offered in the HOUSE

By

TO: HCS CSSB 322(L&C)

Page 18, line 4:

Delete "panel"

Insert "designee"

Delete "unanimously on a case by case basis"

Section 18

AMENDMENT

Offered in the HOUSE By S

TO: HCS CSSB 322(L&C)

Page 18, lines 8 - 11:

Delete "The opinion of the independent medical examiner shall, i absence of clear and convincing objective evidence to the contrar presumed to be correct."

SUMD - MOVED
Y: 7
N: 0
ADOPTED AS
AM #29

Sec. 20

5-1514Lf
Ford

AMENDMENT

Offered in the HOUSE By Sund

TO: HCS CSSB 322(L&C)

Page 19, lines 14 - 15:

Delete "a continuance may not be granted"

Insert "the parties may not stipulate to change the hearing date or t cancel, postpone, or continue the hearing, except for good cause a determined by the board"

Page 19, lines 16 - 19:

Delete "Evidence or arguments filed after the conclusion of the hear ing may not be considered by the board, unless the board determines tha good cause exists for failure to complete the hearing at the schedule time."

ADOPTED AS 29 UNAM

4/19/88

AMENDMENT

Offered in the HOUSE

TO: HCS CSSB 322(L&C)

Sec 24 25 26

~~Page 21, line 7, after "penalty",~~

~~Insert "to the employer"~~

On Hold

Page 21, line 8:

Delete "$100"

Insert "$1,000 [$100]"

Delete "$10"

Insert "$100 [$10]"

Page 21, line 10:

Delete "$1,000"

Insert "$10,000 [$1,000]"

Page 22, after line 4:

Insert a new bill section to read:

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

(e) If any installment of compensation payable without ar is not paid within seven days after it becomes due, as provided of this section, there shall be added to the unpaid installm amount equal to ~~25~~ 50 [20] percent of it or $100 $300, whichever amo greater. This additional amount shall be paid at the same ti

ADOPTED

4/13

and in addition to, the installment, unless notice is filed
of this section or unless the nonpayment is excused by the bo
a showing by the employer that owing to conditions over w
employer had no control the installment could not be paid wi
period prescribed for the payment."

Renumber remaining bill sections accordingly.

Page 22, line 8, after "it":

Insert "or $900 $700, whichever amount is greater"

Page 23, line 11:

Delete "$100"

Insert "$1,000"

Page 23, line 12:

Delete "$10"

Insert "$100"

Page 33, line 1:

Delete "sec. 27"

Insert "sec. 28"

Page 33, line 18:

Delete "27, 28, 40, and 44"

Insert "28, 29, 41, and 45"

4/

Page 33, line 21:

Delete "Section 40"

Insert "Section 41"

Page 33, line 22:

Delete "sec. 40"

Insert "sec. 41"

Page 33, line 23:

Delete "Sections 40 and 47"

Insert "Sections 41 and 48"

Page 33, line 25:

Delete "39, and 41 - 46"

Insert "40, and 42 - 47"

5-15 4L
Ford

Sec. 27

AMENDMENT

Offered in the HOUSE By Sund

TO: HCS CSSB 322(L&C)

Page 23, line 12, after "late.":

Insert "If the annual report is incomplete when filed, the insurer o adjuster shall pay a civil penalty of $1,000."

SUND MOVES
Y: 5
N: 0
ADOPTED
AS = 3D

4/19/88

Sec. 27

5-1 14.
For

AMENDMENT

Offered in the HOUSE By Sund

TO: HCS CSSB 322(L&C)

Page 22, line 26, after "filed", through page 23, line 6:

Delete all material.

Insert "the reports in a timely manner, the commissioner may waive percentage or all of the penalties assessed under (c) of this section."

Page 23, line 7:

Delete "waived."

NOT MOVED

Sec. 33

AMENDMENT

Offered in the HOUSE By Sund

TO: HCS CSSB 322(L&C)

Page 26, line 15:

Delete "net"

Page 26, line 16, after "person":

Delete ", and"

Insert ". The percentage of permanent impairment of the whole perso is the percentage of impairment to the particular body part, system, o function converted to the percentage of impairment to the whole person a provided under (b) of this section. The compensation is"

NO OBJECTION
6-D
ADOPTED
AS AM 31

5 15
Fo d

Sec 44

AMENDMENT

Offered in the HOUSE

By Sund

TO: HCS CSSB 322(L&C)

Page 33, line 7:

Delete "REDUCTION"

Insert "FREEZE"

Page 33, lines 8 - 11:

Delete "shall provide at least a six percent reduction in the premi rate charged within the state for workers' compensation insurance, for th period beginning July 1, 1988, and ending January 1, 1990"

Insert "may not increase the premium rate charged within the state fo workers' compensation insurance during the period beginning April 18, 1988 and ending January 1, 1991"

Page 33, after line 22:

Insert a new bill section to read:

"* Sec. 48. Section 44 of this Act is retroactive to April 18, 1988."

Renumber the following bill sections accordingly.

Page 33, line 23, after "40":

Delete "and 47"

Insert ", 44, 47, and 48"

Delete "takes"

Insert "take"

Page 33, line 25:

Delete "and 41 - 46"

Insert "41 - 43, 45, and 46"

AMENDMENT

NOT ADOPTED

Offered in the HOUSE By

TO: HCS CSSB 322(L&C)

Page 31, after line 9:

Insert a new bill section to read:

"* Sec. 39. AS 23.30.260 is amended to read:

Sec. 23.30.260. PENALTY FOR RECEIVING UNAPPROVED FEES SOLICITING. A person is guilty of a misdemeanor, and upon convi is punishable for each offense by a fine of not more than $1,00 by imprisonment for not more than one year, or by both, if the pe

(1) receives a fee, other consideration, or a gratui account of services rendered to an employer, employee, insurer insurance adjuster regarding [IN RESPECT TO] a claim, unless consideration or gratuity is approved by the board, a designee o board, or the court; or

(2) makes it a business to solicit employment for a l or for oneself in respect to a claim or award for compensation."

Page 33, line 18:

Delete "40, and 44"

Insert "41, and 45"

Page 33, line 21:

Delete "Section 40"

Insert "Section 41"

Page 33, line 22:

Delete "sec. 40"

Insert "sec. 41"

Page 33, line 23:

Delete "Sections 40 and 47"

Insert "Sections 41 and 48"

Page 33, line 25:

Delete "39, and 41 - 46"

Insert "40, and 42 - 47"

For

See 44

AMENDMENT

Offered in the HOUSE

B

TO: HCS CSSB 322(L&C)

HOLD

If the insured has received pool insurance for at least two years and has not received an experience rating

Page 2, after line 6:

Insert a new bill section to read:

"* Sec. 2. AS 21.39.155 is amended by adding a new subsection to

(c) An insurer may not impose a surcharge until ~~for assigned ri~~ ~~insurance unless~~ the insured has received an experience rating."

Renumber remaining bill sections accordingly.

Page 32, line 29:

Delete "sec. 8"

Insert "sec. 9"

Page 33, line 1:

Delete "sec. 27"

Insert "sec. 28"

Page 33, line 13:

Delete "sec. 9"

Insert "sec. 10"

Page 33, line 18:

Delete "secs. 8, 25, 27, 28, 40, and 44"

Insert "secs. 9, 26, 28, 29, 41, and 45"

Page 33, line 21:

Delete "Section 40"

Insert "Section 41"

Page 33, line 22:

Delete "sec. 40"

Insert "sec. 41"

Page 33, line 23:

Delete "Sections 40 and 47"

Insert "Sections 41 and 48"

Page 33, line 25:

Delete "Sections 1 - 39, and 41 - 46"

Insert "Sections 1 - 40, and 42 - 47"

See 44

AMENDMENT

Offered in the HOUSE

TO: HCS CSSB 322(L&C)

Page 2, after line 6:

Insert a new bill section to read:

"* Sec. 2. AS 21.39.155 is amended by adding a new subsection

(c) An insurer may not impose a surcharge for assigned

insurance unless the insured has received an experience rating

Renumber remaining bill sections accordingly.

Page 32, line 29:

Delete "sec. 8"

Insert "sec. 9"

Page 33, line 1:

Delete "sec. 27"

Insert "sec. 28"

Page 33, line 13:

Delete "sec. 9"

Insert "sec. 10"

Page 33, line 18:

TO: Rep. John Sund

FROM: Shari Kochman

DATE: April 16, 1988

RE: All Proposed Amendments to SB 322 in all testimony

Amendment #1

This is a technical change.

The present cite in the bill for the U.S. Department of Labor Dictionary of Occupational Titles is incorrect.

Amendment #2 Sec 31

This is a technical change. The present cite in bill is incorrect.

Amendment #3 Sec 42

This would delete the definition for "suitable gainful employment" which is a term used in the present vocational rehabilitation statute, but would not be used in the proposed statute - AS 23.30.041.

Amendment #4 Sec 38

This would make the reporting, notification and penalties described in AS 23.30.155(c) and (m) apply to uninsured employers as well as self-insured employers.

Amendment #5 Sec 24 & 26

This amendment refers to penalties against employers for failure to file required reports, notify claimants of changes in compensation and make payments to claimants on time.

The amendment increases the fines for late notification of changes and late annual reports from $100 to $1,000 for the first day and from $10 to $100 for every day thereafter.

The penalty for late payment of compensation is increased from 20 percent of the compensation to 25 percent but no less than $100. This is consistent with penalty changes already made in the House Labor and Commerce Committee and, in fact, was intended to be changed in that committee.

Amendment #6 Sec 28

This amendment would delete a section added in the House Labor and Commerce committee that requires compensation checks to be drawn on funds deposited in Alaska or by certified check.

The intent of this is to prevent delayed payment due to check clearing time. But it is doubtful whether this provision would accomplish that. First of all, check clearing is computerized on a national and regional basis. It could take as long to clear an Anchorage check in Ketchikan as it would a Des Moines check. Second of all, certified checks carry no more weight and are cleared no faster than personal or business checks. Third of all, I don't see how the Legislature has the authority to tell an insurance company where to do its banking. This is a commercial matter, not a workers' compensation matter.

Amendment #7 Sec 1

The intent of this intent language is to urge the Administration to enforce penalties in the workers' compensation statute. Currently, the board may report to the Division of Insurance that an employer is without insurance, and the Division may then pass that onto the attorney general's office, but the case dies there. We have one memo that states the case is "just not worth the state's time."

If we believe lack of workers' comp insurance is reprehensible, we need to enforce the penalties.

Amendment #8 Sec 4

This would delete section 4 of the bill which mandates the department to adopt new regulations if the Supreme Court finds existing regulations invalid. The intent of the task force was that new regulations be retroactive as well as prospective. There is question for the need and actual effect of this section -- which you understand better than I.

Amendment #9 Sec 33

This would delete the provision that an impairment rating for permanent partial disability would be reduced by an impairment from a preexisting condition.

You should note a couple of things here. The provision does not delineate whether the preexisting condition was work related -- that's not the point. The question is whether an employer should be responsible to pay for an earlier condition that is unrelated to the present injury, but may be aggravated by the present injury.

Another thing to note is that if the combination of injuries does result in permanent total disability, the worker would be compensated for PTD.

Amendment #10 Sec 36

This amendment refers to the methods for the board to determine spendable weekly wage, which is now one of the most litigated areas in workers' comp.

The problem is with those employees who had no earnings in the two years prior to injury or were working for only 6 months out of the previous two years. In those cases, the board is to determine compensation based on employees work history and may not exceed projected earnings.

The present language tries to exclude people, who because of lifestyle choices, have low earnings in the two years before injury. It attempts to include people who, for good reasons, have low earnings in the two years before injury.

However, it doesn't succeed. For example, an employee who works just long enough to pay for his extensive vacations would, because he was voluntarily out of the work force, be

entitled to an adjustment in his spendable weekly wage under subsection (b).

However, a person who is out of the work force for more than 18 months in the two years before injury because he is battling cancer, surely an involuntary reason for not working, would not be entitled to an adjustment to his spendable weekly wage under subsection (b). Instead, his compensation would be based on his earnings, if any, in the two years before injury divided by 100.

This amendment deletes the word "voluntarily" because of the above cited problems with definition.

Amendment #11 Sec 9

This amendment addresses the minimum offered wage to an injured worker that would make the worker ineligible for vocational rehabilitation. It would increase the percentage of wage at the time of injury from 60 percent to 75 percent.

Note: This was proposed by the Labor-Management Task Force as part of the amendments to the "PPD-TTD package deal."

Amendment #12 Sec 33

This is the new proposal for the PPD-TTD schedule. It would lower the maximum PPD payment from $240,000 to $135,000 and delete the adjustment factor schedule. Effects of this change are in a table that has been distributed to the committee.

In conjunction with the PPD change, the amendment would return TTD and TPD to present law which is no limit on TTD (present bill puts a two year limit on it) and a five year limit on TPD (present bill limits it to two years.

Note: The Task Force testified that TTD would go to a five-year limit to make it consistent with TPD. However, I later clarified that if the intent was actually to go to present law (which was confirmed), then TTD should be unlimited.

Sec 18

Amendments #13A and #13B

These are two possibilities for addressing the present requirement for a unanimous board vote to have an IME outside of the claimant's physician's speciality.
Amendment 13A would simply delete any reference to the specialty and direct the board to select an IME from their list of providers.

Amendment 13B would instruct the board to conduct the IME in the same specialty as the treating physician unless the board or its designee (i.e., the pre-hearing officer) approves a different specialty.

Both amendments would prevent the costly necessity of convening the board to select an IME. It should be noted that the present language would have a fiscal impact for board meetings which has not yet been determined.

Both amendments also address the importance of this decision in comparison to other decisions made by the board. No other decision requires a unanimous vote.

The second proposal (13B), by even mentioning the specialty requirement, may open a door for litigation. The first proposal (13A) probably would not. If the overall intent of the bill is to reduce litigation, we should probably consider what new possibilities for litigation we are introducing through this legislation.

One other point. While the chiropractors do have substantial evidence that the medical professional does discriminate against them, the present language infers an expected discrimination on the part of the board. If we believe the board is discriminatory, we are in sorry shape.

S&C 44

Amendment #14

The proposed amendment deletes the mandated rate reduction and replaces it with a mandated rate freeze.

It also makes the freeze effective from now through 1990 -- so that new rates could not be set until 1991. That is a year later than the mandated rate reduction now in the bill specifies.

The idea of a freeze, as indicated by John Lewis, is to give time to gather experience under the law change. If we want to do that, we should consider what experience is used for determining rates. The following table explains:

Date Rates Set	Experience Base
January 1989	Jan. '86 - Jan. '88 (no experience under this bill)
January 1990	Jan. '87 - Jan. '89 (six months experience under this bill)
January 1991	Jan. '88 - Jan. '90 (18 months experience under this bill)
January 1992	Jan. '89 - Jan. '91 (24 months experience under this bill)

Therefore, if a freeze is effective until only Jan. 1990, rates will be set with very little new experience (only six months) versus 18 months of new experience come Jan. 1991.

One argument against the freeze being effective immediately is that the Jan. 1989 rates will be based on pre-legislation experience and should, therefore, be subject to modification. However, Don Koch of the Division of Insurance testified on April 11 that as of current available data, he sees either no increase or a very small (maybe 2 percent) increase in January.

Regarding the rate reduction -- the C&R Committee, on April 4, determined a 5.7 percent reduction was in line on July 1, 1988 as a result of the bill. Keep in mind two things -- the rates will be subject to an experience adjustment which could overcompensate for the law reduction (although Mr. Koch's testimony indicates otherwise). Furthermore, it is unclear which version of the bill the C&R Committee was using. The letter said "in the existing version of SB 322" which, on

April 4, was the House Labor and Commerce substitute. But some are under the impression that the committee was using the Senate version. Finally, this does not address the results of any House Judiciary and subsequent changes.

Amendment #15 SEC 2

This amendment addresses the assigned risk pool and prohibits the 20 percent surcharge for those pool companies that do not receive an experience modification. That really translates to all new companies in the pool and all companies with a premium under $2,500 (because lower premiums are not rated.)

This would give immediate and extensive relief to many small employers in the state, but keep in mind the policy call this is making.

Because the pool runs at a deficit (losses were more than $4 million in 1987), those lost surcharges will be put on the shoulders of the larger companies in the pool. Should the larger companies subsidize the smaller companies?

Also, experience mods are not always a clear reflection of actual claim losses. Let me try to explain -- but beware that I am getting into the clandestine area of actuarial science.

A $100,000 loss is not considered a $100,000 for purposes of experience modifications. It is actually considered a $9,260 loss unless other circumstances (which I will not get into) make it higher. So, as is the nature with insurance, the added loss is spread among other companies.

Note also that this amendment does a curious thing in providing a disincentive for a company to want an experience rating. Let's say the company gets rid of its 20 percent surcharge because of no experience mod, and later is given a .95 mod which is a five percent reduction. Now the employer loses the exemption from the surcharge and the net effect is a 15 percent increase in rates. Of course, the question is whether the insurers will bother rating the lower premiums, but this amendment may incite them to do so -- which of course adds to their costs of doing business.

As Stan Sparks testified, the assigned risk pool is a tricky thing to address and our problem is not exclusive to Alaska. I have been told by a member of the C&R Committee that they are trying to address it and revamp the pool in some way.

Amendment #16 NEW SEC 39

This is the defense attorney fees amendment which you know more about than I do.

Other issues to address:

Section 2 -- safety program -- is it workable.

Section 7 - semi-annual payments for seasonal employers. If we want to change this, we need language from the Division of Insurance.

Section 10 - voc rehab - questions on optional versus mandatory and the time frame for requesting an evaluation.

Section 14 - treatment plan limitations and how is a "visit" defined.

Section 18 - Board IME - weight given to the Board's IME and the exemption from liability for the IME physician.

Section 20 - time frames for hearing requests and limits on continuances.

Sections 21 and 40 - stress claims.

Sections 37 and 39 - treatment of pension plans.

5-1514Lg
Ford

A M E N D M E N T #1

OK

Offered in the HOUSE

By Sund

TO: HCS CSSB 322(L&C)

Page 7, line 24:

Delete "dictionary of occupational titles"

Insert "United States Department of Labor's "Selected Characteristics of Occupations Defined in the Dictionary of Occupational Titles""

ADOPTED AS #4

4/15/88

5-1514Le
Ford

AMENDMENT #2 OK

Offered in the HOUSE By Sund

TO: HCS CSSB 322(L&C)

SSC 31

Page 25, line 29:

Delete "AS 23.30.041(m)(7)"

Insert "AS 23.30.041(p)" ADOPTED

4/13/88

5-1514Lo
Ford

AMENDMENT #3

OK

Offered in the HOUSE

By Sund

TO: HCS CSSB 322(L&C)

Page 32, line 27:

Delete "is"

Insert "and 23.30.265(28) are"

5-1514Lk
Ford

#4

A M E N D M E N T

Offered in the HOUSE

By Sund

TO: HCS CSSB 322(L&C)

Sec 28

Page 23, line 14, after "self-insured" #9

Insert "or uninsured"

4/15/88

A M E N D M E N T

Offered in the HOUSE

By Sur

TO: HCS CSSB 322(L&C)

~~Page 21, line 7, after "penalty",~~

~~Insert "to the employee"~~

Page 21, line 8:

Delete "$100"

Insert "$1,000 [$100]"

Delete "$10"

Insert "$100 [$10]"

Page 21, line 10:

Delete "$1,000"

Insert "$10,000 [$1,000]"

Page 22, after line 4:

Insert a new bill section to read:

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

(e) If any installment of compensation payable without an awa
is not paid within seven days after it becomes due, as provided in (
of this section, there shall be added to the unpaid installment
amount equal to 25 [20] percent of it or $100, whichever amount
greater. This additional amount shall be paid at the same time a

and in addition to, the installment, unless notice is filed under
of this section or unless the nonpayment is excused by the board af
a showing by the employer that owing to conditions over which
employer had no control the installment could not be paid within
period prescribed for the payment."

Renumber remaining bill sections accordingly.

Page 22, line 8, after "it":

Insert "or $100, whichever amount is greater"

Page 23, line 11:

Delete "$100"

Insert "$1,000"

Page 23, line 12:

Delete "$10"

Insert "$100"

Page 33, line 1:

Delete "sec. 27"

Insert "sec. 28"

Page 33, line 18:

Delete "27, 28, 40, and 44"

Insert "28, 29, 41, and 45"

Page 33, line 21:

Delete "Section 40"

Insert "Section 41"

Page 33, line 22:

Delete "sec. 40"

Insert "sec. 41"

Page 33, line 23:

Delete "Sections 40 and 47"

Insert "Sections 41 and 48"

Page 33, line 25:

Delete "39, and 41 - 46"

Insert "40, and 42 - 47"

AMENDMENT

Offered in the HOUSE By Sund

TO: HCS CSSB 322(L&C)

Page 23, lines 22 - 25:

Delete all material.

5-1514L
Ford

AMENDMENT #7

Offered in the HOUSE By Sund

TO: HCS CSSB 322(L&C)

Page 1, line 9, after "LEGISLATIVE":

Insert "FINDINGS AND"

After "INTENT.":

Insert a new subsection to read:

"(a) The legislature finds that, as the costs of workers' co pensation insurance increases, the danger that an employer will fa to insure or to qualify for self-insurance also increases. The legi lature also finds that there has been a failure on the part of t state to

(1) adequately enforce AS 23.30.075(a), which requires employer to either obtain workers' compensation insurance or to pr vide proof of the ability to self-insure; and

(2) impose the punishment authorized under AS 23.30.075(against those employees who do fail to obtain workers' compensati insurance or to qualify as a self-insurer."

Reletter following subsections accordingly.

4/15/88

#8 OK

AMENDMENT

ADOPTED

Offered in the HOUSE By Sund

TO: HCS CSSB 322(L&C)

Page 3, lines 9 - 13:

Delete all material.

Renumber following bill sections accordingly.

Page 32, line 29:

Delete "sec. 8"

Insert "sec. 7"

Page 33, line 1:

Delete "sec. 27"

Insert "sec. 26"

Page 33, line 13:

Delete "sec. 9"

Insert "sec. 8"

Page 33, line 18:

Delete "secs. 8, 25, 27, 28, 40, and 44"

Insert "secs. 7, 24, 26, 27, 39, and 43"

Page 33, line 21:

AMENDMENT #9 ND

Offered in the HOUSE By Sund

TO: HCS CSSB 322(L&C)

Page 28, lines 6 - 8:

Delete "The impairment rating determined under (a) of this secti shall be reduced by a permanent impairment that existed before the compe sable injury."

AMENDMENT #10

Offered in the HOUSE

By Sund

TO: HCS CSSB 322(L&C)

Page 29, line 13:

Delete "voluntarily"

5-1514
Ford

AMENDMENT #11

Offered in the HOUSE

By Sund

TO: HCS CSSB 322(L&C)

OK

Page 7, line 28:

Delete "60"

Insert "75"

ADOPTED AS #3

4/16/88

AMENDMENT #12

Offered in the HOUSE

TO: HCS CSSB 322(L&C)

Sec 33

By Sund

Page 26, lines 2 - 10:

Delete all material.

Renumber the remaining bill sections accordingly.

Page 26, line 15:

Delete "$240,000"

Insert "$135,000"

Page 26, line 18, following "considerations."

Delete all material through page 27, line 24.

Page 28, lines 12 - 21:

Delete all material.

Renumber the remaining bill sections accordingly.

Page 33, line 18:

Delete "40, and 44"

Insert "38, and 42"

Page 33, line 21:

Delete "40"

Insert "38"

Page 33, line 22:

Delete "40"

Insert "38"

Page 33, line 23:

Delete "40 and 47"

Insert "38 and 45"

Delete "takes"

Insert "take"

Page 33, line 25:

Delete "39, and 41 - 46"

Insert "37, and 39 - 44"

5-1514L
Ford

#13 A

AMENDMENT

Offered in the HOUSE

Sec 10

By Sund

TO: HCS CSSB 322(L&C)

Page 18, lines 1 - 5:

Delete "A physician selected by the board under this subsection sha be qualified in the same specialty as the treating physician selected the employee, unless the board or the board's panel agrees unanimously or case by case basis to approve a different selection."

5-1514L
Ford

#13 B

A M E N D M E N T

Offered in the HOUSE

By Sund

TO: HCS CSSB 322(L&C)

Page 18, line 4:

Delete "panel"

Insert "designee"

Delete "unanimously on a case by case basis"

4/15/88

5-1514Lm
Ford

AMENDMENT #14

Offered in the HOUSE By Sund

TO: HCS CSSB 322(L&C)

Page 33, line 7: SEC 44

Delete "REDUCTION"

Insert "FREEZE"

Page 33, lines 8 - 11:

Delete "shall provide at least a six percent reduction in the premium rate charged within the state for workers' compensation insurance, for the period beginning July 1, 1988, and ending January 1, 1990"

Insert "may not increase the premium rate charged within the state for workers' compensation insurance during the period beginning April 18, 1988, and ending January 1, 1991"

Page 33, after line 22:

Insert a new bill section to read:

"* Sec. 48. Section 44 of this Act is retroactive to April 18, 1988."

Renumber the following bill sections accordingly.

Page 33, line 23, after "40":

Delete "and 47"

Insert ", 44, 47, and 48"

Delete "takes"

Insert "take"

Page 33, line 25:

Delete "and 41 - 46"

Insert "41 - 43, 45, and 46"

#15

A M E N D M E N T

Offered in the HOUSE By Sur

TO: HCS CSSB 322(L&C)

Page 2, after line 6:

Insert a new bill section to read:

"* Sec. 2. AS 21.39.155 is amended by adding a new subsection to read

(c) An insurer may not impose a surcharge for assigned risk pc insurance unless the insured has received an experience rating."

Renumber remaining bill sections accordingly.

Page 32, line 29:

Delete "sec. 8"

Insert "sec. 9"

Page 33, line 1:

Delete "sec. 27"

Insert "sec. 28"

Page 33, line 13:

Delete "sec. 9"

Insert "sec. 10"

Page 33, line 18:

Delete "secs. 8, 25, 27, 28, 40, and 44"

Insert "secs. 9, 26, 28, 29, 41, and 45"

Page 33, line 21:

Delete "Section 40"

Insert "Section 41"

Page 33, line 22:

Delete "sec. 40"

Insert "sec. 41"

Page 33, line 23:

Delete "Sections 40 and 47"

Insert "Sections 41 and 48"

Page 33, line 25:

Delete "Sections 1 - 39, and 41 - 46"

Insert "Sections 1 - 40, and 42 - 47"

AMENDMENT #16

Offered in the HOUSE By Sund

TO: HCS CSSB 322(L&C)

Page 31, after line 9:

Insert a new bill section to read:

"* Sec. 39. AS 23.30.260 is amended to read:

Sec. 23.30.260. PENALTY FOR RECEIVING UNAPPROVED FEES AND SOLICITING. A person is guilty of a misdemeanor, and upon conviction is punishable for each offense by a fine of not more than $1,000, or by imprisonment for not more than one year, or by both, if the person

(1) receives a fee, other consideration, or a gratuity on account of services rendered <u>to an employer, employee, insurer, or insurance adjuster regarding</u> [IN RESPECT TO] a claim, unless the consideration or gratuity is approved by the board<u>, a designee of the board,</u> or the court; or

(2) makes it a business to solicit employment for a lawyer or for oneself in respect to a claim or award for compensation."

Page 33, line 18:

Delete "40, and 44"

Insert "41, and 45"

Page 33, line 21:

Delete "Section 40"

Insert "Section 41"

Page 33, line 22:

Delete "sec. 40"

Insert "sec. 41"

Page 33, line 23:

Delete "Sections 40 and 47"

Insert "Sections 41 and 48"

Page 33, line 25:

Delete "39, and 41 - 46"

Insert "40, and 42 - 47"

TIM KELLY

TO BE ADDED TO
WCO's CS

1) INSURANCE CARRIERS SHALL IN ADVANCE NOTIFY ALL INSURED THAT THEY CAN MAKE BIANNUAL PAYMENT

2) P9 L16 INSERT "AT LEAST"

3) P15 L15 - INSERT AFTER TREATMENT — "THE ABILITY TO ENTER A RE-EMPLOYMENT SERVICES PLAN"

4) P28 L5 — DELETE "of"

Compliments of pip Printing
274-3584

TIM KELLY

GET GOTTSTEIN'S ANSWERS

1) ANY EVIDENCE ✓

2) OK BIANNUAL P/MTS – JUNE 1, AUG OK

3) ~~%~~ WHOLE MAN SCHEDULE ✓

4) P 9 L 12 – IF EMPLOYER OK BELIEVES ... ?

5) P10 PARA (9) MOVED TO (c) – IS THIS OK ??

6) P 20 L 17 [STATE] INSERT LOCALITY AREA ?

Compliments of pip Printing
274-3584

Senate Labor and Commerce Committee

Senator Tim Kelly, Chairman

RICK STOLTZE

CLARIFY THIS SECTION

P5 L28

P6 L1-2

DOES THIS COVER ALL JOBS IN PAST 10 YRS OR JUST JOBS ~~HAS~~ SINCE THE ~~THE~~ ~~INJ~~ INJURY

INTENT WAS TO COVER EVERYTHING ~~&~~ TO BE SURE THAT A PERSON HAD ENUF TO COMPETE

NOT JUST JOBS SINCE INJURY