SB 322

File 8 - Constitutionality

ESTABLISHED 1915

J. B. GOTTSTEIN & CO., INC.

Wholesale Grocers

ANCHORAGE, ALASKA 99520

TELECOPY TRANSMITTAL SHEET

DATE: 2/17/88

TIME: TIME STARTED:

PLEASE DELIVER TO: John Rinaldi - Sen Kelly's Ofc

To: Senator Tim Kelly
Chairman Senate Labor & Commerce Comm.

From: Labor Management Task Force [illegible]

Subject: Revisions to SB for Senate Bill No. [illegible]

Date: 02/17/88

The Task Force has met to review [illegible]
you. We want to express our [illegible]
encompassed in most part [illegible]
toward major problems [illegible]
has taken on everybody's [illegible]
within an acceptable [illegible]

With that in mind we have [illegible]
to modify in order to [illegible]
Those [illegible] to the [illegible]
are presenting for your [illegible]

Recommended Changes

1. The [illegible] on the first page [illegible]
the whole agreement [illegible]
Fairness to be [illegible]
that [illegible]
conditions. [illegible]
"unreasonable" [illegible]
enable. We feel we [illegible]
allow the [illegible]
would change [illegible]
such specific [illegible]
the consultation work by the Board.

2. As a necessary [illegible]
deletion from [illegible]
acutely likely [illegible]
operations. We feel [illegible]

3. There is a general [illegible]
subdivisions and [illegible]
legality of regulations. [illegible]
mandatory work order [illegible]
be somewhat [illegible]
effects [illegible]
expectations [illegible]
protection on this matter [illegible]
uncertainty levels for [illegible]

L23 to read "court. Such regulations shall apply prospectively and retrospectively."

4. Some have legitimately urged caution in the selection of the reemployment benefits administrator. We would recommend adding to the end of P4 L7 as it reads "administrator [illegible] with a minimum of [illegible] years rehabilitation experience, and [illegible]."

5. One of the things we attempted to accomplish [illegible] the information available as to who the [illegible] providers are, and in what areas. This [illegible] stress quality care and to balance the [illegible] has [illegible] eligibility determinations. [illegible] been deleted. We would therefore [illegible] "section for the previous [illegible] year [illegible] general section and section [illegible] specialist used [illegible] this section [illegible] statistical [illegible] of all [illegible]

6. [illegible]

7. [illegible] change to [illegible]

8. As [illegible] attendance.

[illegible]

[illegible]

11. In order to [illegible] Legislature [illegible] event shall [illegible] and [illegible] Session of [illegible]

[illegible] specifically [illegible] the board."

13. In order for clarification and to avoid [illegible] that [illegible] lines [illegible] 5, 7, and 9 [illegible] the [illegible] of sentences on those lines [illegible] the words [illegible]

"during the preceding year".

14. The language you have on 930 517 is still regarded as very open to challenge by the courts. John Lewis has provided us with language most feel will survive challenge. Recalling that we need to be available for each locality in the U.S. [illegible] therefore respectfully suggest [illegible] living of the area in which the recipient resides [illegible] living in the state," and to change [illegible] accordance with the criteria set forth by the [illegible] Alpac, the board shall provide by regulation [illegible] and comparison of living costs at [illegible] recipients reside and for other [illegible]

15. It was not our intent that [illegible] partial disability [illegible] This would in effect be [illegible] possible. We have [illegible] total disability [illegible] her own work prior to retirement [illegible] personal [illegible] The percentage [illegible] would determine [illegible]

16. A valid estimate of [illegible] partial disability [illegible] difficult. Both actuarial [illegible] [illegible] to [illegible] [illegible] [illegible]

"Degree of Actual Impairment"	Adjustment Factor
0-5%	0.000
6%	0.050
7%	0.100
8%	0.150
9%	0.200
10%	0.300
11%	0.330
12%	0.350
13%	0.390
14%	[illegible]
15%	[illegible]
16%	[illegible]
17%	[illegible]
18%	0.585
19%	0.630
20%	0.675
21%	0.680
22%	0.688
23%	0.696
24%	0.704
25%	0.713
26%	0.740
27%	0.765
28%	0.790
29%	0.815

30%	0.840
31%	0.880
32%	0.910
33%	0.940
34%	0.970
35-100%	1.000*

VECO INTERNATIONAL, INC.
5151 Fairbanks Avenue
Anchorage, Alaska 99502

February 16, 1988

Honorable Tim Kelly, Senator
Chairman Senate Labor and Commerce Committee
Alaska State Senate
Pouch Y
Juneau, Alaska 99811

Dear Senator Kelly,

This firm has been watching with great interest the activities of the Legislature, the Governor and the Governor's Oversight Committee and the several employer and employee interest groups that have been actively involved in either drafting or commenting upon the legislation to modify the Workers' Compensation Act, Senate Bill 322 and House Bill 352.

Veco is a large employer and, because of the nature of its work, is one of the largest payors of workers' compensation benefits in the state. We have watched with alarm the cost of our workers' compensation premium and the cost of our claims rise steadily and significantly, despite a continuing decline in the number of injuries sustained by our workforce. Accordingly, although we have remained relatively uninvolved in the process leading to the proposal of the subject legislation, Veco is and will remain vitally interested in the outcome.

Although we have taken a less visable role in the drafting of proposals to your committee, we have been carefully monitoring the legislative hearings, the work of the Oversight Committee and the work of WCCA. We have also been engaged in independent review of the bill in order to determine the impact the proposals are likely to have on our specific claims.

As a result, and because you are now about to begin mark-up of the bill, we wish you to consider our very serious concerns.

First, it is the position of our company that, as a general propcsition, the bill provides a framework for meaningful improvement in the way the compensation benefits are delivered. We do like many aspects of the bill. We do find, however, that some of the most important provisions have been drafted in such a way as to create more ambiguity, and thus foster more litigation, than is warranted by the expected savings from a change in concept or definition of benefit.

Secondly, we are alarmed to learn from work done by two actuarial firms, the rating bureau used by the insurance industry and an independent actuarial firm hired by the State, that the bill will not only not save any significant cost, but could end up costing employers more. Such a finding makes the bill totally unacceptable, even if there are concepts that are desireable.

Our inquiries lead us to believe that the current system has been subjected to substantial increase in cost for three principle reasons:

1. Unwarranted utilization of the rehabilitation benefits driving up both rehabilitation costs and extending the times for payment of lost time benefits;

2. ambiguities in the current law which give rise to litigation, particularly in such areas as calculation of average wages;

3. Increases in permanent partial disability awards, particularly for unscheduled injuries (backs and necks).

The bill you have before you makes a good faith attempt to address these issues and in many ways does a good job.

We believe there are three principle areas where the bill is deficient and which have to be changed if the bill is to be adopted.

1. The langua in the intent section is drafted as to not cure the blem which the intent language was written to addr

Our view is t the language has to more clearly specify that th ourts should strictly construe the interpretations o the law such that the benefits are not increased except by specific act of the legislature. On the other hand, factual questions ought to be decided based on the weight of the evidence, but, if there is reasonable disagreement on the weight of the evidence to favor the employee.

We have enclosed alternative proposed language for the intent section.

2. It is incomprehensible that the legislature would even consider this bill unless changes are made which, according to responsible actuarial indications will save some money for employers. We have targeted an overall hard dollar savings of 15% as our goal for any meaningful legislation.

It is our understanding that the firm of Milliman and Robertson, the firm hired by the State and reporting to the Governor's Oversight Committee, is currently working on a proposed revision to the permanent partial impairment section of the bill, the section that revises 23.30.190, such that an overall savings of 15% could be realized. We urge you to include their recommendations in your bill when they become available. We understand that their work will be transmitted to Alaska in the next day or so.

3. The rehabilitation provisions, while being the area of most concern from both a cost and administrative viewpoint, is also the area where we believe inartful drafting leaves the way open to unnecessary litigation.

We have included with this letter, a proposed alternative draft of 23.30.041.

Its salient differences from the current draft are as follows:

a. Our proposal clarifies and limits the authority of the rehabilitation administrator. We do not believe it is necessary or appropriate that an essentially independent structure for rehabilitation be created in the division of workers' compensation. The rehabilitation aspects of a claim should be handled to the greatest extent possible in the context of the existing administrative adjudicatory structure, yet permitting use of specialists in the rehabilitation disciplines.

b. The procedure for obtaining initial eligibility determinations is greatly simplified. Our review indicates that the basic eligibility test in the proposed bill is a good one, but the procedure for determining the eligibility is unncesssarily complex.

c. It is vital that the formal and full evaluation process allow for the rehabilitation specialist to find that a plan may not be appropriate. Our draft includes a procedure for finding that no plan is warranted, even for those found preliminarily eligible, if the plan would not accomplish anything for the employee.

d. Another principle change deals with the process for resolving disputes over the rehabilitation plan. We are deeply concerned that the bill includes a provision giving the rehabilitation administrator absolute and non-reviewable authority to make decisions. The hearing officers who decide far more consequential issues do not have such authority.

4.There is in the bill a much improved control over the medical delivery aspects of the workers' compensation system. We believe, however, that the independent medical examiner called for in the newly added 23.30.095(k) must be a medical doctor. We support the proposition that alternative health care providers should be allowed and paid for by the system to the extent they are effacacious, but the IME is called upon to make judgements that we believe ought not to be made by any of the several health care provider professionals that come under the act's definition of "physician". This one section should limit IME participation to "Doctor of Medicine".

Senator Kelly, there are several parts of the bill which we do not comment on because they are acceptable to us. In fact some are very important and if they were to be taken out would cause us to rethink our posture on the bill; the limit on stress claims, the two year limit on temporary benefits and the limits on medical costs and services are all important.

There are several changes favoring employees in the bill which were negotiated by the Ad Hoc Task Force and we are prepared to accept these changes if the overall cost of the system is brought under control.

Thank you for your consideration of our views.

Yours cordially,

John Kerrigan
Vice-President

PROPOSED CHANGES TO INTENT LANGUAGE OF
HB 352/SB322

Section 1 (b)

It is the specific intent of the legislature that the definition of rights and obligations under this act be strictly construed in accordance with the clear and unambigious language of this act. If there is any ambiguity, it is the intent of the legislature that the act be interpreted so that there shall not be any change, extension or broadening of rights of the employees or obligations of the employers except by act of the legislature.

It is further the intent of the legislature that the system, including the process of administrative hearings for resolving factual disputes, be fair and afford due process, but expidiciously settle factual differences. Accordingly, unless specifically provided otherwise in the act, factual disputes that cannot be resolved by the weight of the evidence, should be resolved by according favor to the position of the injured worker.

PROPOSED CHANGES TO 23.30.041

23.30.041 (a) The department shall select and employ a rehabilitation administrator, who shall be a part of the Division of Workers' Compensation and who shall have such additional staff as required to carry out the purposes of this section. The rehabilitation administrator is in the partially exempt service under AS 39.25.120.

(b)The rehabilitation administrator shall implement the provisions of this section, and study the issue of rehabilitation, both physical and vocational, on a continuing basis.

(c) If an employee suffers a compensable injury that may permanently preclude an employee's return to the employee's job at the time of injury, the employee or employer may request the treating doctor of medicine or independent medical examiner selected pursuant to AS 23.30.xxx to determine what the physical capacities of the employee will be when the employee reaches medical stability. The only capacities which may be determined pursuant to this paragraph are those required to make the determinations under paragraph (d).

(d) An employee shall be eligible for a full evaluation pursuant to paragraph (f) of this section if the capacities of the employee at medical stability determined pursuant to paragraph (c) are found to be less than the physical demands as described in the United States Depadrtment of Labor's "Selected Characterisitics of Occupations defined in the Dictionary of Occupational Titles" for:

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

(2) other occupations that exist in the labor market that the employee has held within 10 years before the injury; and

(3) occupations that the employee has held following the injury for a period long enough to acquire the vocational preparation required for those occupations as specified in the "Selected Characteristics of Occupations defined in the Dictionary of Occupational Titles".

(e) An employee is not eligible for an evaluation pursuant to paragraph (f) if:

(1) the employer offers, or obtains for, employee remunerative employment the physical demands of which are not more than the physical capacities of the employee determined to exist at medical stability and the employment is in an occupation that generally exisits in the labor market; or

(2) the employee has received rehabilitation benefits in connection with a prior industrial injury under this or any similar section of a Workers' Compensation Act, but, following the receipt of the benefits, was employed at the same or similar occupation as the occupation at the time of the prior injury.

(3) the employee has been paid any or all of his permanent impairment award pursuant to AS 23.30.190.

(f) When an employee is found eligible for and desires to have a full evaluation for rehabilitation the employee shall so notify the employer and the employee and the employer jointly shall select a rehabilitation specialist who shall provide a full re-employment evaluation, and, if appropriate, a complete re-employment service plan. If the employee and the employer cannot agree on a rehabilitation specialist, but not before thirty days after the employee notifies employer of his desire to have an elibibility for an evaluation, either party may request the rehabilitation administrator to assign a rehabilitation specialist. The employer and the employee each have the right to reject the assignment by the rehabilitation administrator for cause and shall have the right to one pre-emptive rejection.

(g) The full evaluation and rehabilitation service plan must include the following:

(1) an inventory of the employee's technical skills, physical capacities, intellectual capacity, academic achievement, emotional condition and familial support.

(2) a determination of the occupation which the plan establishes as the goal.

(3) a finding that:

i. the occupation established as the goal for the plan is one for which adaquate employment opportunity exists the labor market; and

ii. the employee's technical skills, physical capacities, intellectual capacity, academic achievement, emotional condition and familial support at commencement of the plan are such that the employee can reasonably be expected to satisfactorily complete the plan and perform in the new occupation; and,

iii. the plan can be completed within the time an cost limitations imposed by this section.

(4) a detailed description and schedule of the plan.

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

(6) the date the plan will commence.

(7) the time that the employee will be medically stable as determined by the treating doctor of medicine or independent medical examiner.

(h) [(g) in the bill as currently drafted.]

(i) If the rehabilitation specialist finds that any one of the required findings in subsection (g) (3) is not true, then the employee shall not be entitled to a re-employment plan and the rehabilitation specialist shall provide a report to the employee and the employer stating that fact including the reasons and information upon which such finding is made.

(j) [same as (i) in current draft of the bill.]

(k) The following time limitations shall apply to the entitlements and the obligations of this section:

(1)The reemployment plan must be scheduled so that it can be completed and the occupational goal achieved within two years from date of plan approval.

(2)-(6) [same as (2)-(6) in current draft of bill except change "reemployment services administrator" to "rehabilitation administrator" so that consistent terms are used throughout.]

(7) If the report or plan of the rehabilitation specialist is not approved by either the employer or the employee, either may petition the rehabilitation administrator for a modification of the report or plan in a manner set forth in the petition. If no petition is filed within ten days of submission of the report or plan to the employee and employer, the report or plan is deemed approved. If a petition is filed, the non filing party shall have ten days to file a response. The administrator shall conduct a pre-hearing conference with the parties to resolve differences. If the approval of both partis cannot be obtained at the pre-hearing conference, then the administrator shall prepare a report within ten days following the conference with a recommendation as to the report or plan that ought to be approved. The petition, response and report of the administrator shall be deemed the filing of a claim and notice of claim referred to in AS 23.30.110(a) and (b). The Board shall notice a hearing as provided in AS

23.30.110(c) and proceed pursuant to AS 23.30.110 to resolve the matter.

(l)-(m) [as (k)-(l) in the current bill.]

(m) In this section:

(1) [as (1) in current bill.]

(2) "labor market" means the geographic areas where the employee lived and where the employee worked at the time of injury, unless, subsequent to the date of injury, the employee permanently changed residence from Alaska to outside the state, in which case the labor market is also anywhere in the state of new residence.

(3) "physical capacities" and "physical demands" means the physical capacities and physical demands as those terms are used in the Department of Labor "Selected Characteristics of Occupations Defined in the Dictionary of Occupational Titles".

(4) [included with (3).]

(5)-(7) [as (5)-(7) in the current bill.]

(8) "occupation" means the generic classification of work as described in the Dictionary of Occupational Titles.

Offered: 5/13/87
Referred: Judiciary & Finance

wo0157hX

Original sponsor: Rules/Governor

BY THE LABOR AND COMMERCE COMMITTEE

IN THE HOUSE

SENATE CS FOR CS FOR HOUSE BILL NO. 177 (L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FIFTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to the second injury fund; and providing for an effective date."

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

* Section 1. AS 23.30.040(h) is amended to read:

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

* Sec. 2. This Act takes effect July 1, 1987.

WE ARE ADDING ALL OF THIS VERSION TO THE WORKERS' COMP BILL

35 30

Degree of Actual Impairment	Adjustment Factor	Degree of Actual Impairment	Adjustment Factor
0%	0.000	26%	0.620
1	0.000	27	0.640
2	0.000	28	0.660
3	0.000	29	0.680
4	0.000	30	0.700
5	0.000	31	0.720
6	0.060	32	0.740
7	0.120	33	0.760
8	0.180	34	0.780
9	0.240	35	0.800
10	0.300	36	0.820
11	0.320	37	0.840
12	0.340	38	0.860
13	0.360	39	0.880
14	0.380	40	0.900
15	0.400	41	0.910
16	0.420	42	0.920
17	0.440	43	0.930
18	0.460	44	0.940
19	0.480	45	0.950
20	0.500	46	0.960
21	0.520	47	0.970
22	0.540	48	0.980
23	0.560	49	0.990
24	0.580	50% or greater	1.000
25	0.600		

IMPAIRMENT	50%	35%
45	102,800	109,000
40	86,400	96,000
35	58,200	94,000
32	56,800	69,800
25	57,600	68,550
20	24,000	32,000
15	14,400	12,600
12	11,000	11,850
10	SAME →	

OFFICE OF THE COMMISSIONER
Division of Insurance
XEROX TELECOPIER 295
3601 C STREET, SUITE 722
ANCHORAGE, ALASKA 99503
(907) 562-3626
Telecopy #(907)562-0048

TELECOPIER TRANSMITTAL SHEET

TO: JOHN RINGSTAD
Sen. Kelley's office

FROM: PAUL FULLER
Division of Insurance

NUMBER OF PAGES, INCLUDING TRANSMITTAL SHEET: 4

DATE: 2/19/88

TIME: 3:25 p.m.

Sending to: 586-9548

Sender: Spencer

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

#23

MILLIMAN & ROBERTSON, INC.
CONSULTING ACTUARIES

[illegible]

[illegible]

February 19, 1996

Mr. Paul Roller
ALASKA DIVISION OF INSURANCE
3601 "C" Street, Suite 722
Anchorage, Alaska 99503

RE: MODIFIED PERMANENT PARTIAL DISABILITY AWARD SCHEDULE

Dear Paul:

M&R was requested by the Division of Insurance to test alternatives to the permanent partial disability award schedule contained in draft bills HB352 and SB322. Attached is one such alternative with the following characteristics:

1. We estimate that the attached schedule will develop approximately the same total dollars of permanent partial awards as the current Alaska workers' compensation law.

2. Combined with all other aspects of HB352 and SB322, we estimate that incorporation of the attached alternative schedule will result in an overall cost reduction of approximately 6%.

3. The proposed schedule is designed to smooth the award "adjustment factors" such that the factor becomes 1.000 at a 50% impairment rating. The awards begin to exceed those available under the current law at a 33% impairment rating.

4. The M&R cost estimate associated with this table assumes that the "whole man" value is maintained at $250,000.

M&R has also evaluated an alternative schedule developed by David Gottstein. This table is similar to the attached; however, the "adjustment factor" reaches 1.000 at a 36% impairment rating. We estimate that this alternative would result in a 14% increase in permanent partial awards. Combined with all other aspects of HB352 and SB322, we estimate that this alternative schedule would result in an overall cost reduction of approximately 2%.

We emphasize that the cost estimates presented herein reflect only M&R's evaluation. We do not know to what extent the NCCI evaluation may differ from our own.

Mr. Paul Roller -2- February 19, 1988

Please contact me if you have any questions.

Best regards,

Michael A. McMurray

MAM:cap

Exhibit 1

Degree of Actual Impairment	Adjustment Factor	Degree of Actual Impairment	Adjustment Factor
0%	0.000	26%	0.520
1	0.000	27	0.540
2	0.000	28	0.560
3	0.000	29	0.580
4	0.000	30	0.700
5	0.000	31	0.720
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8	0.180	34	0.780
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15	0.400	41	0.920
16	0.420	42	0.940
17	0.440	43	0.960
18	0.460	44	0.980
19	0.480	45	0.990
20	0.500	46	0.995
21	0.520	47	0.997
22	0.540	48	0.998
23	0.560	49	0.999
24	0.580	50% or greater	1.000
25	0.600		

OFFICE OF THE COMMISSIONER
Division of Insurance
XEROX TELECOPIER 295
3601 C STREET, SUITE 722
ANCHORAGE, ALASKA 99503
(907) 562-3626
Telecopy #(907)562-0048

TELECOPIER TRANSMITTAL SHEET

TO: JOHN RINGSTAD - 465-3822
Sen. Kelley's office

FROM: PAUL ROLLER
Division of Insurance

NUMBER OF PAGES, INCLUDING TRANSMITTAL SHEET: 2

DATE: 2/18/88

TIME: 3:45 p.m.

Sending to: 586-9548

Sender: Spencer

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#22

John,
I decided to go ahead &
send. Pls call when you
have it.
Paul

Degree of Actual Impairment	Adjustment Factor
0%	0.000
1	0.000
2	0.000
3	0.000
4	0.000
5	0.000
6	0.060
7	0.120
8	0.180
9	0.240
10	0.300
11	0.320
12	0.340
13	0.360
14	0.380
15	0.400
16	0.420
17	0.440
18	0.460
19	0.480
20	0.500
21	0.520
22	0.540
23	0.560
24	0.580
25	0.600

Degree of Actual Impairment	Adjustment Factor
26%	0.620
27	0.640
28	0.660
29	0.680
30	0.700
31	0.720
32	0.740
33	0.760
34	0.780
35	0.800
36	0.820
37	0.840
38	0.860
39	0.880
40	0.900
41	0.910
42	0.920
43	0.930
44	0.940
45	0.950
46	0.960
47	0.970
48	0.980
49	0.990
50% or greater	1.000

LANGDON CLINIC

Bruce N. Smith, Ph.D.
Senior Clinical Psychologist
561-1361

4001 Dale Street Suite 101 Anchorage, Alaska 99508

ALPA ALASKA PSYCHOLOGICAL ASSOCIATION

p.26 l. 14 and c) ~~that the work related stressor~~ resulted in a stress related disorder as diagnosed by a psychiatrist who is licensed as a physician in the state and certified, or eligible for certification, in psychiatry by the American Board of Psychiatry and neurology; or a psychologist or psychological associate licensed under AS 08.86.

P.O. BOX 4-1885 • ANCHORAGE, ALASKA 99509-1885

5-1514Bb
Ford

A M E N D M E N T

Offered in the SENATE By Kelly

TO: CSSB 322(L&C)

Page 3, after line 2:

Insert a new bill section to read:

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

(8) The premium paid for the insurance ~~may~~ shall be paid biannually, if after notification requested by the insured."

Renumber remaining bill sections accordingly.

~~The~~

INSURERS SHALL NOTIFY ALL INSURED THAT

Page 27, line 28:

Delete "sec. 5"

Insert "sec. 6"

Page 27, line 29:

Delete "20"

Insert "21"

Page 28, line 5:

Delete "secs. 5, 18, 20 and 22 of"

Insert "secs. 6, 19, 21 and 23,"

THE PRECEDING DOCUMENT(S) MAY NOT FILM LEGIBLY BECAUSE OF POOR QUALITY OF THE ORIGINAL.

UNIT COMPANY
3101 OLD SEWARD HIGHWAY
ANCHORAGE, ALASKA 99515

TELEPHONE NUMBER 907-349-6555
FAX NUMBER 907-562-3584

FACSIMILE TRANSMISSION SHEET

TRANSMIT TO FAX # 586-9548

DATE 2-8-95

TOTAL NUMBER OF PAGES
(Including this sheet) 7

TIME (mtn)

TO

COMPANY Senate/House Labor & Commerce

ATTENTION John Blessing

FROM

UNIT COMPANY

CONTACT Dick Gutierrez

COMMENTS

I will send a hard copy of this material and a copy of our changes to 041 in a pouch through legislative affairs.

MANAGEMENT/LABOR AD HOC COMMITTEE

RESPONSES TO

MEMORANDUM FOR POINTS OF DISCUSSION
DATED FEBRUARY, 5, 1988

We have examined the concerns raised in the above referenced memorandum. For ease of comparison, our replies follow the same sequence as that used in the memorandum.

1. We are also concerned about the "any evidence" standard and have asked that John Lewis provide some direction as to the standard used in other jurisdictions. The concern of both management and labor is with the overly broad interpretation the courts have applied to the "substantial evidence" standard currently in effect. We will hopefully have a recommendation by February 12.

2. Our language was crafted and reviewed by attorneys knowledgeable in the constraints imposed by the courts. It is their opinion that the language will withstand a constitutional challenge.

3. For the system to operate as designed, it must be fair to both the injured worker and the employer. Therefore, providers to the system must provide services free of bias for or against either party. It is our desire that the regulations should allow for a bias free system and providers that exhibit bias will not be allowed to provide IME's or rehabilitation services. Health care providers could still continue to operate in the system if chosen by the employee or employer even if they were not on the list of IME providers.

4. We think that the standard for knowingly making a false statement is sufficiently strict that it will be difficult to abuse by an employer. If an employee withholds information from an employer for any reason, he could be endangering himself or others since he does not know what duties might be called for on a given job. We think that this section is important to the bill.

5. We have recommended to the board that the lists be maintained on a geographical basis to remove a certain amount of the unnecessary expenditures. We are concerned however that if we deal with the concerns expressed, we are losing sight of the needs of the injured worker, and instead place the travel costs of the rehabilitation specialist ahead of the needs of the worker.

6. Under the prestat system, it is estimated that approximately 90% of those that have been rehabilitated have gone back to their prior occupation. It is our belief that when this occurs, it is not necessary to rehabilitate someone for yet another job should they receive a subsequent injury. They have already received the training necessary to compete in a new occupation and we would encourage them to enter that labor market.

The concerns about the minimum threshold of 60% of pre-injury wages fail to recognize that this is the minimum threshold and it would represent an entry level wage. As skills improve, it would be anticipated that salary levels would increase.

7. Dispute resolution language was omitted by legislative drafting. We have included a rewrite of Section 041 which deals with that and other problems.

8. We have modified the time for the eligibility determination from 50 days to 90 days. The time frames are now consistent with the current statute.

9. We have attempted to remove the rehabilitation section from the litigation process. To accomplish this we have put the injured worker in control of his plan and we have given the administrator the authority to quickly resolve disputes. Since the administrator reports to the board, the board can review his performance on an ongoing basis and accordingly modify the general approach to the job when it does not conform to the guidelines of the board. We believe that this approach is in the best interests of the worker and the system.

10. Employment in this economy is a difficult standard to achieve. Employability is better in that it defines the time when the person is available and prepared to work, and it additionally puts some of the responsibility for the acquisition of a job on the worker.

11. The opposition to the labor market definition is based on misunderstandings. We have established a priority which starts with the area of residence, then the area of last employment, then the State of Alaska, and finally other states. We do not understand the concerns.

12. We have modified this section to include Certified Rehabilitation Counselors. It is the desire of the committee that these specialists be professionals in the area of vocational rehabilitation. That is not the case currently and as a result, both the employee and the employer suffer.

13. See number 1 above.

14. It is the desire of the committee to see that the employee is provided [illegible] in a timely, [illegible] manner. Abuses can early [illegible] the system and we believe that our

language will remedy many of the problems. We think that the suggestion that we allow no more than one change within each specialty does not eliminate the problem. The treating physician can still refer the patient to specialists as necessary.

The concerns regarding the definition of treating physician are inappropriate as the concept is part of the current law and does not cause a problem.

15. See 14 above and 16 below.

16. This section of the bill requires that a treatment plan be submitted if continuing and multiple treatments are prescribed. It seems reasonable that both the employee and employer should know what the physician is intending to do and what he anticipates will happen. The limits on the number of visits was based on the recommendations of experts, but we provided a exception when needed. All the physician would need to do is document the need for additional services. Again we were attempting to deal with abuses to the system.

17. The current statute has no limits at all, therefore to have restricted the frequency of the employer IME. We have modified our recommendation to every 60 days thereafter. It should be acknowledged that the employer is restrained by the costs of such IME's which must be borne by the employer. It should also be remembered that in the case of a dispute, the board's IME will determine the outcome.

18. While no one on the committee was aware of any problems in this area, we have added language which should deal with the concerns expressed. We suggest that when medically appropriate, the IME physician should use already existing diagnostic data to make his determination.

19. Our proposal suggests the adoption of a usual and customary fee schedule. Such schedules are normal in health care plans and under the Social Security System. It does not envision a separate schedule for an employee's physician and an employer's physician.

20. This language merely gives the board the authority to administer the act by hiring experts, be they Alaskans or not.

21. We were concerned about the supreme court giving the presumption to the treating physician in cases where evidence clearly suggests that they were in error. Since the board selected IME will be independent, we believe that giving his opinions greater weight is appropriate.

22. We have a few grammatical recommendations in the language. We do not believe that [illegible] is an appropriate standard and that inclusion will [illegible]

23. We do not understand the constitutionality question on this issue. We believe that this standard is legal.

24. See #1.

25. See #2.

26. See #11.

27. It is our belief that if a person has skills which can be used in the job market, they are not a permanent total disability.

28. We have added language which will clarify our intent. We are suggesting that after two years, a person be tested to determine their degree of impairment and given a lump sum settlement.

29. It is our desire to pay more money for severe injuries and less money for less severe injuries. We have attempted to do so without increasing the overall costs of this section.

30. Medical stability in this section is determined by the rating and the degree of permanent impairment. Medical benefits are not limited and will continue for the duration of the injury.

31. This section currently exists as section 288 of the Statute. We merely moved it to section 880 since it now only applies to that section.

32. We did not receive Attachment 3, so we are unclear as to their concerns.

33. Vested benefits were used to make this section manageable and to recognize that a worker have an legal right to "earned" benefits. Vesting has nothing to do with duties or nonduties.

34. Workers' compensation was created to deal with work related injuries and should not be seen as the vehicle to address other social goals. The items outlined concerned issues that are adequately addressed in other State and Federal statutes.

35. See #30 above.

OTHER ITEMS

1. Our agenda for 1985 includes a review of the Division of Workers Compensation. We are particularly interested in the timely resolution of workers' compensation claim and will examine both the delays caused by the system and those caused by the employers or employees attorneys.

2. We believe that our proposal will include system modifications which will result in cost savings of at least 10%. We hope the insurance community will concur and ask for a rate reduction effective July 1.

3. Issues regarding the insurance industry were not addressed in this bill because of the complexity of the problem. We will be addressing these issues in 1985.

4. This problem is particularly difficult since the courts have held that the contractors insurance carrier is liable when the sole-proprietor has a work related injury. The insurance company takes the position that they need to collect premiums to cover the risk and accordingly charge the contractor.

5. Final billing after audit is necessary to make sure that adequate premiums are collected for the actual wage exposure. Quotes given at the initiation of the policy are based on the employers estimates of wages by classification, and if accurate will result in no additional premiums. Unless insurance companies are given the ability to audit payroll records, everyone will underestimate payroll and the system will become even more chaotic.

6. We will examine this when we examine the insurance company, but an 'all states rider" does not eliminate the state rates. They will be charged during the audit on the policy. We believe that the problem occurs from misrepresenting and miscalculating payroll and the insurance carrier not rebating the problem at audit.

7. We would have no problem with such an amendment to the unemployment law.

SUGGESTED CHANGES TO LEGISLATION

Page 2, Line 4 The department shall (may) adopt (identical)

Page 2, Line 7 , and shall (may)

Page 13, Line 8 commencement of such

Page 13, Line 24 board When medically appropriate, the IME physician should use already existing diagnostic data to make his determination.

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Page 27, Line 6 [illegible] and 21 this

MANAGEMENT/LABOR AD HOC COMMITTEE

RESPONSES TO

MEMORANDUM FOR POINTS OF DISCUSSION
DATED FEBRUARY, 5, 1988

We have examined the concerns raised in the above referenced memorandum. For ease of comparison, our replies follow the same sequence as that used in the memorandum.

1. We are also concerned about the "any evidence" standard and have asked that John Lewis provide some direction as to the standard used in other jurisdictions. The concern of both management and labor is with the overly broad interpretation the courts have applied to the "substantial evidence" standard currently in effect. We will hopefully have a recommendation by February 12

2. Our language was drafted and reviewed by attorneys knowledgeable in the constraints imposed by the courts. It is their opinion that the language will withstand a constitutional challenge

3. For the system to operate as designed, it must be fair to both the injured worker and the employer. Therefore, providers to the system must provide services free of bias for or against either party. It is our desire that the regulations should allow for a bias free system and providers that exhibit bias will not be allowed to provide IME's or rehabilitation services. Health care providers could still continue to operate in the system if chosen by the employee or employer even if they were not on the list of IME providers

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language will remedy many of the problems We think that the suggestion that we allow no more than one change within each specialty does not eliminate the problem. The treating physician can still refer the patient to specialists as necessary.

The concerns regarding the definition of treating physician are inappropriate as the concept is part of the current law and does not cause a problem.

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23.30.041 MAKES IT REDUNDANT

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PROPOSED CHANGES

BY THE LABOR AND COMMERCE COMMITTEE

IN THE SENATE

SENATE BILL NO. 322

IN THE LEGISLATURE OF THE STATE OF ALASKA

FIFTEENTH LEGISLATURE - SECOND SESSION

A BILL

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

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

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

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

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

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

(2) reduce disincentives to return to work; and

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

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

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

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

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

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

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

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

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

(2) there was a causal connection between the false

representation and the injury to the employee.

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

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

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

2		125	150
1		150	175
0		175	

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

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

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

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

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

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

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

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

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

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

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

(D) the cost of reemployment services;

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

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

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

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

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

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

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

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

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

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

NEEDS DEFINING

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

(1) an occupational goal in the labor market;

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

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

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

(5) the date the plan will commence; and

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

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

(1) on the job training;

(2) vocational training;

(3) academic training;

(4) self-employment; or

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

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

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

(1) keep appointments;

(2) maintain average grades;

(3) attend designated programs;

(4) maintain contact with the rehabilitation specialist;

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

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

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

(j) Reemployment benefits are subject to the following time

limits:

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

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

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

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

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

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

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

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

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

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

(m) In this section

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

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

(A) area of residence;

(B) area of last employment;

(C) the state;

(D) other states;

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

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

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

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

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

average weekly wage.

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

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

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

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

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

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

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

the reasonable value of the medical or surgical treatment so obtained by the employee. A claim for a course of treatment requiring continuing and multiple treatments of a similar nature is not valid unless the treatments are carried out under a written treatment plan prescribed before the commencement of treatment, completed and signed by the attending physician, and mailed to the employer within one week of the beginning of treatment. The treatment plan must include objectives, modalities, and frequency of treatment. The initial treatment plan may not include more than 20 visits in the first 60 days. If more than 20 visits are required within the first 60 days, or more than four visits a month after the first 60 days, the physician shall document the need for services in excess of the guidelines in the written treatment plan.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

DELETE

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) area of residence;

(2) area of last employment; and

(3) the state.

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

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

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

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

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

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

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

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

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

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

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

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

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

DELETE OR AFTER MED. STABILITY

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

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

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

* Sec. 28. AS 23.30.220(a) is amended to read: GO BACK TO OLD WAY BASED ON HISTORICAL WAGES

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(17) "injury" means accidental injury or death arising out of and in the course of employment, and an occupational disease or infection which arises naturally out of the employment or which naturally or unavoidably results from an accidental injury<u>; "injury"</u> [,

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

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

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

* Sec. 34. AS 23.30.210 is repealed.

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

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

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

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

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

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

* Sec. 5. AS 23.30.041 is repealed and reenacted to read:

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

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

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

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

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

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

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

section for the previous fiscal year; the report must include a statistical summary of all rehabilitation cases, including

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

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

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

(D) the cost of reemployment preparation services;

(6) maintain a list of rehabilitation specialists meeting the qualifications established in this section;

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

(c) If an employee suffers a compensable injury that may permanently preclude an employee's return to the employee's occupation at the time of injury, the employee or employer may request an eligibility evaluation for reemployment benefits. The employee must request an eligibility evaluation within 90 days after the employee gives the employer a notice of injury unless the [reemployment services] administrator determines the employee has unusual and extenuating physical limitations that prevent the employee from making a timely request. The [reemployment services] administrator shall, on a rotating and geographic basis, select a rehabilitation specialist from the list maintained under (b)(6) of this section to perform the eligibility evaluation.

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(d) Within thirty days after the referral by the administrator, the rehabilitation specialist shall perform the eligibility evaluation and issue a report of findings. The [reemployment services] administrator may grant up to an additional 30 days for performance of the eligibility evaluation upon notification of unusual and extenuating circumstances and the rehabilitation specialist's request. Within 14 days after receipt of the report from the rehabilitation specialist, the [reemployment services] administrator will notify the parties of the employee's eligibility for reemployment preparation services. Within 10 days after the decision, either party may seek review of the decision by requesting a hearing under AS 23.30.110. The hearing shall be held within 30 days after it is requested. The board shall uphold the decision of the administrator except for abuse of discretion on the administrator's part.

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

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

(2) other jobs that exist in the labor market that the employee has held or received training for within 10 years before the injury or that the employee has held following the injury for a period long enough to obtain the skills to compete in the labor market, according to specific vocational preparation codes as described in the dictionary of occupational titles.

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

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

(2) the employee has been previously rehabilitated in a former workers' compensation claim and returned to work in the same or similar occupation, in terms of physical demands, as the employee held at the time of the prior injury; or

(3) at the time of medical stability no permanent impairment is identified or expected.

(g) Within 10 days after the employee receives the {reemployment services} administrator's notification of eligibility for services, the employee shall notify the employer in writing of his selection of a rehabilitation specialist who shall provide a complete reemployment services plan. If the employer disagrees with the employee's choice of rehabilitation specialist to develop the plan and the disagreement cannot be resolved, then the {reemployment services} administrator shall assign a rehabilitation specialist. The employer and employee each have one right of refusal of a rehabilitation specialist.

(h) Within 90 days after the rehabilitation specialist's selection in (g) of this section, a reemployment plan must be formulated and approved. The reemployment plan must contain at least the following:

(1) an occupational goal in the labor market;

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

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

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

(5) the date the plan will commence; and

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

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

(1) on the job training;

(2) vocational training;

(3) academic training;

(4) self-employment; or

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

(j) The employee, rehabilitation specialist, and the employer shall sign the reemployment services plan. If the employer and employee fail to agree on a reemployment plan, either party may submit a reemployment plan for approval to the [reemployment services] administrator; the [reemployment services] administrator shall approve or deny a plan within 14 days after the plan is submitted. Within 10 days after the administrator files the decision, either party may seek review of the decision by requesting a hearing under AS 23.30.110. The standards and time periods allowed for review are the same as those in (d) of this section.

(k) Benefits related to the reemployment plan may not extend beyond two years from the date of plan acceptance or approval, at which time benefits expire. If an employee reaches medical stability before completion of the plan, temporary total disability benefits

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

(l) The cost of the reemployment plan, not including the fees of the rehabilitation specialist or the benefits provided in (l) of this section, shall be the responsibility of the employer, but may not exceed $10,000.

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

(n) After the employee has elected to participate in reemployment benefits, noncooperation by the employee shall result in the termination of reemployment benefits on the date of noncooperation. Noncooperation means [but shall not be limited to,] failure to

(1) keep appointments;

(2) maintain at least average grades;

(3) attend designated programs;

(4) maintain contact with the rehabilitation specialist;

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

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

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

If the employer believes the employee has not cooperated, it may terminate reemployment services and wages under (1) of this section. However, upon the request of either party, the reemployment services administrator shall decide whether the employee cooperated. A hearing before the administrator shall be held within 30 days after it is requested. The administrator shall issue a decision within 14 days after the hearing. Within 10 days after the administrator files the decision, either party may seek review of the decision by requesting a hearing under AS 23.30.110. The standards and time periods allowed for review are the same as those in (d) of this section.

(o) In this section

(1) "employability" means possessing the ability but not necessarily the opportunity to engage in employment that is consistent with the employee's physical limitations resulting from the compensable injury.

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

(A) area of residence;

(B) area of last employment;

(C) the state;

(D) other states.

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

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

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

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

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

(c) The carrier or independent adjuster [EMPLOYER] shall notify the board and the employee on a form prescribed by the board that the payment of compensation has begun or has been increased, decreased, suspended, terminated, resumed, or changed in type. An initial report shall be filed with the board and sent to the employee within 28 days

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

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

(1) On or before March 1 of each year the carrier or independent adjuster shall file a verified annual report on a form prescribed by the board stating the total amount of all compensation by type, medical and related benefits, vocational rehabilitation expenses, legal fees and penalties paid on all claims during the preceding calendar year.

(2) If the annual report is timely and complete when received by the board and provides accurate information about each category of payments, the commissioner or his designee shall review the timeliness of the carrier or independent adjuster's reports filed during the

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preceding year as required by (c) of this section. If the carrier or independent adjuster timely filed at least 99% of the reports for the preceding year, the penalties assessed under (c) of this section shall be waive. If the carrier or independent adjuster timely filed at least 97%, of the reports for the preceding year, 75% of the penalties assessed under (c) of this section shall be waived. If the carrier or independent adjuster timely filed 95% of the reports for the preceding year, 50% of the penalties assessed under (c) of this section shall be waived. If the carrier or independent adjuster's reports for the preceding year were not timely filed at least 95% of the time, none of the penalties assessed under (c) of this section shall be waived. The penalties that are not waived shall be due and payable within 28 days after the Commissioner of Labor mails the notice of the penalties due.

(3) If the annual report is not filed by March 1 of each year, the carrier or independent adjuster shall pay a civil penalty of $100 for the first day plus $10 for each day thereafter.

(4) If the payment under (2) of this subsection is not paid timely, the carrier or independent adjuster shall pay a civil penalty of 20% of the penalties due plus interest at the rate prescribed by AS 45.45.010.

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

(n) If the employer does not have a carrier or independent adjuster, (c) and (m) of this section apply to the employer.

NOTE: ALL SUBSEQUENT SECTIONS SHOULD BE RENUMBERED.

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additional possible amendments to 322

1) all states rider
2) adjustment to permanent partial impairment schedule
3) mandatory rate reductions
4) level of evidence required

5-1514Bc
Ford

A M E N D M E N T

Offered in the SENATE

By Kelly

TO: CSSB 322(L&C)

Page 3, after line 2:

Insert a new bill section to read:

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

(c) An insurer extending coverage required under this chapter by including an all states endorsement or other similar endorsement with the insurance policy shall provide notice to the department under AS 23.30.085."

Renumber remaining bill sections accordingly.

Page 27, line 28:

Delete "sec. 5"

Insert "sec. 6"

Page 27, line 29:

Delete "20"

Insert "21"

Page 28, line 5:

Delete "secs. 5, 18, 20 and 22 of"

Insert "secs. 6, 19, 21 and 23,"

A M E N D M E N T

Offered in the SENATE By Kelly

TO: CSSB 322(L&C)

Page 28, after line 4:

Insert a new bill section to read:

"* Sec. 37. 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 28, line 5:

Delete "and 22 of"

After "22":

Insert "22, and 37,"

JOHN LEWIS

OUT OF STATE RECIPIENTS

IF COURT DETERMINES THAT REGS ARE BAD THE BOARD CAN PUT IN NEW ONES

CONSIDER RETROSPECTIVE NEW REGS

P1 L 24 — (1) — WHERE THE RECIPIENT LIVES [LOCALITIES]

DEBBIE 3 — (1) — IN THE STATE RATHER THAN OF THE ST

P 20 L 5 — IN THE STATE & OTHER AREAS IN WHICH RECIPIENTS RESIDE

THIS WILL BE CURRENTLY NOT FOR SURE

NCCI & MSR WORKING ON FIXING SCHEDULE

TO ELIMINATE GAPS & ~~O~~ NET

TO ROLLOVER TABS ON WEB

BUT CURRENTLY FOR COMPLETED OR EMPLOYEE

SAME TO 2ND DEFINITION

P 22 L 6 AFTER INJURY — IF PRESUMES COMPENSABLE FOR INJURY IT IS PRESUMED TO HAVE EXISTED

BOARD HAS AUTHORITY & DOES IT CURRENTLY

PPD GET 80% WEEKLY — NOT SETTLEMENT

NOT SUPPOSED TO GET BOTH — BUT DOOR IS OPEN TO DO IT

23.30.130 MODIFYING AN AWARD

WHEN PPD BECOME PTD — DEVELOP OFFSET PLAN TO BE APPROVED BY BOARD

NEED TO GO BACK TO DATE OF PERMANENCY & CALC IT

ON LUMP SUM — GIVE ONLY 10-15% THEN GIVE BALANCE PD @ WEEKLY TOTAL RATE

LEWIS - 305-885-3129. FAX #

P.1, L.20 ANY EVIDENCE

NO INTNS FOR NO APPEAL

U.S. SUPREME HAS INTERPRETED THIS - NOT MUCH DIFFERENT THAN SUBSTANTIAL

ARTHUR LARSON — CHANGES WROTE HIM FOR HELP — GURU OF W/C WORKERS COMP SINCE '65

1) PTD - SAID HE WOULDN'T GET INVOLVED

2) ANY EVIDENCE — A.L. SUPPORTS THIS WORDING TO GIVE MESSAGE TO COURT

— JACKIE HAS SET OF LARSON —

VOL. 3 SEC. 80.10

P 426.307 SUBSTANTIAL IS NOT LARGE THAN ANY

ANY DOESN'T DENY RIGHT OF APPEAL

PAUL ROLLER

REHAB BILLS S/B ON EXPENSE BASIS, NOT ON LUMP SUM UP FRONT

10% DECREASE & MORITORIUM IS GOAL
6% IN WHOLE MAN SCHEDULE

BILL ONLY ADDRESS 44% of COST
- ATTORNEY FEE
IME
PROFITS
BOARD
ETC

AREAS FOR NEXT YEAR

DON KOCH

- ALL STATES ENDORSEMENTS

POLICY NAMES THE STATE IT IS GOOD IN

INCLUDES ALL STATES ENDORSEMENT — NO CHARGE —

WHEN AK IS ADDED AS A PLACE OF WORK

RATES W/ S INCREASED

IF EMPLOYER DOESN'T NOTIFY INSURER, AUDIT

MIGHT FIND IT — OR CLAIM

" DON'T REMOVE ALL STATES ENDORSEMENT "

MAY LEAVE EMPLOYER W/ NOTHING

MIKE F IS DRAFTING AMENDMENT

REQUIRE INSURANCE CO. TO NOTIFY D. of LABOR

W/ REMOVAL OF ALL STATES ENDORSEMENT FOR AK

LABOR THEN CAN FLAG & FOLLOW