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TO : KEVIN DOUGHERTY & MARY PIERCE, CO-CHAIRS  
LABOR/MANAGEMENT AD HOC COMMITTEE

FROM : SHARI KOCHMAN, DIRECTOR *SK*  
WORKERS' COMPENSATION DIVISION *jk*

DATE : NOVEMBER 6, 1990

RE : SUGGESTIONS FOR AMENDMENTS TO THE ACT

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The following is a list of issues, in order of priority, that the department is asking the Ad Hoc Committee to address in any workers' compensation legislation in 1991. As you will note, some of the issues were included in SB 508 from the 1990 session. Both Jan Hansen and I will be available to work with you to explain our concerns in these areas and establish language for bill introduction.

1. AS 23.30.041(k), payments to the employee during rehabilitation: The language in SB 508, proposed in the 1990 legislative session, solves most of the problems with this subsection.

2. AS 23.30.080: There are literally hundreds of uninsured employers in Alaska. Though the department has requested several prosecutions, none has been successfully undertaken since the 1988 amendment to AS 23.30.075(b) which increased the criminal fine from \$1,000 to \$10,000. Moreover, many uninsured employers work during the summer season only, and by the time the board goes through its required processes to issue a stop order under Section 80, the employer is gone or out of business. Accordingly, to enable the department to impress employers with the need to provide insurance to cover their employees, the department suggests the following: 1) give the division authority to issue stop orders that are immediately effective--that is, stop work now, have a hearing later; and 2) give the board the authority to assess civil penalties for failure to insure.

3. AS 23.30.107 and new AS 23.30.108, confidentiality of the board's files: There is a growing demand for copies of workers' compensation files. While there are legitimate uses for these records, the department is concerned about the commercial uses (index bureaus get the information from the State and then sell it to insurance companies) and the improper uses (employers seek the information to decide whether or not to hire a person) of this information. Under the current freedom of information provisions, the information must be provided to anyone regardless of how it may be used. The attached draft language seeks to preserve the legitimate uses while preventing some of the commercial or improper uses.

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BEING*

MEMO TO KEVIN DOUGHERTY & MARY PIERCE (CONT.)  
RE: SUGGESTIONS FOR AMENDMENTS TO THE ACT  
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4. AS 23.30.095(e), the employer may have the employee examined by a doctor the employer chooses: AS 23.30.095(h) currently requires all parties to serve medical reports on the other party once an application or petition has been filed. We have structured this filing requirement in 8 AAC 45.052. However, in the division's experience, employers often do not send copies of their medical reports to the employee or his representative or the treating doctor when they have examinations done under AS 23.30.095(e) before an application or petition has been filed. This seems unfair to the employee and his treating physician; if there are suggestions for treatment from another examiner, the treating physician ought to know about them. Moreover, the employee ought to know what employer's examiner is saying about him since employer knows what employee's doctor is saying.

To solve this problem the department suggests the following changes to AS 23.30.095(e): Add something like, "The physician chosen by the employer shall prepare a written report following the examination. Within five days after the employer receives the report, it shall provide the original report to the board and a copy to the employee." Even that might not be enough. Perhaps something additional, such as the following, should be added: "For the purposes of AS 23.30.155(e), no controversion of benefits based on the report of a medical examination by a physician chosen by the employer is valid unless the employer files the original of the report with the board and a copy with the employee within five days after the report is received." The effect of this would be that the employer could be required to pay a 25% penalty to the employee even if it filed a timely controversion notice.

5. AS 23.30.175(a), minimum weekly rate payable: If you have had the opportunity to review the SB 322 sectional analysis with annotated cases Jan Hansen recently gave you, you will note that there are lots of petitions requesting permission to pay compensation at a rate less than \$154 per week. The statutory language is confusing and perhaps even contradictory, the regs we made solved some of the problem but not all of it, and it seems we need to find a better, self-executing way to do this. Here is the department's proposal: "The weekly rate of compensation for disability or death may not exceed \$700 and initially may be not less than \$110 when the employee has furnished documentary proof of the employee's wages or less than \$154 when the employee has not furnished documentary proof of the employee's wages. However, if the [BOARD DETERMINES THAT THE] employee's spendable weekly wage[S] is [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, the employee's weekly compensation rate shall equal the employee's spendable weekly wage[S]. The employer may pay compensation at the

employee's spendable weekly wage without a board order according to rules established by the board. If the employer erroneously computes and pays the employee's rate at less than \$154 per week, the employer shall {insert some penalty or some incentive here so that employers will take this seriously and not try to take advantage of employees.} If the employee's spendable weekly wage[S] is [ARE] greater than \$154, but 80 percent of the employee's spendable weekly wage[S] 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."

The board could then require employers to file affidavits and documents with the compensation report. Some appropriate penalty should give them an incentive to do it right, unlike their current behavior.

6. AS 23.30.155(d), last employer in a multiple employer/insurer case pays benefits while the employers/insurers solve the liability dispute: As you can see from the cases under this subsection, there have been some problems with the language. The department suggests the following changes: "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 a party to the claim and who may be liable shall make the payments during the pendency of the dispute. When a final determination of liability is made, any reimbursement required, including interest at the statutory rate, and all reasonable costs and attorneys' fees incurred by the prevailing employer, shall be made within 14 days of the determination."

7. Fix the "compensation" definition problem. More than 15 years ago the Supreme Court noted that "compensation" needed to be more rigorously and consistently applied throughout the Act. See Williams v. Safeway Stores, 525 P.2d 1087 (Alaska 1974). The problem was dealt with in two places in the 1988 amendments, AS 23.30.105(a) and AS 23.30.130(a), but nothing else has been done. This is what the department recommends:

a. Keep the present definition of "medical and related benefits," AS 23.30.265(20).

b. Amend the definition of "compensation," AS 23.30.265(8), as follows: "compensation" means the money allowance payable to an employee for disability or the dependents for the employee's disability or death as provided for in this chapter and includes the funeral benefits provided for in this chapter;"

c. Add the following definition of benefits: "benefits" means compensation and medical and related benefits, reemployment preparation benefits, rehabilitation specialist fees, attorney's fees and legal costs, and interest."

d. Change the following sections as follows:

- 1/ AS 23.30.010 - Change "compensation" to "benefits."
- 2/ AS 23.30.011(b)(2) - Change "income benefits" to "compensation."
- 3/ AS 23.30.011(b)(3) - Eliminate this subsection.
- 4/ AS 23.30.011(c) - Change "compensation," used twice in this subsection, to "benefits."
- 5/ AS 23.30.011(c)(4) - Change "compensation benefits" to "benefits"; change "income benefits or medical and related benefits" to "benefits."
- 6/ AS 23.30.011(c)(6) - Change "compensation" to "benefits."
- 7/ AS 23.30.012 - Change "compensation" to "benefits."
- 8/ AS 23.30.015(a) - Change "compensation," used three times, to "benefits."
- 9/ AS 23.30.015(b) - Change "compensation," used four times, to "benefits."
- 10/ AS 23.30.015 - Change "compensation" to "a contribution."
- 11/ AS 23.30.015(e)(2) - Change "compensation" to "benefits."
- 12/ AS 23.30.015(f) - Delete "and compensation."
- 13/ AS 23.30.015(h) - Change "compensation," used three times, to "benefits."
- 14/ AS 23.30.015(i) - Change "compensation" to "benefits."
- 15/ AS 23.30.020 - Change "compensation" to "benefits."
- 16/ AS 23.30.025(b) - Change the first "compensation" to "benefits," and delete the second "compensation" or add the word "workers" before it.
- 17/ AS 23.30.030 - Change "compensation" to "benefits." I think this section could be shortened a lot by adding the definition of "benefits" and using the three terms, "benefits," "compensation," and "medical and related benefits" properly throughout instead of repeating the litany of what amounts to medical and related benefits.
- 18/ AS 23.30.045(a) - Change "compensation," used twice, to "benefits."
- 19/ AS 23.30.045(b) - Change "compensation" to

- "benefits."  
20/ AS 23.30.055 - Change "compensation" to  
"benefits."  
21/ AS 23.30.060(a) - Change "compensation" to  
"benefits."  
22/ AS 23.30.060(b) - Change "compensation"  
(in the sample notice) to "benefits."  
23/ AS 23.30.075(a) - Change "compensation,"  
used twice, to "benefits."  
24/ AS 23.30.075(b) - Change "compensation or  
other benefits" to "benefits."  
25/ AS 23.30.092 - Delete "and compensation."  
26/ AS 23.30.100(a) - Change "compensation" to  
"benefits."  
27/ AS 23.30.100(b) - Change "compensation" to  
"benefits."  
28/ AS 23.30.100(d)(3) - Change "compensation"  
to "benefits."  
29/ AS 23.30.110(a) - Change "compensation" to  
"benefits."  
30/ AS 23.30.110(e) - Change "compensation" to  
"benefits" or "workers' compensation"?  
31/ AS 23.30.110(g) - Should the first  
"compensation" be changed to "benefits"?  
32/ AS 23.30.120(a) - Change "compensation" to  
"benefits."  
33/ AS 23.30.125(a)-(f) - Depending on what is  
done in AS 23.30.110(e), it should be the same here. In other  
words, what should a "compensation order" be called?  
34/ AS 23.30.130(a)-(b) - Since this section  
was changed in the 1988 amendments, I am not sure what should be  
done with it.  
35/ AS 23.30.145(b) - Redraft this section as  
follows: " If an employer controverts any benefits except  
compensation, failed to file a timely controversion notice, failed  
to pay benefits within 15 days after they become due or otherwise  
resisted the payment of benefits, and if the employee has employed  
an attorney in the successful prosecution of the claim, the board  
shall make an award to reimburse the employee for the costs in the  
proceedings, including a reasonable attorney fee. The award is in  
addition to the benefits ordered."  
36/ AS 23.30.145(c) - The same term used for  
"compensation order" in AS 23.30.110 and 125 should be used here.  
In the last sentence of the section "compensation or medical and  
related benefits" should be changed to "benefits."  
37/ AS 23.30.155(a) - Change "compensation,"  
used twice, to "benefits."  
38/ AS 23.30.155(a)(1) - Change "compensation"  
to "benefits."  
39/ AS 23.30.155(a)(5) - Change

"compensation," used twice, to "benefits."  
40/ AS 23.30.155(f) - Change "compensation,"  
used three times, to "benefits."  
41/ AS 23.30.155(h) - Change "compensation,"  
used five times, to "benefits."  
42/ AS 23.30.155(i) - Change "compensation" to  
"benefits."  
43/ AS 23.30.155(k) - Delete the entire  
subsection.  
44/ AS 23.30.165(a) - Change "compensation,"  
used two times, to "benefits."  
45/ AS 23.30.165(d) - Change "compensation,"  
used two times, to "benefits."  
46/ AS 23.30.165(e) - Change "compensation" to  
"benefits."  
47/ AS 23.30.170(a) - Change "compensation,"  
used four times, to "benefits." The term for "compensation order"  
should be changed to comport with the term chosen in AS 23.30.110  
and 125.  
48/ AS 23.30.170(c) - Change "compensation  
order" to the same term used in AS 23.30.110 and 125.  
49/ AS 23.30.205(d)(2) - Change "compensation"  
to "workers' compensation."  
50/ AS 23.30.230(b) - Change "compensation  
order" to the same term chosen in AS 23.30.110 and 125.  
51/ AS 23.30.235 - Change "compensation" to  
"benefits."  
52/ AS 23.30.245(a) - Change "compensation or  
medical services and supplies" to "benefits."  
53/ AS 23.30.245(b) - Change "compensation" to  
"benefits."  
54/ AS 23.30.255(a) - Change "compensation,"  
used four times, to "benefits."  
55/ AS 23.30.255(b) - Change "compensation" to  
"benefits."  
56/ AS 23.30.260(2) - Change "compensation" to  
"benefits."  
57/ AS 23.30.265(28) - Change "compensation"  
to "benefits."

Most of these changes should be non-controversial; they are what the board has been doing. If I had any doubts about them I put in a questions mark. This is not an exhaustive list. Someone else should go through the law to look for all the uses of compensation. I have obviously left many uses as they are because I think they are correct.

8. AS 23.30.155(o), requiring the board to report frivolous or unfair controversions to the insurance division: The two recent board decisions under this subsection make it clear this

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NOVEMBER 6, 1990

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is not working the way the Legislature, and presumably the Ad Hoc Committee, intended. This could be remedied in one of two ways: 1) either delete the subsection entirely to allow the division to report adjuster misbehavior to the Division of Insurance as it did before the enactment of this subsection; or 2) the more desirable approach would be to rewrite it as follows: "The board shall promptly notify the division of insurance if the board determines that the employer's insurer has filed a notice of controversion for a reason without legal merit or based on a false statement of fact [FRIVOLOUSLY OR UNFAIRLY CONTROVERTED COMPENSATION DUE UNDER THIS CHAPTER]. After receiving notice from the board, the division of insurance shall determine if the insurer has committed an unfair claims settlement practice under AS 21.36.125. When the board determines that the adjuster for a self-insured employer has filed a notice of controversion for a reason without legal merit or based on a false statement of fact, the board shall consider the self-insured employer's claims adjusting practices in determining whether to cancel or renew a self-insurance certificate."

9. AS 23.30.105(a), statute of limitations: The following change should be made to this subsection: "[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 therefore is filed within one year after the death, except that if payment of compensation has been made without an award on account of the injury or death, a claim may be filed within two years after the date of the last payment of benefits under AS 23.30.180, 23.30.185, 23.30.190, 23.30.200, or 23.30.215." The deleted language was declared invalid in W.R. Grasle Co. v. Alaska Workmen's Compensation Board, 517 P.2d 999 (1974), and should have been removed from the statute long ago.

10. AS 23.30.220(a)(2), determining the gross weekly earnings: It is our understanding one of the purposes of the amendment to this subsection was to cut down on the great deal of litigation on this issue. The amendment has succeeded in that only a handful of cases on this issue have come before the board while a quarter of the cases concerned this issue before the amendment.

However, it is also our understanding the Ad Hoc Committee was concerned that deserving employee's receive compensation rate adjustments. Unfortunately, the amendment to this subsection has also resulted in a case like Murray. See the memo about court interpretation, numbered paragraph 3. Perhaps the subsection should be rewritten to say something like the following: "In the absence of clear and convincing evidence to the contrary it is presumed that the employee's gross weekly earnings can be fairly computed under AS 23.30.220(a)(1). If it is determined that the employee's gross weekly earnings cannot be fairly calculated under

MEMO TO KEVIN DOUGHERTY & MARY PIERCE (CONT.)  
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AS 23.30.220(a)(1), the employee's gross weekly earnings for calculating compensation shall be determined by considering the nature of the employee's work and work history, but compensation may not exceed the employee's gross weekly earnings at the time of injury."

LOMBARD  
GARDNER  
HONSOWETZ  
BREWER  
& SCHONS

Attorneys at Law

January 16, 1991

Timothy Byrnes  
Attorney at Law  
509 W. Third Avenue  
Anchorage, AK 99501-2273

Re: Oregon Worker's Compensation Laws

Dear Tim:

Enclosed please find the following:

725 Country Club Road  
P.O. Box 10332  
Eugene, Oregon 97440

(503) 687-9001  
FAX (503) 484-7404

1) Copies of the following statutes:

(a) ORS (short for Oregon Revised Statutes) 656.005(28) defining "independent contractor" by reference to another statute, ORS 701.025.

(b) ORS 701.025. Please note that this statute is virtually identical to the administrative rule (OAR 436-50-030) which you FAXed to me.

(c) ORS 656.027, defining subject workers under the Oregon Worker's Compensation Law.

(d) ORS 656.029, describing the conditions controlling independent contractor status.

2) Copies of the following Oregon Administrative Rules of the Worker's Compensation Division:

(a) OAR 436-50-030, which is identical to the rule you FAXed to me. Again, please note that this rule is exactly the same as the statutory definition of "independent contractor" set forth by reference in ORS 656.005(28).

(b) OAR 436-50-040, also a rule of the Worker's Compensation Division. Likewise, this rule is virtually identical to the description of conditions controlling independent contractor status in ORS 656.029.

3) A copy of Chapter 3, pages 12 and 13 of the Continuing Legal Education Handbook of the Oregon State Bar on worker's compensation, published in 1990. Section 3.35 contained a typographical error at the first line. The reference should be to ORS 656.005(28). I have handwritten in the correction. This excerpt summarizes the legislative and administrative rule changes created by the 1989 Oregon Legislature.

Herb Lombard, P.C.  
Jack A. Gardner, P.C.  
F. William Honsowetz, P.C.  
David Brewer, P.C.  
Larry H. Schons, P.C.  
Jeffrey E. Potter, P.C.  
Allen E. Gardner, P.C.

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Oregon Worker's Compensation Laws

You can see that the words "independent contractor" were first introduced into Oregon statutory and rule form in 1989. Please note the last sentence of Section 3.35. I shepardized ORS 656.005(28), and ORS 656.029, and found no case law interpreting those statutes following the 1989 amendments.

If I can be of further assistance, please let me know.

Very truly yours,

*David*

DAVID BREWER

DB/lav  
Enclosure

*P.S.  
Sorry this is  
a day later.  
D.B.*

personnel considered subject workers for purposes of ORS 658.001 to 658.794. ORS 658.031(2).

"Volunteer personnel" are all municipal personnel other than those employed full time, part time, or substitutes therefor. ORS 658.031(1).

The application must include an estimate of the number of volunteer personnel for which coverage is requested. Upon receiving the application, the insurer or self-insured employer may fix assumed wage rates for the volunteers which may be used for purposes of computations under ORS 658.001 to 658.794. ORS 658.031.

## B. Statutory Employers

### 1. (§3.33) Historical Perspective

In the past, much litigation has concerned the question whether a worker is an employee or an independent contractor. In resolving this question, the courts have applied the tests for finding a contract for hire and right of control.

In response to the unresolved problems created by a contractor-subcontractor relationship, many states have adopted "statutory employer" statutes which make employers liable for the compensation of certain independent contractors and employees of noncomplying subcontractors. These statutes protect employees against irresponsible or uninsured subcontractors, prevent the use of contracts to circumvent the workers' compensation statutes, and provide an incentive for prime contractors to ensure that their subcontractors comply with the law. See generally I.C.A. Larson, *The Law of Workmen's Compensation* §§49.00-49.22 (1982).

Oregon passed its first version of a statutory employer statute in 1979. 1979 Or Laws, ch 864, §2 (ORS 656.029). The statute was amended in 1981, 1983, and 1985. 1981 Or Laws, ch 726, §1; 1981 Or Laws, ch 854, §4; 1983 Or Laws, ch 397, §1; 1983 Or Laws, ch 679, s 2a; 1985 Or Laws, ch 706 §1; 1989 Or Laws, ch \_\_\_ §\_\_\_ (HB 2320); 1989 Or Laws, ch \_\_\_ §\_\_\_ (HB 2558)

### 2. (§3.34) Current Law.

Effective 10-3-89, if a person (defined to include partnerships, joint ventures, associations, corporations, governmental agencies, and sole proprietorships) awards a contract involving the performance of labor to a nonsubject worker (e.g., an independent contractor) and such labor is not a normal and customary part or process of the person's trade or business, the person awarding the contract is not responsible for providing workers' compensation insurance. The person to whom the contract is awarded is responsible for providing coverage for all non-exempt workers engaged to perform work under the contract. ORS 656.029(2).

If, however, the labor contemplated by the contract is a normal and customary part or process of the trade or business of the person awarding the contract, the person awarding the contract must provide workers' compensation insurance for all individuals other than those exempt under ORS 656.027 who perform labor under the contract unless the person to whom the contract is awarded provides such coverage before labor under the contract commences.

If the person to whom the contract is awarded obtains coverage before labor under the contract commences but allows the coverage to lapse before an individual is injured while performing labor under the contract, the person to whom the contract was awarded is treated as a noncomplying employer. ORS 656.029(1).

Notwithstanding the above provisions (ORS 656.029(1)), a person who is registered as a builder pursuant to ORS 701.076 and who is acting under a contract to perform work described by ORS Chapter 701 shall be considered the subject employer for all individuals employed by that person. 1989 Or Laws, ch \_\_\_ §\_\_\_ (HB2558).

### C. (§3.35) Independent Contractors

ORS 656.023(28) defines "independent contractor" as an individual or business entity providing labor or services for remuneration under the following circumstances:

(1) The individual or business entity providing the labor or services is free from direction and control over the means and manner of providing the labor or services, subject only to the right of the person for whom the labor or services are provided to specify the desired results;

(2) The individual or business entity providing labor or services is responsible for obtaining all assumed business registrations or professional occupation licenses required by state law or local government ordinances for the individual or business entity to conduct the business;

(3) The individual or business entity providing labor or services furnishes tools or equipment necessary for performance of the contracted labor or services;

(4) The individual or business entity providing labor or services has the authority to hire and fire employees to perform the labor or services;

(5) Payment for the labor or services is made upon completion of the performance of specific portions of the project or is made on the basis of an annual or periodic retainer;

(6) The individual or business entity providing labor or services is registered under ORS chapter 701 if the individual or business entity

*Borrowed Servant Rule*

*Section 3.36*

provides labor or services for which such registration is required;

(7) Federal and state income tax returns in the name of the business or a business Schedule C or farm Schedule F as part of the personal income tax return were filed for the previous year if the individual or business entity performed labor or services as an independent contractor in the previous year; and

(8) The individual or business entity represents to the public that the labor or services are to be provided by an independently established business. To qualify as an independently established business, the individual or business entity must file a Schedule F as part of the personal income tax returns, perform farm labor or services reportable on Schedule C, or satisfy four or more of the following circumstances:

(a) The labor or services are primarily carried out at a location that is separate from the residence of an individual who performs the labor or services, or are primarily carried out in a specific portion of the residence, which portion is set aside as the location of the business;

(b) Commercial advertising or business cards as is customary in operating similar businesses are purchased for the business, or the individual or business entity has a trade association membership;

(c) Telephone listing and service are used for the business that is separate from the personal residence listing and service used by an individual who performs the labor or services;

(d) Labor or services are performed only pursuant to written contracts;

(e) Labor or services are performed for two or more different persons within a period of one year;

(f) The individual or business entity assumes financial responsibility for defective workmanship for services not provided as evidenced by the ownership or performance bonds, warranties, errors and omission insurance or liability insurance relating to the labor or services to be provided.

The definition of independent contractor is applicable "as used in various provisions of ORS chapters 318, 565, 657 and 701," 1989 Or Laws ch \_\_\_ § \_\_\_ (HB 2558). Before the 1989 amendments, the words, "independent contractor" did not appear within Chapter 656. Case law generally viewed "independent contractor" and "subject employer" as mutually inconsistent concepts unless the independent contractor was designated as a subject employer (i.e., statutory employer) by statute. "Independent contractor" now appears in

chapter 656 in ORS 656.005(28) (definition of independent contractor), ORS 656.027(7) (regarding sole proprietors), ORS 656.027(8) (regarding partnerships), ORS 656.027(9) (regarding corporate officers), and ORS 656.029( ) (regarding persons registered as a builder per chapter 701; 1989 Or Laws ch \_\_\_ § \_\_\_ (HB 2558). It is not clear if the new definition of independent contractor supersedes the traditional case law concepts, thereby enlarging the potential category of subject employers and statutory employers by making the category of independent contractor more restrictive.

**D. (§3.36) Borrowed Servant Rule**

When a general employer lends an employee to a special employer, the special employer becomes liable for workers' compensation only if (1) the employee made a contract of hire with the special employer; (2) the work being done is essentially that of the special employer; and (3) the special employer has the right to control the details of the work. *Newport Seafood v. Shins*, 71 Or App 119, 691 P2d 132 (1984).

**VI. Multiple Employers**

**A. (§3.37) Temporary Service Companies**

In *Robinson v. Omark Industries*, 46 Or App 263, 611 P2d 665 (1980), *rev. dismissed*, 291 Or 5, 291 P2d 1263 (1981), and *Blacknall v. Westwood Corporation*, 89 Or App 145, 747 P2d 412 (1987), plaintiffs were employed by temporary labor service companies and were injured when performing services at plaintiff's job site. The temporary labor service company paid plaintiff's salary, taxes, workers' compensation insurance, social security, unemployment, and fringe benefits and accepted responsibility for the on the job injury. The defendants directly supervised the plaintiff's activities at the job sites, including hours, breaks, and work assignments. Defendants successfully defended civil negligence lawsuits by asserting immunity from suit based on status as plaintiff's employer.

**B. (§3.38) Concurrent Employment**

Concurrent employment was recognized in *Colecliff v. Trotman*, 47 Or App 855, 618 P2d 1095 (1980). Claimant worked for one dentist on Tuesdays and a second dentist on Wednesdays, Thursdays, and Fridays. Claimant developed epicondylitis as a result of her employment. The Court concluded that the last injurious exposure rule was not applicable because claimant had developed her disease concurrently due to both periods of employment. The case was remanded to develop a formula for apportioning claim costs between the two employers. The Board remanded the case to the referee. The referee's unspecified

L+C

Sharon  
Facklin's  
group

FEB 12 1991

**ALASKA PROFESSIONAL DESIGN COUNCIL  
1991 LEGISLATIVE PRIORITIES**

**Reinstatement of Statute of Repose - I cosponsored**

- The statute of repose for architects and engineers was declared unconstitutional by the Alaska Supreme Court in April, 1988. (Opinion No. 3290)
- With a statute of repose, the time period in which to bring an action usually begins running from the date of substantial completion of a project. This is different from a statute of limitations, which begins running from the date of injury or discovery thereof.
- Without a statute of repose, builders, architects, and engineers are subject to an indefinite period of liability even though they have no control over maintenance of the facilities after substantial completion.
- Since 1961, 47 states as well as the District of Columbia and Puerto Rico have passed statute of repose legislation. 43 of these statutes have been tested in court with 33 ruled constitutional and 10 ruled unconstitutional. Alaska is included in this latter group. New legislation has been adopted in four of the 10 states in which the statute was ruled unconstitutional.
- A 1983 study by Victor O. Shinnerer & Co. indicated that 89.3% of claims are brought within 6 years of substantial completion, 95.5% within 8 years, and 96.8% within 10 years.

**Design-Build-Lease**

- The State of Alaska should procure space with reasonable life-cycle cost and quality, particularly in large projects.
- The State of Alaska should build, own, and finance any space needs in excess of 10,000 square feet or any space needed for more than 10 years, unless existing space is available at lease rates competitive with life cycle costs of State-owned facilities.
- If the decision is made to lease rather than build and own, the Department of Administration should address in the lease criteria life-cycle costs, function, indoor environment, public convenience, planning, design, appearance, and location, in addition to lease costs.
- The lease evaluation committee should include qualified individuals reflecting appropriate experience and professional training.

\* **Workers' Compensation Exemption**

Design professionals have no control over construction methods and safety as is clearly stated in construction contract language. They are, however, often targets for third party suits from injured construction workers because of the design professional's E&O insurance.

Nationally approximately 23% of all claims against design professionals are for bodily injury. Of these, 50% are claims from workers injured at the job site.

How  
want  
L+C  
to  
understand

- Currently 12 states have adopted laws providing immunity to design professionals from third party suits on the construction site. These states recognized the importance of existing contractual relationships and wanted to minimize unnecessary litigation, a goal of the single remedy workers' compensation laws.
- The requested immunity for design professionals does not apply to the negligent preparations of design plans and specifications.

#### **Unified Building Codes**

The Alaska Professional Design Council fully supports the following concepts:

- Establishment of a statewide building code and appeals board.
- Automatic statewide updating to current building codes.
- Consolidation of the administration and enforcement of all building codes under one state agency.

February 21, 1991

Drue Pearce, Chairman  
Labor and Commerce Committee  
Senate, State of Alaska  
c/o Legislative Offices  
3111 C Street  
Anchorage, Alaska 99503

David Finkelstein, Chairman  
Labor and Commerce Committee  
House of Representatives  
State of Alaska

Dear Senator Pearce and Representative Finkelstein:

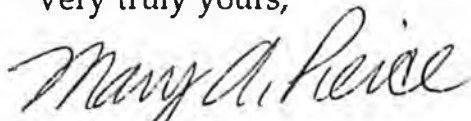
The Workers' Compensation Labor Management Ad Hoc Committee is submitting a proposal for legislation to be introduced in the 1991 legislative session.

This proposal is one that the committee has been working on for several months. It is something that labor and management is committed to and is a balanced bill. Our purpose, as always, is to amend the Workers' Compensation statute so that it provides the best compensation for loss to the injured worker while protecting the business community from escalating costs.

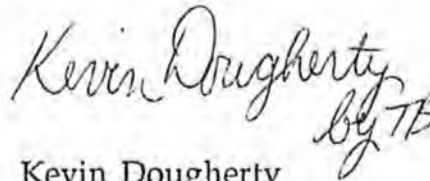
We are eager to answer your questions and discuss the proposal. We are also of course available to work with legislative drafting.

Thank you for your interest in supporting this legislation.

Very truly yours,



Mary A. Pierce  
Co-Chairman  
563-3414



Kevin Dougherty  
Co-Chairman  
276-1640

LEGISLATIVE INTENT: Sec AS 23.30.265 (15) The purpose of the amendment is to reaffirm the original intent of the 1982 amendment to include prior temporary total disability payments received within the definition of gross wages since such worker compensation serves as wage replacement income and was intended to be included as gross income.

LEGISLATIVE INTENT: Sec AS 23.30.055. This section addresses the Supreme Court's Van Biene decision and the Court's deferral to the legislature on the policy question of exclusive liability for insurer's in the performance of safety inspection. This amendment responds to the Court's public policy question by providing for exclusive liability involving safety inspections or safety advisory services. No change is intended regarding liability for conduct not concerning safety inspections or safety advisory services.

LEGISLATIVE INTENT: Sec AS 23.30.265(21). It is the intent of the legislature that the presumption of compensability in AS 23.30.120(a)(1) continue to be applied only to the question of whether an injury is related to the employment.

\*\*\* The Legislature requests that the Division of Insurance study the implementation of a "Contracting Classification Premium Adjustment Program" to provide premium credits for insured employers under the Alaska Workers Compensation Act. The Division shall consult with and seek periodic recommendations from a Committee comprised of Alaska Labor and Management representatives for this purpose. A report to the Legislature shall be given\_\_\_\_\_.

Proposed  
Draft

IN THE LEGISLATURE OF THE STATE OF ALASKA  
SEVENTEENTH LEGISLATURE - FIRST 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. AS23.30.041(b) is amended to read:

(b) The administrator shall [PERFORM THE FOLLOWING  
FUNCTIONS:]

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

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

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

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

(5) submit to the department, on or before July 1  
[January 1] of each year, a report of reemployment benefits  
provided under this section for the previous calendar [FISCAL]  
year; the report must include a general section, sections related  
to each rehabilitation specialist employed under this section,  
and 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 benefits program including a return  
to work date;

(D) the cost of reemployment benefits;

(6) maintain a list of rehabilitation specialists who

meet the qualifications established under this section;

(7) monitor the activities of medical managers assigned by the carrier to an injured employee, including reviewing reports or correspondence concerning the injured employee;

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

Sec. 2. AS 23.30.041(c) is amended to read:

(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 shall request an eligibility evaluation within 90 days after the employee gives the employer notice of injury unless the administrator determines the employee has an unusual and extenuating circumstance that prevents the employee from making a timely request. If, after a review of the board's case file, the administrator determines the employee is unlikely to be able to return to the employee's occupation at the time of injury, [T]he 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.

Sec. 3. AS 23.30.041(e) is amended to read:

(e) An employee is [SHALL BE] eligible for benefits under this section upon the employee's written request and by having a licensed physician, or regarding muscular, skeletal, or neurological injuries, a licensed physician or a licensed physical or occupational therapist, 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; or

(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 complete in the labor market, according to specific vocational preparation codes as described in the United States Department of Labor's "Selected Characteristics of occupations Defined in the Dictionary of Occupational Titles."

Sec. 4. AS 23.30.041(h) is amended to read:

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

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

(2) an inventory of the employee's technical skills, physical and intellectual capacities, academic achievement, emotional condition and family support;

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

(4) 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;

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

(6) the date the plan will commence;

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

(8) a detailed description and plan schedule; [AND]

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

limitations of the plan; and [.]

(10) a certification by the rehabilitation specialist that the plan meets all the requirements of this subsection. If the administrator finds the plan does not meet one or more of the requirements of this subsection, the rehabilitation specialist shall amend the plan to meet these requirements without addition to the rehabilitation specialist fees.

Sec. 5. AS 23.30.041(k) is repealed and reenacted to read:

(k) The employer shall pay compensation to an employee eligible for reemployment benefits, as follows:

(1) until the employee reaches medical stability or the reemployment plan is completed or terminated, whichever comes first, temporary disability benefits shall be paid;

(2) if the employee reaches medical stability and has requested reemployment benefits or has been found eligible for reemployment impairment benefits shall then be paid biweekly at the employee's temporary total disability rate until plan completion, termination, or exhaustion of permanent impairment benefits; permanent impairment benefits remaining unpaid upon completion or termination of the plan shall be paid to the employee in a single lump sum;

(3) if the employee's permanent impairment benefits are exhausted before the completion or termination of the reemployment plan, the employer shall pay, on a biweekly basis, an amount equal to 60 percent of the employee's spendable weekly wage as determined under AS 23.30.220, not to exceed \$525, until the completion or termination of the plan;

(4) if the employee reaches medical stability before an impairment rating is given as provided in AS 23.30.190, except for the first 30 days the employee shall be paid 60 percent of the employee's spendable weekly wage until an impairment rating is given; benefits paid more than 30 days after medical stability but before an impairment rating is given shall be offset from the total sum of permanent impairment benefits due to the employee; after the employee reaches medical stability and an impairment

rating is given, all benefits paid shall be included as permanent impairment benefits;

(5) benefits related to the reemployment plan may not extend past two years from the date of the initiation of the 60 percent payment of the employee's spendable weekly wage, plan approval, or plan acceptance, whichever date occurs first, at which time the benefits expire;

(6) if the employer controverts the employee's claim or appeals a ruling of the administrator or the board that is favorable to the employee, the controversion or appeal delays completion of an evaluation, development, commencement or completion of a plan, and the employee is successful in the claim or appeal, the employer shall pay the employee 60 percent of the spendable weekly wage during the period of controversions or appeal, except that temporary disability benefits shall be paid until the employee reaches medical stability; for purposes of this paragraph the two-year limitation on payment of benefits in (5) of this subsection does not begin to run or is tolled, and payments made at 60 percent of the employee's spendable weekly wage during controversion or appeal may not be offset from permanent impairment benefits due to the employee.

Sec. 6. AS 23.30.041(1) is amended to read:

(1) the cost of the reemployment plan incurred under this section is [SHALL BE] the responsibility of the employer, shall be paid on an expense incurred basis, and may not exceed \$10,000. The cost of the rehabilitation specialist shall be paid by the employer, but may not be included in determining the cost of the reemployment plan. Fees charged by and paid to a rehabilitation specialist for services must be comparable to fees for similar services in the community in which the services are performed, as determined by the administrator according to rules established by the board.

Sec. 7. AS 23.30.041(p) is amended to read:

(p) In this section

(1) "administrator" means the reemployment benefits administrator under (a) of this section;

(2) "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:

(3) "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;

(4) "medical manager" means a nurse, rehabilitation specialist, or other health care provider assigned by the carrier to assist an employee in coordinating medical benefits, or to monitor the employee's medical services;

(5) "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;

(6)[(5)] "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;

(7)[(6)] "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;

(8)[(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. 8. AS 23.30.041 is amended by adding a new section to read:

(q) After a medical manager has been assigned to an injured employee, the medical manager shall send written notice to the employee, the employer, and the employee's physician explaining in what capacity the medical manager is employed, who the medical manager represents, and the scope of the services to be provided.

Sec. 9. AS 23.30 is amended by adding a new section to read:

Sec 23.30.047 BENEFITS FOR HEALTH INSURANCE. (a) An employer who pays compensation to an injured employee under AS 23.30.041(k), AS 23.30.180, AS 23.30.185, AS 23.30.190, AS 23.30.200 or As 23.30.215, and who provided health insurance at the date of injury, shall make payments to reimburse the employee for health insurance benefits lost for the employee or employee and covered dependents as provided below.

(b) Payments under this section shall be determined at an amount equal to the employer's current contribution toward health insurance benefits as they relate to a term of employment or the amount paid by the employee for replacement coverage, whichever amount is less.

(c) Payments required under this section commence when the employee's health insurance provided by the employer's contribution ceases, and shall continue until the employee is no longer receiving benefits under section (a) above, or for eighteen months, whichever period is shorter.

(d) Provided that the benefits under this section shall only become due upon on-going demonstrated proof that the employee has secured health insurance. The insurance may be in the form of a purchased individual conversion policy, a private insurance policy, COBRA, or a notice of self-payment to or continuance under the hour bank provision of a union health or welfare trust.

(e) If benefits payable under the terms of this Section are not paid within 30 days after it has been presented for payment to the employer, there shall be added to that benefit an amount equal to 25 percent of it, which shall be paid at the same time as, but in addition to, the benefit.

Sec. 10. 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. The liability of the employer is exclusive even if the employee's claim is barred under AS 23.30.022. 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 contributory negligence of the employee. In this section "employer" includes the employer's carrier, an insurance service agent to a self-insured employer, or a trade association, if the carrier, insurance service agent, or trade association provides or fails to provide safety inspections or safety advisory services.

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

(b) If an employer fails to insure and keep insured employees subject to this chapter or fails to obtain a certificate of self-insurance from the board the court shall

impose a fine of \$10,000 and may impose a sentence of imprisonment for not more than one year. In addition, the board may impose a civil penalty of three times the manual rates used to compute the employer's insurance premium for the period no insurance was in effect. The manual rates used shall be those that were in effect during the uninsured period. If an employer is a corporation, all persons who, at the time of the injury or death, had authority to insure the corporation or apply for a certificate of self-insurance, and the person actively in charge of the business of the corporation shall be subject to the penalties prescribed in this subsection and shall be personally, jointly, and severally liable together with the corporation for the payment of all compensation or other benefits for which the corporation is liable under this chapter if the corporation at that time is not insured or qualified as a self-insurer.

Sec. 12. 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 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 pendency of the dispute. When a final determination of liability is made, an reimbursement required, including interest at the statutory rate, and all reasonable costs and attorneys' fees incurred by the prevailing employer, shall be made within 14 days of the determination.

Sec. 13. AS 23.30.175(a) is amended to read:

(a) The weekly rate of compensation for disability or death may not exceed \$700 and initially may not be less than \$154 when the employee has furnished documentary proof of the employee's wages or less than \$110 when the employee has not furnished documentary proof of the employee's wages [\$110]. However, if [THE BOARD DETERMINES THAT] the employee's spendable weekly wage[S] is [ARE] less than [\$110 A WEEK AS COMPUTED UNDER AS 23.30.221, OR LESS THAN] \$154 a week as computed under AS 23.30.220.[IN THE CASE OF AN EMPLOYEE WHO HAS FURNISHED DOCUMENTARY PROOF THE EMPLOYEE'S WAGES, IT SHALL ISSUE AN ORDER ADJUSTING THE WEEKLY RATE OF COMPENSATION TO A RATE] the employee's weekly compensation rate shall equal [TO] the employee's spendable weekly wage[S]. The employer may not pay compensation at the employee's spendable weekly wage without a board order except according to rules established by the board. [IF THE EMPLOYER MAY NOT PAY COMPENSATION AT THE EMPLOYEE'S SPENDABLE WEEKLY WAGES ARE LESS THAN \$154, THE EMPLOYER MAY ADJUST THE WEEKLY RATE OF COMPENSATION TO A RATE EQUAL TO THE EMPLOYEE'S SPENDABLE WEEKLY WAGES WITHOUT AN ORDER OF THE BOARD.] If the employee's spendable weekly wage[S] is [ARE] greater than \$154, but 80 percent of the employee's spendable weekly wage[S] 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.

Sec. 14. AS 23.30.190(b) is amended to read:

(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 shall adopt a supplementary recognized schedule for injuries that cannot be rated by use of the American

Medical Association Guides. An impairment rating shall be determined by a licensed physician or if the injury is related to muscular, skeletal, or neurological disabilities, by a licensed physician or licensed physical or occupational therapist.

Sec. 15. AS 23.30.195 is amended to read:

Sec. 23.30.195. SURVIVAL OF THE RIGHT TO COMPENSATION.  
(a) Compensation to which a [any] claimant would be entitled under AS 23.30.190 [EXCEPTING (a)(20) OF THAT SECTION] shall, notwithstanding death arising from causes other than the injury, be payable to and for the benefit of the following persons [FOLLOWING]:

(1) if there is [BE] a widow or widower, but [AND] no child of the deceased, to the widow or widower;

(2) if there is [BE] a widow or widower and a surviving child or children of the deceased, one-half to the widow or widower, the other half to the surviving child or children, in equal shares;

(3) if there is [BE] a surviving child or children of the deceased, but no widow or widower, then to the child or children, in equal shares.

(b) An award for impairment [DISABILITY] may be made after the death of the injured employee.

Sec. 16. AS 23.30 is amended by adding a new section to read:

Sec. 23.30.238. VOLUNTEER EMERGENCY MEDICAL TECHNICIANS AS EMPLOYEES (a) A person who is injured during the course and within the scope of providing service as a volunteer emergency medical technician is an employee of the state for purposes of this chapter if the person

(1) is certified by the state under AS 18.08 as an emergency medical technician;

(2) provides emergency medical service outside an incorporated city or borough; and

(3) is not otherwise covered for that injury by an employer's workers' compensation insurance policy or self-

insurance certificate.

(b) The gross weekly earnings for a person receiving benefits under this section shall be the gross weekly earnings paid a full-time emergency medical technician employed in the city or borough nearest to the place where the injury occurred, or, if the nearest city or borough has no full-time emergency medical technician, at a reasonable figure previously set by the nearest city or borough 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 of work a week.

Sec. 17. AS 23.30.265 is amended by adding a new paragraph 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 wages [COMPENSATION THAT IS] deferred at the option of the employee and temporary disability compensation for an occupational injury or illness, and excluding irregular bonuses, reimbursement of expenses, expense allowances, and any benefit or payment to the employee that is not fully taxable to the employee during the pay period, 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; the value of room and board if taxable 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 state average weekly wage at the time of injury may not be considered;

(21) "medical stability" means the date after which further objectively measurable improvement or deterioration 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 or deterioration for a period of 45 days; this presumption may be rebutted by clear and convincing evidence;

(34) "volunteer emergency medical technician" means a person who is certified by the state as an emergency medical technician under AS 18.08 and who provides emergency medical services on a voluntary basis.

Sec. 18. This act takes effect immediately under AS 01.10.070(c)

FEB 22 1991



February 20, 1991

The Honorable Drue Pearce  
P.O. Box V  
Juneau, AK 99811

Dear Senator Pearce:

I would like to thank you for sharing part of your busy schedule with us last week to address issues of concern to the professional design community. Your support for the statute-of-repose bill introduced by Senator Halford is very much appreciated.

*Red* { I would also like to express my interest in upcoming Worker's Compensation Legislation. As vice-president of WCCA and an active member of the professional design community, I have some concerns about the lack of issues being addressed by the task force. Please keep me posted.

Should you have any questions on issues pertaining to the design community, do not hesitate to contact myself or Sharon Macklin. Thanks again for your time and support.

Truly yours,

CRW ENGINEERING GROUP

A handwritten signature in cursive script, appearing to read 'W. Van Hemert', written in dark ink.

Willem Van Hemert, P.E.



Post-It™ brand fax transmittal memo 7671 # of pages 3

To	Sharon MacLain	From	Willem Van Hemert
Co.		Co.	
Dept.		Phone #	
Fax #		Fax #	

Rod

WCCA  
 c/o Warren Dvorak  
 Anchorage School District  
 P.O. Box 196614  
 Anchorage, Alaska 99519-6614

Re: Design Professional Exclusion

Dear Warren:

Attached is proposed wording to amend Alaska Statute 23, Labor and Worker's Compensation, in regard to exclusion of design professionals as a third party involving construction projects. The proposal language was taken directly from a similar provision in the State of Washington's statutes. Other states with similar language include:

- Connecticut
- Florida
- Hawaii
- Oregon
- Kansas
- Nebraska
- Missouri

Four other states (Maine, South Dakota, North Dakota and Oklahoma) have exclusions for design professionals but the actual wording is substantially different. In fact, we used Oklahoma's approach last year and that seemed to meet with some resistance.

If you have any questions or need more information, please do not hesitate to contact me.

Truly yours,

Willem Van Hemert, P.E.

cc: V. McKinney - HHB

## INTRODUCTION

Under the traditional three-legged approach to the design and construction of a facility--owner, architect/engineer and contractor--the respective role of each participant is clearly defined in terms of responsibility and liability exposure.

The old "master builder" concept, in which the designer assumed a significant role in directing the actual construction, was abandoned many years ago. Present day approaches recognize that the architect or consulting engineer, in serving as the design professional, normally has limited activities intended only to evaluate whether or not construction is being performed in accordance with the plans and specifications.

This view of the consulting professional engineer's role is recognized in contract documents published by the Engineers Joint Contract Documents Committee (EJCDC), which note that the role of the engineer is "to observe the progress and quality of the construction to determine in general if the work is proceeding in accordance with the contract documents." Similar language is included in documents published by the American Institute of Architects (AIA). Likewise, standard general conditions governing responsibilities of the contractor make it clear that the contractor is solely responsible for the safety of workers employed both by the contractor and any subcontractors.

While these concepts and the contract language have served the public and design professionals well in past years, recently there have been a number of instances in which consulting professional engineers and architects have been drawn into claims and lawsuits for alleged negligence in connection with construction worker injuries/deaths.

As a result of these kinds of cases, state A/E societies have sought legislation to provide protection from worker injury, third-party claims where the design professional was not involved in the events leading to the injury. Currently, 12 states have adopted laws providing immunity of the consulting design professional from third party suits except:

1. With regard to the negligent preparation of design plans and specification.
2. When the design professional is contracted to supervise safety practices.

The exceptions provide what may be considered a "loophole" to the extent that the plaintiff may always allege that the injury (or death) was a consequence of negligent plans or specifications. But, even so, the law narrows the claim of an injured employee of the contractor to proof of negligent plans and specifications. The statutes prevent the broader and more general charge of professional negligence by failing to detect dangerous conditions during observation of construction. The recognition and correction of such conditions is the sole responsibility of the construction contractor who has control of the work.

The following states have laws to protect design professionals: Connecticut, Florida, Kansas, Maine, Nebraska, North Dakota, Oklahoma, Oregon, South Dakota, Washington, Hawaii and Missouri.

Add the following section:

**Sec. 23.30.016 Action against third person - Immunity for design professional and employees.**

- (a) If on account of disability or death for which compensation is payable under this chapter the person entitled to the compensation may not seek damages against a design professional who is a third person and who has been retained to perform professional services on a construction project, or any employee of a design professional who is assisting or representing the design professional in the performance of professional services on the site of the construction project, unless responsibility for safety practices is specifically assumed by contract, the provisions of which were mutually negotiated, or the design professional actually exercised control over the portion of the premises where the worker was injured.
- (b) The immunity provided by this section does not apply to the negligent preparation of design plans and specifications.
- (c) For the purposes of this section, "design professional" means an architect, professional engineer, or land surveyor, who is licensed or authorized by law to practice such profession, or any corporation licensed or authorized by law to practice such profession in the State of Alaska.

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MARCUS R. CLAPP\*  
JOE M. HUDDLESTON  
SIGURD E. MURPHY  
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VIVIAN L. BISSARD  
DAVID V. BURGLIN\*  
RICHARD L. MUSICK\*  
SHELDON E. WINTERS\*\*  
DAVID F. LEONARD\*  
JORDAN E. JACOBSEN  
JACQUELYN L. PARRIS\*  
LINDA J. JOHNSON  
JAYNE M. GILBERT\*\*  
JOSEPH S. SLUSSER\*

OF COUNSEL  
JOHN C. HUGHES  
RICHARD G. GANTZ

Reply to: Anchorage

\*\*ONE SEALASKA PLAZA  
SUITE 303  
JUNEAU, ALASKA 99801-1249  
TELEPHONE (907) 886-5912  
TELECOPIER: (907) 483-3020

Direct Dial:  
(907) 263-8244

March 5, 1991

David Brangan, District Manager  
National Association for the Self-Employed  
555 W. Northern Lights Blvd., Suite 201B  
Anchorage, Alaska 99503

Re: Alaska regulatory changes  
Our File No. 2449-1

Dear Dave:

This letter will confirm our advice to you concerning possible changes to the Alaska Department of Labor regulations defining independent contractors for purposes of workers' compensation. The present regulation, 8 AAC 45.890, sets out a test for determining employee status which can be hard for an independent contractor to meet. For example, if an employer has the right to exercise control over the manner and means to accomplish work, the regulation creates a strong inference that the person doing the work is any employee and not an independent contractor.

Under this regulation, in any doubtful case, an employer would probably take the safe route of considering a person working for him as an employee, thus requiring workers' compensation coverage. I understand this occurs frequently in the trucking industry, although there are many independent truckers who do not consider themselves employees and would prefer to purchase their own separate health and accident coverages, rather than the more expensive and less flexible workers' compensation coverage.

We have forwarded to you copies of the Oregon statutes and regulations concerning this same issue. Oregon has adopted a more flexible approach, allowing many people who consider

Letter to David Brangan  
March 5, 1991  
Page 2

HUGHES THORSNESS GANTZ POWELL & BRUNDIN  
ATTORNEYS AT LAW

themselves independent contractors to avoid the burdens of workers' compensation. I believe Oregon has a large number of independent truckers, and I presume they were in favor of changing the Oregon regulations to give them more options in choosing their own health and accident coverages.

In our opinion, the Alaska Department of Labor should have the authority to rescind its current regulation and adopt regulations similar to those of Oregon. Doing so would require the Department to comply with the Administrative Procedure Act, and give notice of the proposed new regulations to interested parties who then would have the opportunity to comment on them. There certainly appear to be very valid reasons for the Department to review these regulations, however, and because Oregon has already been through the process of changing its own similar regulations, it probably makes sense for the Department to examine the Oregon regulations as a starting point.

If the Department of Labor were to adopt new regulations similar to those in Oregon, then it appears very likely that many independent truckers could indeed qualify as independent contractors. This would remove an expensive burden which we understand many independent truckers want to avoid. The regulations could be drafted in a way to promote or require their obtaining alternative insurance coverages, of the type which you are familiar with and can provide to them.

Whenever new regulations are adopted, they may be subject to different interpretations or to court tests. It appears likely, however, that regulations along the lines of those in effect in Oregon would be upheld as a valid exercise of the Department of Labor's powers, and would be interpreted in a manner allowing independent truckers to purchase individual health and accident coverages, and not be subject to mandatory workers' compensation coverage.

If you have any further questions, please let us know.

Very truly yours,

HUGHES, THORSNESS, GANTZ,  
POWELL & BRUNDIN

By:

  
Timothy R. Byrnes

TRB/10385XYBR

**National Association for the Self-Employed®**



DAVID BRANGAN  
District Manager  
555 W. North Lights Blvd., Ste. 201B  
Anchorage, AK 99503  
(907) 277-5757  
(907) 277-6647 FAX

Field Services Office

March 6, 1991

Senator Drew Pierce  
Capitol Building, Suite 101  
Juneau, AK 99811

Attn: Mr. Rod Mourant

Ref: Proposed regulatory change defining independent contractors.

Dear Mr. Mourant:

The purpose of this memo is to propose regulatory changes which would define what an independent contractor is. This change is necessary in view of the problems now existing for independent truckers (owner/operators) and others due to a lack of definition in this regard.

We would like to see the State of Alaska define the independent contractors similar to the following: (Note; this is practically verbatim to Oregon Statute 701.025 from Oregon Administrative Rules of the Workers Compensation Division).

An individual or business entity that performs labor or services for remuneration shall be considered to perform the labor or services as an "independent contractor" if the standards of this section are met:

(1) The individual or business entity providing the labor or services is free from direction and control over the means and manner of providing the labor or services, subject only to the right of the person for whom the labor or services are provided to specify the desired results;

(2) The individual or business entity providing labor or services is responsible for obtaining all assumed business registrations or professional occupation licenses required by state law or local government ordinances for the individual or business entity to conduct the business;

*Ask Davey  
DZUR - to consider  
in her bill.  
FYI - what does  
worry like  
think?  
SELF-EMPLOYED  
REQUEST THIS  
HARRINGTON TO W. P.  
Rod*

(3) The individual or business entity providing labor or services furnishes the tools or equipment necessary for performance of the contracted labor or services;

(4) The individual or business entity providing labor or services has the authority to hire and fire employees to perform the labor or services;

(5) Payment for the labor or services is made upon completion of the performance of specific portions of the project or is made on the basis of an annual or periodic retainer;

(6) The individual or business entity providing labor or services is registered under this chapter, if the individual or business entity provides labor or services for which such registration is required;

(7) Federal and state income tax returns in the name of the business or a business Schedule C or farm Schedule F as part of the personal income tax return were filed for the previous year if the individual or business entity performed labor or services as an independent contractor in the previous year; and

(8) The individual or business entity represents to the public that the labor or services are to be provided by an independently established business. Except when an individual or business entity files a Schedule F as part of the personal income tax returns and the individual or business entity performs farm labor or services that are reportable on Schedule C, an individual or business entity is considered to be engaged in an independently established business when four or more of the following circumstances exist:

(a) The labor or services are primarily carried out at a location that is separate from the residence of an individual who performs the labor or services, or are primarily carried out in a specific portion of the residence, which portion is set aside as the location of the business;

(b) Commercial advertising or business cards as is customary in operating similar businesses are purchased for the business, or the individual or business entity has a trade association membership;

(c) Telephone listing and service are used for the business that is separate from the personal residence listing and service used by an individual who performs the labor or services;

(d) Labor or services are performed only pursuant to written contracts;


(e) Labor or services are performed for two or more different persons within a period of one year; or

(f) The individual or business entity assumes financial responsibility for defective workmanship or for service not provided as evidenced by the ownership of performance bonds, warranties, errors and omission insurance or liability insurance relating to the labor or services to be provided;

(g) The individual or business entity can be expected to carry its own accident burden;

Contract carriers in this case must be assured that they will not have to purchase workers compensation insurance for themselves as an owner/operator. The contract carrier has available at the present time a private health carrier that will cover them 24 hours/day with health, disability and life insurance. This is a great savings to the small business owner (contract carrier) and relinquishes the burden by the shipper to provide workers compensation coverage on a contract carrier. By providing the definition of an independent contractor, this will take out the intimidation of the workers compensation carriers to the shipper or independent contractor to prove that the independent contractor should not be added to the shipper's WC program. This is vitally important to a large segment of the Alaska trucking industry. Your timely consideration of this matter is greatly appreciated.

Sincerely

A handwritten signature in cursive script that reads "David Brangan". The signature is written in dark ink and is positioned above the typed name and title.

David Brangan  
District Manager

cc Senator Virginia Collins, attn: Ms. Nancy Spear  
Representative David Finkelstein

FAX TRANSMITTAL

DATE: 3/7/91

TO: Rod Mourant  
COMPANY: Senator Barce's Office  
LOCATION:  
FAX #: 463-5352

FROM: MARY PIERCE  
4000 Old Seward Highway, Suite 203  
Anchorage, Alaska 99503  
Telephone: (907) 563-3414  
FAX#: (907) 562-7804

Page 1 of 1

RE: Rod,  
Co-Chair Management - Mary Pierce - NOKA  
Co-Chair Labor - Kevin Dougherty - Laborers

Labor	Management
Matt Grotskie - Iron Workers	Elaine Taylor - Taylored Constru
Jeff Wertz - Machinists	Dick Pattenash - Unit Co.
Steve Boyd - Electricians	Richard Whitbeck - Mammoth
Joe Thomas - Laborers 942	Trucking
	Terry McCarty - Chugach Fore
	Products

Mary

IF YOU DO NOT RECEIVE A COMPLETE AND LEGIBLE COPY OF THIS FAX PLEASE CALL THE MICA OFFICE NUMBER ABOVE

March 8, 1991

Drue -

Re: Worker's Compensation

I spoke with Mary Pierce. She gave me the same answers as everyone else. Thought the proposed legislation was a package deal and removal of any section would break the deal and perhaps cause the ad hoc committee to lobby against subsequent legislation. Unlike Cattanach, she was sure of the source of the additional sections.

Rod

# NFIB Alaska

National Federation of  
Independent Business

March 13, 1991

The Honorable Drue Pearce  
Alaska State Senate  
Pouch V  
Juneau, Alaska 99811

Dear Senator Pearce:

The legislative agenda of NFIB/Alaska is determined by our ballot. The ballot is our annual poll of our membership on a series of issues deemed critical to small business. A majority vote, of the members in response to the poll, sets our policy and position on legislative issues.

It is my undersatnd that a bill might be introduced regarding workers' compensation through the Senate Labor and Commerce Committee. I would like to share with you the results of the 1991 NFIB/Alaska ballot question regarding workers' compensation.

Are you having trouble obtaining workers' compensation insurance coverage?

Yes 7.3%                      No 89.3%                      Undecided 3.4%

Did your workers' compensation premium increase in the past year?

Yes 59.1                      No 33.6                      Undecided 7.3

If you answered "Yes" to the question above, by what percent did it increase?

Increase		Increase	
0 to 10%	43.1%	26 to 50%	10.9%
11 to 25%	40.9%	More than 50%	5.1%

State Office  
9159 Skywood Lane  
Juneau, AK 99801  
(907) 789-4278

Did your workers' compensation premium decrease in the past year?

Yes 8.3%                      No 83.8%                      Undecided 7.9%

If you answered "Yes" to the question above by what percent did it decrease?

Decrease		Decrease	
0 to 10%	62.5%	26 to 50%	4.2%
11 to 25%	33.3%	More than 50%	0.0%



The Guardian of  
Small Business

Page: 2

Have any of your employees filed a successful workers' compensation claim in the past two years?

Yes 28.8%      No 69.6%      Undecided 1.6%

During the year, the field staff of NFIB/Alaska visits literally thousand of small businesses in the state. One recurring theme our staff continues to hear is concern with the increasing cost of insurance. On the 1991 NFIB/Alaska ballot we conducted this extensive poll on Workers Compensation Insurance to determine the current extent of any problems.

The members that wrote comments about Workers Compensation Insurance, expressed a sense of frustration. Although they had no claims or a few minor claims, their cost had increased. Enclosed are the unedited comments from our members. NFIB/Alaska would urge you to keep in mind cost when considering any proposals to change the Workers' Compensation statutes. Our members have experienced an increase in premiums and any further cost increase would be very detrimental to small business.

NFIB/Alaska hopes this information regarding the views of small business owners on this issue will be useful to you. If you have any questions regarding this information, please do not hesitate to contact me.

Sincerely,



Resa Jerrel  
NFIB/Alaska  
State Director

Enclosure

cc: Commissioner Nancy Usher

## 1991 BALLOT COMMENTS

### WORKERS COMP

It's tough these days to run a small business. With rising insurance costs & overhead & trouble collecting for work done, it's been a troubling year. Service - Fairbanks

My biggest problems involve insurance (Gen liability, workers comp & health). Something must be done - we small contractors cannot survive much longer with these escalating prices. Construction - Anchorage

The cost of workers comp. and general liability insurance has been prohibitive to us. We have been forced to become less "professional" in our pursuit of a livelihood due to the cost of administration, taxes, and insurance. There is a "hump of success" which we have not been able to scale and so we do our best at the bottom of it. Service - Homer

Rate Increase? Not sure - Premiums are small part of overall "rip-off" of this program. Construction - Cordova

Workman's Comp ins rates (minimum) is much too high for small seasonal business. Service - Juneau

Re insurance: Our WC has gone down - but because we have fewer employees. WC rates have increased 0-10% looking at rates per \$100 of payroll. Retail - Juneau

Item 9 no problem to obtain, but, rates are astronomical. Construction - Soldotna

We have not had trouble but carriers are limited therefore premiums are high. Service - Big Lake

All clients with employees have experienced increases 10-20%. Service - Juneau

Our workmans comp increased from less than a \$100 per year to almost \$600 per year in 1987. We are one of the unfortunate business that have such a low accident record that no one will cover us, so we are tossed in a pool with the highest accident records, that also no one wants to cover. Retail - Palmer

We have a small business. We had a gas station to run, but because of rising cost of insurance, and trying to keep good help, we leased it out so we have an easier work load. We still pay thru the nose for insurance and we only have 1 employee full time and one part-time helper for a fuel oil business, small engine shop and bulk fuel station. Now the cost of fuel going up and the federal tax up again, our cost has to go up again, which makes everything harder. The rate we're going sometimes between insurance & taxes I think we're working this hard for the insurance company and the government and it doesn't seem fair to small businesses like us. The one time we tried to use workmens comp. when a worker got hurt in gas station it was such a hassle we ended up paying ourselves. "Accidents do happen" but you wouldn't believe it they were no help at all. I wish we had a choice of insurance coverage it would straighten things out for people like us. Retail - Wasilla

I don't hire anymore because of the expense of worker's comp.  
Service - Juneau

We have no employees; We are not able to afford it. Service -  
Fairbanks

Something needs to be done with the workmans comp. laws in Alaska.  
The premiums are extraordinarily expensive. And the coverage med  
allowances very poor. It appears that the system is easy to abuse  
and consequently, very expensive to the employer. Service -  
Anchorage

Rates went down but they increase by experience multi enough to  
off set any decrease - 1 employee had a back injury which he saw a  
doctor for but did not miss any work as a result. Retail - Big  
Lake

We hire seasonal employees and are unable to obtain seasonal  
workmans comp. It is a flat fee for one year - not quite  
reasonable for a business adding employees for 4 or less months.  
Tourism - Kodiak

Workers compensation - Workers Comp. is outrageously high. It  
should be based on hours worked not on money earned. If one man  
is better than some of the others I pay him more per hour. Does  
this make him a greater risk? Retail - Cordova

Need to change worker's comp so premiums are based on hours worked  
not payroll. Service - Fairbanks

No trouble obtaining, its the cost that is the problem! Retail -  
Talkeetna

This was the 1st year I had an employee (one) and never did end up  
with workmans comp Insurance! I tried, but I had the impression I  
was being given the run-around after it. Dragged on for a month  
and then quoted a premium of over \$1,400 !! for a 3-month seasonal  
employee. Being a seasonal employer (charter boat business) I  
think it unfair to have to pay an annual premium. Whittier

Because of the cost of W.C., we have chosen not to have employees  
and expand our business. Inorder to have emp. and W.C. we would  
have to charge at least 50% more for our product. If we did that,  
we would just have to close the doors. The local mentality of  
getting it down south cheaper would over come any reasonableness  
concerning shopping locally, keep the money in town. So its too  
bad - because we could hire two people to do all the work more  
efficiently. Retail/Service - Juneau

Workers comp rates have created a major problem for us with little  
we can do about it. We had one claim which the employee tried to  
milk until it was obvious to everyone and it got to the point that  
I wanted our carrier to file some kind of counter claim for fraud  
and they said it was too expensive and too much bother so they  
just paid everything and in turn our rates jumped higher. I feel  
they should pursue false claims to prevent others from doing the  
same thing. One improvement might be to be able to have employees  
pay a percentage of w/c and these wrongful claims would effect  
them also. Service - Juneau

After 3 years with the same workers' compensation carrier, they declined to to renew our policy. Reason for non-renewal, "underwriting policy". Reason given by our insurance agent was our annual premium is not large enough. During the past 3 years, the carrier paid 2 small claims totalling approx. \$600.00. Our premiums exceeded \$30,000.00 during this period. Service - Anchorage

I have a real hard time believing in the 25% surcharge, charged by Work Comp Insurance companies because I have a new company. I also have a problem with their quote overhead. They have the finest office space money can buy, their own library, pictures hanging on the wall that are very expensive. If they operated in a efficient way I would have no complaints. We tell on person in the office whats going on with our business + someone else in their office sends us a bill + expects us to pay even though it is not correct. After a few phone calls + letters, they finally catch on. One hand doesn't know what the others doing. The bottom line is overhead is driving my cost up. Service - Anchorage

As an indication of the unjustifiable cost: our workmens' compensation is 17% of wage for a hired hand. The same rate applies to policemen. The reason is said to be because we carry firearms. But policemen carry firearms because people try to shoot and kill the. I've never had a wild animal shoot back at me. This workmens compensation rate is a totally unjustified ripoff. Service - Palmer

Employee file successful claim past 2 years? The successful claim was by the wife of a 39 year old man who had worked for us 1 hour to having a fatal heart attack. Our insurance company awarded nearly \$300,000 without advising us of their intent. As an added not the 1 hour of work also included a 20 minute safety meeting. Construction - Wasilla

Rate Decrease? On workers comp, our insurance rates only went down because we were able to get a group rate through our trade association. Had we continued with the same insurer, our rates would have been about the same. Retail - Juneau

Workmans Comp is the most serious issue facing Alaska businesses. Service - Anchorage

We are semi retired now and only my wife and I work at the business. The last year we had employees (1988) our Workmen's Comp went up and although we had only 2 accidents in 10 years our carrier dropped us and our agent had to go to someone else. Someone should do something about insurance coverage on all levels, Workman's Comp, Liability and Health Insurance. They are all out of site for the average small businessman as well as on a personal level. Service - Ketchikan

A 200% increase. With the increase in both Liability & Workmens Comp. we're seriously considering ceasing business. Service - Anchorage

No change in Workers Comp - Because we are down to two employees - Retail - Kenai

My agent informed me our carrier, Ak. Indust. Indem., is pulling out of Alaska. He assured me he'll find a new carrier by renewal time. Service - Soldotna

I feel the main concerns small business has in Alaska at this time, is lack of financial help from the lending institutions and the fast rising costs of Insurance. Service - Kenai

I am self employed and no longer have employees but feel the rates of worker's comp versus their exposure to liability is unfairly high. I believe that if the common man knew what business insurance was costing him in higher prices for goods and services they would back legislation to limit law suits and initiate more no fault laws. Service - Eagle River

MAR 18 1991

Rod. billite

# WCCA

Workers' Compensation  
Committee of Alaska

March 13, 1991

The Honorable Druæ Pearce, Chair  
Senate Labor and Commerce Committee  
Alaska State Legislature  
P.O. Box V (MS 3100)  
Juneau, AK 99811

Dear Senator Pearce:

It has come to my attention that there is some misunderstanding of the position of the Workers' Compensation Committee of Alaska (WCCA) regarding the proposed legislation being submitted to you by the Labor/Management Ad Hoc Committee. To clarify this, permit me to state the position taken by the WCCA Board of Directors at our March 7th Board meeting.

The WCCA has, and continues to fully support the Labor/Management Ad Hoc Committee and the deliberative process they follow in developing needed improvements in the Alaska Workers' Compensation Act. This committee consists of 5 members representing Alaska employers and 5 members representing organized labor. Because it is a balanced committee, this process has worked exceedingly well in the past, both for employers and workers, and we feel that it is essential for this process to be preserved.

The proposed legislation that has been submitted to you is, for the most part, the same as CSSB 508 sponsored by Labor and Commerce, offered on April 24, 1990 and amended April 25, 1990. The current version contains some clarifications in language and there have been three additional sections intended to eliminate some ambiguities in the current act and provide additional protection for employers and workers. Last year the WCCA supported CSSB 508 and we unconditionally support the revised version in its entirety as submitted to you.

This package of revisions contains some items of primary importance to employers, i.e. Sections 4, 10, 12, 17, and the legislative intent statements; some are important to Labor, i.e. Sections 9 and 11; and some others were requested by the Division of Workers' Compensation, i.e. Sections 1 - 3 and 5 -

P.O. Box 200631  
Anchorage, Alaska 99520

have been thoroughly discussed and agreed to by the representatives of both management and labor and by the Board of WCCA. It would be a grave disservice to the good faith negotiating process as well as Alaska employers and workers to split the package into multiple bills, or to strip provisions from this one. After the bill has been introduced, any legislator who feels that a modification is in order may do so in committee.

For these reasons, the Board of WCCA, on behalf of all our member employers, urges the Senate Labor & Commerce Committee to proceed with the sponsorship of the proposed legislation as submitted to you by the Labor/Management Ad Hoc Committee.

Sincerely,

A handwritten signature in cursive script, appearing to read "Warren L. Dvorak", written in dark ink.

Warren L. Dvorak  
President

WLD:mse

cc: Mary Pierce, Co-Chair, Ad Hoc Committee  
Kevin Dougherty, Co-Chair, Ad Hoc Committee

# Alaska State Legislature

Senator Druce Pearce, Chair  
Senator Virginia Collins, Vice Chair  
Senator Dick Eliason  
Senator Rick Halford  
Senator Jay Kerttula



## SENATE LABOR AND COMMERCE COMMITTEE

WHILE IN JUNEAU  
P.O. BOX V  
JUNEAU, ALASKA 99811  
(907) 465-3844

3111 C STREET, SUITE 150  
ANCHORAGE, ALASKA 99504  
(907) 561-2018

TO: Mike Ford, Legislative Legal Counsel  
Division of Legal Services

FROM: Rod Mourant, Committee Aide  
Senate Labor & Commerce Committee

DATE: March 14, 1991

RE: Proposed Worker's Compensation Legislation

Mike, please draft a worker's compensation bill using the attached Worker's Compensation Ad Hoc Committee recommendation as the guide. Please show the Senate Labor & Commerce Committee by Request as the sponsor.

We need this ASAP. Thank you.

ARK LABOR/Mgt. WORK COMP AD HOC

Amendments to 3/14/91 WORK DRAFT 7-LS1004\A

Section 1 (a)

CD 8

① Add sentence to read, "No change is intended regarding liability for conduct not concerning safety inspections or safety advisory services."

② Section 1 (b) should read:

It is the purpose of sect. 18 of this Act to amend AS 23.30.26 (15) to reaffirm the original intent of the 1982 amendment to include prior ~~total~~ temporary total disability payments within the definition of gross wages.

③ Amend Section 1 (c) as Dick Cottanach already indicated 1N

④ Amend Section 6 Line 20 as D. Cottanach already indicated 1N

(4b) See 16 1N

5) Section 10(b)

Redraft Lines 9-12 to read:

Compensation required under this section commences when the employee's health insurance provided by the employer's contribution ceases and shall continue for 18 months, or until the employee is no longer receiving compensation described in (a) of this section, whichever period is shorter.

6) Question on why M. Ford changed this?

See 10 Part c

HAD 4 ONLY 10 (C) (D) 2

From the desk of:

*Senator Drue Pearce*

Rod.

Run this by the  
Ad hoc crowd ✓ plus

Charlie filler ✓

Pat Smutz ✓

+ Labor. ✓

COLLINS ✓

It's my intention to

drop it in Friday!

dp

(so you'll need to get  
a final for Rick)



TELECOPY COVER SHEET

SENATOR DRUE PEARCE'S OFFICE

VOICE (907) 465-4993 FAX (907) 463-5352

To: PAT SMUTZ Fax: 586-5658

Attn: \_\_\_\_\_ Phone: \_\_\_\_\_

Transmitted by: ROD MOURANT Date: 3/15/91

Re: WORKER'S COMPENSATION DRAFT

Comments: THIS IS COVER MEMO I FAILED  
TO TRANSMIT WITH LEGISLATION.

Number of Pages: 3 Including Cover Sheet.





TELECOPY COVER SHEET

SENATOR DRUE PEARCE'S OFFICE

VOICE (907) 465-4993 FAX (907) 463-5352

To: PAT SMUTZ Fax: 586-5658

Attn: \_\_\_\_\_ Phone: \_\_\_\_\_

Transmitted by: ROD MOURANT Date: 3/15/91

Re: WORKER'S COMPENSATION DRAFT LEG

Comments: PLEASE SHARE WITH APPROPRIATE

PARTIES THE SENATOR WOULD LIKE

TO INTRODUCE ON MONDAY, SO NEED

COMMENTS / CONCERNS ASAP.

THANKS PAT.

Rod

Number of Pages: 12 Including Cover Sheet.





TELECOPY COVER SHEET

SENATOR DRUE PEARCE'S OFFICE

VOICE (907) 465-4993 FAX (907) 463-5352

To: COMMISSIONER USFWS Fax: 465-2784

Attn: \_\_\_\_\_ Phone: \_\_\_\_\_

Transmitted by: ROD MOURANT Date: 3/15/91

Re: WORKMAN'S COMP LEGISLATION

Comments: CONRA MAILED FOR DRAFT

LEGISLATION PREVIOUSLY TRANSMITTED.

Number of Pages: 3 Including Cover Sheet.





TELECOPY COVER SHEET

SENATOR DRUE PEARCE'S OFFICE

VOICE (907) 465-4993 FAX (907) 463-5352

To: COMMISSIONER USEPA Fax: 465-2784

Attn: DOL Phone: 465-2700

Transmitted by: ROD MOURAY Date: 3/15/91

Re: WORKER'S COMPENSATION LEGISLATION DRAFT

Comments: Nancy

WOULD YOU LOOK OVER? YOUR

COMMENTS AS WELL AS STAFF WOULD

BE APPRECIATED. TIME SCHEDULE IS

TIGHT! THE SENATOR WOULD LIKE TO

DROP THIS IN ON MONDAY.

I WILL BE IN ALL DAY

SATURDAY. THANKS Rod

Number of Pages: 12 Including Cover Sheet.





TELECOPY COVER SHEET

SENATOR DRUE PEARCE'S OFFICE

VOICE (907) 465-4993 FAX (907) 463-5352

To: DICK CATANACH Fax: 522-3464

Attn: \_\_\_\_\_ Phone: 349-4568

Transmitted by: ROD MOURANT Date: 3/15/91

Re: WORKER'S COMP DRAFT LEGISLATION

Comments: THE SENATOR WOULD APPRECIATE

COMMENTS AND CONCERNS OF AD HOC

COMMITTEE. TIME IS OF THE

ESSENCE. WOULD YOU PLEASE GET

BACK ASAP. I WILL BE IN

ALL DAY TOMORROW.

Rod

Number of Pages: 14 Including Cover Sheet.



# WORK ORDER REQUEST FORM

W.O. [17] LS-1004

KEYWORDS: WORKERS' COMPENSATION ASSIGNED: Ford

\_\_\_\_\_  
\_\_\_\_\_

REQUEST FOR: New Bill TAKEN BY: Barnes

SUBJECT: Workers' Compensation

REQUESTED FOR: SC SL&C BY: Rod Mourant PHONE: 465-3844

DELIVER TO: Sen. Pearce, Cap 101

INSTRUCTIONS: Draft workers' compensation bill using the attached Workers' Compensation Ad Hoc Committee recommendation as a guide.

OBTAIN	SPECIAL DRAFTING INSTRUCTIONS ATTACHED [ ]
	AUTHORIZED TO CONFER WITH _____ _____
	RETURN _____
	_____ TO REQUESTOR
	APPROVED: <input checked="" type="checkbox"/> DIRECTOR, LEGAL SERVICES

REVIEWED _____	SPECIAL INSTRUCTIONS to TYPING/PROOFING
IN <u>03/14/91</u> DUE _____	By Request _____
TYPED: Draft _____ Date _____	_____
Final _____ Date _____	_____
PROOFED _____ DELIVERED _____	Request for DRAFT



# Alaska National

INSURANCE COMPANY

*A policy of service and protection*

March 15, 1991

Mr. Charlie Miller  
Juneau, Alaska 99811

Dear Charlie:

I believe that the following changes should be made to the draft workers' compensation bill:

Section 23.30.232

Insert "or failing to perform" after "performing" on line 31.

This additional language is used in the intent section (Section 1) and should also be included in Section 16 to avoid any misunderstanding.

Section 23.30.047 (b) and (c)

The word, "compensation" appears four times in these two sub-sections. The word, "payments" should be substituted for "compensation". There may be a subtle distinction in the terms, but the difference is important.

Section 23.30.041 (k) (2)

The phrase, "and has requested reemployment benefits" should not have been deleted. There are financial implications without it.

Section

I believe the reference to Section 11 should be to the new Section 11.

While I favor all of the above changes, the most critical one is to Section 23.30.232.

Yours truly,

A handwritten signature in dark ink, appearing to read "James E. Pfeifer".

James E. Pfeifer  
President

# Alaska State Legislature

Senator Drue Pearce, Chair  
Senator Virginia Collins, Vice Chair  
Senator Dick Eliason  
Senator Rick Halford  
Senator Jay Kerttula



WHILE IN JUNEAU  
P.O. BOX V  
JUNEAU, ALASKA 99811  
(907) 465-3844

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ANCHORAGE, ALASKA 99504  
(907) 561-2018

## SENATE LABOR AND COMMERCE COMMITTEE

TO: Mike Ford, Legislative Counsel  
Division of Legal Services

FROM: Rod Mourant, Legislative Aide  
Senate Labor & Commerce Committee

DATE: March 18, 1991

RF: Changes to Draft Legislation 7-LS1004/A

Mike, on page 1 line 11, please review this language to determine if it is consistent with the legislative intent:

"Sec AS 23.30.265(21). It is the intent of the legislature that the presumption of compensability in AS 23.30.120(a)(1) continue to be applied only to the question of whether an injury is related to the employment."

If it is not consistent, please redraft this section.

Pg 2 ln 22-24, section (7) seems to imply more than just notification, which is its intended purpose. Please clarify.

Pg 7 lns 7, 9, 11, 13 payments were not intended to be "compensation" but rather just payments of benefits. Language not indicates benefits to be compensation. Please delete the word "compensation" and insert "payment".

Pg 9 ln 31 please redraft to read:

"for civil damages as a result of an act or omission in performing or failing to perform a workplace safety inspection".

On the second page of your March 14th cover memorandum for this draft legislation you speak to deleting "and has requested reemployment benefits" in AS 23.30.041(k)(2) as duplicative. Because its deletion might result in duplicate payments, please reinsert this language.

One final note, pg 1 Section 1. shouldn't it apply to sections 16, 18, and 19 rather than sections 11, 18, and 19?

Please redraft ASAP. Thanks.

*DOES ANYONE  
- TO THIS  
CALCULATED*

*(NO)*

*NOT JUST  
NOTIFICATION  
IF'S DUTY*

*OK*

*REPAIR  
IN*

*OK*

- 1) Problems with draft - after legal did.
- 2) Ad hoc group sent 2 sectional analysis - concern changing what they wanted.
- 3) P7, Section 10, line 14  
"or" s/b "for" type  
Cobra extension under fed law needs to be reinserted.
- 4) p8 section 12, line 12 put "reasonable" back before costs
- 5) 3 amendments introduced & rescinded
- 6) fiscal note should not exist -  
Division of Insurance should have additional text
- 7) rehab staff - Division

fight on Ad hoc still same (Dick + Mary)  
 Elaine Taylor - wec A  
 night members should represent all the employees -  
 feel their position is

# DIVISION OF LEGAL SERVICES

## LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

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FAX (907) 465-2029

Deliveries to: 240 Main Street  
Court Plaza, Room 500  
Mail Stop 3101

### MEMORANDUM

March 14, 1991

**SUBJECT:** Workers' compensation (Work Order No. 7LS1004/A)

**TO:** Senator Drue Pearce

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

I wanted to point out several changes in the attached draft from the material you sent to us. First, the language in AS 23.30.041(k)(6) has been rewritten to provide certain extended benefits in the event of controversion or appeal by an employer. The provision requiring the employee to be successful in defending the controversion or appeal was deleted, in that the language failed to indicate what would occur if the appeal was decided in favor of the employer.

Second, the language contained in Sec. 5, regarding extending the exclusive liability of an employer to a carrier, insurance agent or trade association that provides workplace safety inspections has been moved to a new section, section 16. The submitted language would have added a definition of "employer" to the exclusive liability provision contained in AS 23.30.055. As written, the definition raised several serious problems. It appears that the definition is intended to give the carrier, insurance service agent or trade association similar treatment as an "employer" in determining liability for injuries to an employee. However, the following issues were raised by this approach:

1. While the definition attempts to link safety inspections with the extension of protection against liability, the definition as written provides protection when the carrier, insurance service agent, or trade association "provides or fails to provide safety inspections". In short, the link to safety inspections is confusing at best, and perhaps nonexistent. Whether a carrier requires a safety program or not, the carrier is considered an "employer" under this language.

2. The inclusion of the carrier, service agent, and trade association as an "employer" may create additional liability for these parties. Under AS 23.30.095, an "employer" is not protected when the employer fails to secure payment of workers' compensation as required by law. Therefore, the carrier, service agent, or trade association may

find themselves named as parties to a lawsuit, by virtue of being considered the "employer" of a person whose actual employer failed to secure proper workers' compensation. This language would not provide additional protection from negligent, or intentional acts of misconduct, other than is provided to an employer.

3. Who is the actual "employer" of a person is sometimes intensely litigated. This kind of change to the law is confusing, and an invitation to additional litigation.

If the whole point of the definition is to provide immunity when a safety inspection is done, then a separate section establishing that immunity is simpler and a lot clearer. This is the approach taken in section 16.

Finally, in AS 23.30.041(k)(2) the phrase "and has requested reemployment benefits" was deleted. The language appeared to duplicate a provision already contained in the first sentence of the section.

If I may be of further assistance, please contact me.

MFF:mi  
91-052.mai

# Alaska State Legislature

DRUR - FY I  
ok J Rod

Senator Drue Pearce, Chair  
Senator Virginia Collins, Vice Chair  
Senator Dick Eliason  
Senator Rick Halford  
Senator Jay Kerttula



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ANCHORAGE, ALASKA 99504  
(907) 561-2018

## SENATE LABOR AND COMMERCE COMMITTEE

let's get read  
across.

TO: Mike Ford, Legislative Counsel  
Division of Legal Services

FROM: Rod Mourant, Legislative Aide  
Senate Labor & Commerce Committee

DATE: March 18, 1991

RE: Changes to Draft Legislation 7-LS1004/A

Mike, on page 1 line 11, please review this language to determine if it is consistent with the legislative intent:

"Sec AS 23.30.265(21). It is the intent of the legislature that the presumption of compensability in AS 23.30.120(a)(1) continue to be applied only to the question of whether an injury is related to the employment."

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Pg 7 lns 7,9,11,13 payments were not intended to be "compensation" but rather just payments of benefits. Language not indicates benefits to be compensation. Please delete the word "compensation" and insert "payment".

Pg 9 ln 31 please redraft to read:

"for civil damages as a result of an act or omission in performing or failing to perform a workplace safety inspection".

On the second page of your March 14th cover memorandum for this draft legislation you speak to deleting "and has requested reemployment benefits" in AS 23.30.041(k)(2) as duplicative. Because its deletion might result in duplicate payments, please reinsert this language.

One final note, pg 1 Section 1. shouldn't it apply to sections 16,18, and 19 rather than sections 11,18,and 19?

Please redraft ASAP. Thanks.

March 16, 1991

Drue -

Re: Worker's Comp

I received feed back from Charlie Miller, James Pfeifer, Dick Cattanach and Kevin Dougherty. There corrections and comments were virtually identical. I have drafted the attached memo to Ford making the changes they requested.

With your permission, I'll finalize.

Rod

DICK SAID THAT VIRGINIA AGREED  
WITH THESE CHANGES BUT WANTED  
MORE. I HAVEN'T SPOKEN WITH HER.

3/18/91

DRUE -

I SENT MEMO TO MIKE FORD  
REQUESTING A FINAL WITH CHANGES.

March 20, 1991

Drue -

Re: Worker's Comp Legislation

Kevin Daugherty faxed some additional changes to the Ad hoc committee legislation that he says is vital and that all parties agree to. I have tried to reach Dick Cattanach or Mary Pierce to confirm. Neither is in. I also left a message for Charlie Miller to call.

Kevin says that changes need to be made prior to introduction to avoid controversy.

Rod

I JUST SPOKE WITH DICK. HE SAID  
THAT THE CHANGES ARE NEEDED AND  
AGREED TO BUT COULD BE DONE  
AS AMENDMENTS IN L+C OR SPONSOR  
SUBSTITUTE.

Rod

SENATE COMMITTEE REPORT  
FIRST COMMITTEE OF REFERRAL

DATE: 3/20/91

FURTHER:

Date of 5-Day Notice: 3-28-91  
(in accordance with Uniform Rule 23)

DATE TURNED  
INTO OFFICE: \_\_\_\_\_

L&C Committee considered SB 219

Workers' compensation; efd.

and recommended:

replace with \_\_\_\_\_ CS SB 219 (L & C)  same title  
 attached amendment(s)  new title

\_\_\_\_\_ letter of intent adopted

do pass

do not pass

no recommendation

individual recommendations

further referral to \_\_\_\_\_

ATTACHES NEW FISCAL NOTE(S):

Department(s)/Date:

Department(s)/Date:

fiscal note(s) LABOR/4-4-91  
SB

zero fiscal note(s) COMM/4-29-91  
LABOR/4-22-91 & CS

appropriation-no fiscal note

Governor's bill w/fiscal note

SIGNING DO PASS:

OTHER RECOMMENDATIONS:

[Signature]  
[Signature]  
[Signature]  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

[Signature]  
Chair: Signature and Recommendation

# DIVISION OF LEGAL SERVICES

## LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

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Court Plaza, Room 5  
Mail Stop 31

### MEMORANDUM

March 28, 1991

**SUBJECT:** Workers' compensation - (SB 219)  
**TO:** Senator Drue Pearce  
**FROM:** Michael F. Ford *M.F.*  
Legislative Counsel

The following is a section by section analysis of SB 219:

Section 1 - Purpose of sections 16, 18, and 19.

Section 2 - Changes the period covered by the reemployment benefits report submitted by the administrator. ~~Adds a new duty to monitor activities of medical managers.~~ *Adds to the administrator's duty to monitor the disclosure of the medical manager created in Section 9.*

*see attached!* Section 3 - Requires the administrator to review the board's case file and determine if the employee is unlikely to return to work in the same job, before selecting a rehabilitation specialist and performing an eligibility evaluation.

*see attached!* Section 4 - Requires employee injuries be diagnosed by a licensed physician, or in the case of muscular, skeletal, or neurological injuries, by a licensed physician or licensed physical or occupational therapist.

Section 5 - Requires the rehabilitation specialist to certify that the reemployment plan meets the requirements imposed under AS 23.30.041(h). Requires amendment of a plan that does not meet statutory requirements, and prohibits an additional charge by the rehabilitation specialist for amending the plan. *unless approved by rehab administrator*

*see attached!* Section 6 - Provides for payment of compensation to an employee eligible for reemployment benefits and establishes the type of compensation to be paid. Limits benefits related to the reemployment plan to two years, except when the claim is controverted or appealed.

Section 3 - provides the administrator with the authority to review the file and determine <sup>whether</sup> an employee ~~is~~ eligible for an eligibility evaluation. The purpose of this amendment is to codify the rehabilitation administrator's ~~current~~ practice.

Section 4 - <sup>for purposes of vocational rehabilitation laws</sup> adds authority for licensed physical or occupational therapist to determine physical capacities of employees in the case of muscular, skeletal or neurological injuries.

Section 6 - This provides for payment of 60% of the employee's spendable weekly wage for the time between reaching medical stability but before receiving an impairment rating. <sup>except for the first 30 days</sup> payments during this time will be offset against the permanent impairment rating.

In addition if a controversion or appeal of the employee's claim delays completion of rehabilitation the employer shall pay 60% of the spendable weekly wage during this period and the two year limit is tolled. This payment will not be offset against

Senator Drue Pearce

March 28, 1991

Page 2

Section 7 - Provides that the cost of the reemployment specialist shall be paid by the employer, may not be included in the cost of the reemployment plan, and limits fees ~~and~~ charged by the reemployment specialist.

*the board to compare fees and determine the reasonableness of charges by the reemployment specialist*

Section 8 - Definition. *of Medical Manager added*

Section 9 - Requires the medical manager to send certain notice to the employee, employer, and the employer's physician. *(disclosure)*

*see attached*

Section 10 - ~~Requires the employer to provide certain health insurance benefits to an employee. Provides a penalty for failure to make the required payment.~~

Section 11 - Establishes a civil penalty that the board may impose if the employer fails to obtain the required insurance.

Section 12 - Requires that attorney fees awarded a prevailing employer disputing compensation with another employer be reasonable.

*see attached*

Section 13 - ~~Changes the weekly rate of compensation paid to an employee for disability or death. Provides for levels of compensation that depend on documentary proof of wages furnished by the employee. Prohibits the employer paying compensation at the employees spendable weekly wage without a board order, except as provided under regulations established by the board.~~

Section 14 - Requires an impairment rating be determined by a licensed physician, or in certain cases by a licensed physical or occupational therapist.

Section 15 - Clarifies the right to compensation that survives the death of the employee.

Section 16 - Limits the civil liability of an insurer, insurance service agent, or trade association for performing or failing to perform a safety inspection or safety advisory service.

Section 17 - Provides that a person acting as a volunteer emergency medical technician is considered an employee of the state for purposes of workers' compensation. Specifies the calculation of gross weekly earnings.

Section 18 - Amends the definition of "gross weekly earnings" to include temporary disability compensation.

Section 19 - Amends the definition of "medical stability" to include lack of deterioration, as well as lack of improvement from the effects of an injury.

the permanent impairment rating

Section 10 Employers whom provide health insurance to employees and covered dependents will reimburse injured employees for replacement coverage for an amount equal to the employer's contribution, whichever amount is less

However the employee must provide continued proof of coverage

The employer will start payment when current coverage ceases and cease payments when employee is no longer receiving compensation for the injury or 18 months whichever is shorter.

Provides a penalty for failure to make the required payment.

Section 13

Corrects conflicting language regarding procedure and clarifies the method of determining employee's minimum weekly compensation rate. The purpose is to codify the board's current practice.

Senator Drue Pearce

March 28, 1991

Page 3

Section 20 - Definition. of <sup>Volunteer-</sup> Emergency Medical Technician

Section 21 - Requires the division of insurance to prepare a report on implementation of a contracting classification premium adjustment program.

Section 22 - Transition section for reporting on reemployment benefits.

Section 23 - Effective date.

MFF:gc:pl  
91-175.glc

TO: Mike Ford, Legislative Counsel  
Division of Legal Services

FROM: Rod R. Mourant, Legislative Aide  
Senate Labor & Commerce Committee

DATE: April 3, 1991

RE: SB 219

Please draft the following amendments for SB 219 7-LS1004\A  
version:

1) Sec. 1. Add -

No change is intended regarding liability for conduct not concerning safety inspections or safety advisory services.

2) Sec. 1(b) Delete section and replace with -

(b) It is the purpose of sec. 18 of this Act to amend AS 23.30.265(15) to reaffirm the original intent of the 1982 amendment to include prior temporary total disability payments within the definition of gross wages.

3) Sec. 10(b) Delete section and replace with -

(b) Compensation required under this section commences when the employee's health insurance provided by the employer's contribution ceases and shall continue for 18 months, or until the employee is no longer receiving compensation described in (a) of this section, whichever period is shorter.

FAX TRANSMITTAL

DATE: 4/5/91

TO: Rod Mourant

COMPANY: Senator Pearce's Ofc.

LOCATION:

FAX #: ~~463-4993~~ 463-5352

FROM: MARY PIERCE

4060 Old Seward Highway, Suite 203  
Anchorage, Alaska 99503  
Telephone: (907) 563-3414  
FAX#: (907) 562-7804

Page 1 of 6

RE: Rod

Since you asked yesterday for further amendments on SB219 for a CS, Kevin and I have spent the morning comparing notes, mainly our draft and SB219. There are still a few discrepancies which we will mention at the hearing but are very hopeful can get amended in the CS.

IF YOU DO NOT RECEIVE A COMPLETE AND LEGIBLE COPY OF THIS FAX PLEASE CALL THE MICA OFFICE NUMBER ABOVE

```

*****
*
* DELIVER TO: LIOCBLS
*
* ORIGINAL
* SENT: 04/05/91 TIME: 15:49
* FROM: LIOCMIL
* SUBJECT: 91-04-004, PL#2; (S)L&C; 4/5
* PRINT DATE: 04/05/91 TIME: 15:49
*
*****

```

SUBJECT LINE TO READ: TC NO.; PL FS; SHORT SUBJECT, DATE

```

T/C NO: 91-04-004
DATE: 4/5
SPONSOR: (S) LABOR AND COMMERCE
SUBJECT: SB 219 WORKERS' COMP
MODERATOR: JUDY
SITE: ANCHORAGE

```

PARTICIPANT LIST

\*\*\*\*\*

TO TESTIFY

NAMES/REPRESENTING	ADDRESS	PHONE	BILL NO.
1. KEVIN DOUGHERTY	2501 COMMERCIAL		SB 219
2. WARREN DVORAK	4600 DEBARR		SB 219
3. SHELBY NUENKE-DAVISON	1407 W 31		SB 219

4. MATT GROSKE/AD HOC WK CMP COM			SB 219
5. MARY PIERCE/AD HOC			SB 219
6.			

\*\*\*\*\*

TO OBSERVE:

NAME/ REPRESENTING	ADDRESS	PHONE	BILL NO.
1. VIRGINIA BREEZE	101 E 9 #120	99501 274-1113	SB 219
2. RICH WHITBECK	1048 WHITNEY RD	99501 276-7000	SB219
3.			

4.

5.

\*\*\*\*\*

```

BACK UP NUMBER: 561-1197
EMAIL ADDRESS: LIOCMIL

```

```

*****
*
* DELIVER TO: LIOCBL5
*
* ORIGINAL
* SENT: 04/05/91 TIME: 15:27
* FROM: LYCKTN
* SUBJECT: 91-04-004;PL1;WORKERS COMP,4-5
* PRINT DATE: 04/05/91 TIME: 15:27
*
*****

```

```

T/C NO: 91-04-004
DATE: APRIL 5, 1991
SPONSOR: (S) LABOR & COMMERCE COMMITTEE
SUBJECT: SB 219: WORKERS' COMPENSATION CHANGES
MODERATOR: RAE RHODES
SITE: KETCHIKAN

```

PARTICIPANT LIST

```

*****
TO TESTIFY

```

NAME/REPRESENTING	ADDRESS	PHONE	BILL NO.
1. DONNA MAE LEWIS,	ALASKA TIMBER INSURANCE EXCHANGE		SB 219
2.			
3.			
4.			
5.			

```

*****
OBSERVED

```

NAME/REPRESENTING	ADDRESS	PHONE	BILL NO.
1.			
2.			
3.			
4.			
5.			

```

*****

```

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TESTIFIED:
UNABLE:
OBSERVED:

```

TOTAL

START TIME:

END TIME:

COMMITTEE TAPE LOG

COMMITTEE: Labor & Commerce DATE: 4/5/91 TIME: 3:30

SUBJECT: SB 212, SB 219

MEMBERS: Pearce, Collins, Halford, Elaison, Kerttula <sup>Binn</sup>  
 VC RH DE Van ~~Case~~ Case -

SPEAKER	TAPE #	SIGNIFICANT INFORMATION
	344	Teleconference
SB 212		
David Walsh		reveals - Title 21 - hold harmless
Div. of Insurance -		agreement - allows safety valve - reserve - MICA - matches the number of claims filed - NORCAL took MICA'S debts -
	096	MICA couldn't have borrowed - \$4.7 million to state - policy holders will share - Need MICA - maybe - in/out state umbrella - 1/1/92 MICA will no longer exist - necessary bill pass -
Collins		looking at a MICA vehicle - objected to sale of MICA - concern benefit to individuals - copies of hearing - motion to move -
RH		money - premiums -
DW	190	1 year's premium paid to holders - state paid?
RH		
DW		yes - equity position by state - excellent return
DE		dealt during a special session - gave background - malpractice insurance

SPEAKER	TAPE #	SIGNIFICANT INFORMATION
DW-		NORCAL (?)
DE		mandatory insurance?
Marlan H		supports SB212, participated, enthusied with NORCAL - please move the bill on - stronger insurance with NORCAL
RH		passed out SB212 -
VC		Collins objected -
SB219		
Collins		reviewed bills and packets material - 3 amendments - submitted by the ad hoc committee - errors in drafting. gave page # of amendments & moved amendments into CS - w/o so moved -
Balford		
Anchorage		
Kevin ?		Labo Mgm. Labor Committee -
Mary Pierce		gave goal, Ak. labor reps, and ?
2 others	329	from SB508 of last year - appreciate consideration - supreme ct. decision -
Mary Pierce		provided for remedy - employees are covered - not different from SB508.
RH	354	amendment # - what need -

difficult to hear

SPEAKER	TAPE #	SIGNIFICANT INFORMATION
Kevin		exclusive protection - only objective of the amend - public policy -
RH		find course
Collins	388	<del>Brook</del> <del>Brook</del> (?) situation -
Kevin		exclusive - Van Buren v East Helicopters, Inc.
Kevin		second primary feature - loss benefits - cap on benefits - cost factor - make hold - status quo -
Pierce	421	reimbursement law, lost benefits - proof of insurance - important section -
RH		not an incentive for employers not to have health medical insurance -
Collins	451	only provided to an employee who is already insured - concern with whom it benefits - impact on premium
Pierce		1 cent increase -
RH		cost effect of each section -
Kevin	(?)	<del>Brook</del> <del>Brook</del> case - 1% health insurance increase -
Pierce		insurance premiums can go up 10%
Kevin		sect 4 - codify status quo -
Collins		discarded physician - neurological injuries - difficult to diagnose -

SPEAKER	TAPE #	SIGNIFICANT INFORMATION
Collins	518	suggests delete Pinc 9-11 on
		page 3 - no impairment ratings
		by other than a neurologist -
Anch aff		- (definition of neurological
		injuries) -
Pierce		Sect 6 - complex - provide 60%
		of victims weekly wage - need
	556	an impairment rating - two year
		time limit -
		questions?
Halford		- reviewed Sect. 6 - what changes
		from a person injured -
Pierce		payment for a time period -
		medical rating -
Side	B 583	
Pierce		allow physician to use other
		people to make an impairment
		rating - 2 year time limit -
		work on appeal -
Halford		question - compensation -
Pierce		problem with the bill -
Halford		cost is negligible -
Collins		number of injuries, inappropriate
		to rate for some time after
		injury or operation - <sup>not</sup> capricious
Pierce	548	

SPEAKER	TAPE #	SIGNIFICANT INFORMATION
Seven	530	Sect 11 - uninsured employer - all board to assess civil penalties - deterrent in the system -
Pierce		reference to (P. Mason) - SB. 208 - paraphrasing same language -
Collins		Dick Cattanaugh - have resigned has management -
Pierce		explained new members -
Linda Rexwinkel		Workers Comp. Division - lauded the ad hoc group - § continuation of health benefits - administrative impact - work load - fiscal notes - monitoring disclosures -
DE	482	what happened to 508 - fiscal notes - checked with Rod on last years -
L.R.		updating data collection - over load - change to do monitoring -
DE		Could bring zero fiscal notes -
Commissioner		spoke from chair -
Ketchikan		-
Donna Mae supports bill -		Lewis, (aka Timber) Insurance - Van <sup>Beune</sup> <del>Beune</del> ( ) added endorsement to policy - timber industry participating -

SPEAKER	TAPE #	SIGNIFICANT INFORMATION
		W.C.C.A.
Warren	Derorak	- commends ad hoc - supported draft bill -
		Sect. 10 - page 7 - line 14 -
		Sect 12 line 12 - put reasonable back before costs -
Juneau -		
Jim Pfeifer		- Ab. Mat - major writer of workman's supports - comp - balanced project - Van <del>Beine</del> <sup>Beine</sup> Erv Hellerstein - service has declined - negatives can be avoided -
	355	Halford - amend #1 - delete monitoring of medical managers - more comprehensive than intent -
Dave Hatcher		- Ab. Coop - insurance since 1980 - supports extensive safety - curtailed - van <sup>Beine</sup> <del>Beine</del> liability - inspection - cut back on safety -
	Sect. 16	
		Concerned over amend #1
Mary Nordale		- Roberts, Monagle, etc, submitted <sup>statement</sup> insurance paper - asked to have insert prepared in record - responded to testimony R.H.'s
Don Koch		- Div of Insurance - pricing impact - missing element.
	255	Sect 21 - fiscal impact -
		3 trips to Anch. publishing the document -

SPEAKER	TAPE #	SIGNIFICANT INFORMATION
		Sect 11 - Comp board not able to arrive at a rate -
DE		in last years bill -
Hock		- didn't recall,
DE		please check - negotiate over methodology -
Pfeifer	204	avoid fiscal notes - obligations - no fiscal notes attached -
Pierce	188	incredulous over a fiscal notes - Pfeifer is correct -
		delete sect. 21 - intent - no fiscal notes -
Rexwinkel		clarified - 3/2 - incur extra costs - implement data processing -
Halford		rescind the 3 amend - no obj.
	121	described amendments - no sense -
		3rd one has some merit - curious about sections not analyzed -
Collins		will propose changes -
DE	67	provisions - extra baggage -
Rexwinkel		these sections are needed - help to clarify - housekeeping - review the bill -
Halford		need sectional analysis - Rexwinkel will come back -



STATEMENT  
of  
Mary A. Nordale  
in behalf of  
American Insurance Association

My name is Mary A. Nordale. I am an attorney with the firm of Robertson, Monagle & Eastaugh in Juneau, and I represent the American Insurance Association in support of SB 219.

While the AIA supports the entire bill because it represents the negotiated position of the WCCA and Labor, AIA has particular interest in Section 16 of the bill, the so-called Van Biene provision. Section 16 would constitute a response to the question specifically posed to the Legislature by the Alaska Supreme Court in Van Biene v. Era Helicopters, Inc., 779 P. 2d 315 (Alaska 1989). In Van Biene the Court determined that "there is nothing in the statutory language of the Alaska scheme which prevents an employee from bringing suit against a compensation carrier for the negligent performance of a safety inspection" and that a different policy, and different result, would better be the determination of the Legislature.

In a similar case, the Idaho Supreme Court decided that a labor union could be held liable to injured workers for negligently performed safety inspections, Rawson v. United Steelworkers of America, 726 P. 2d 742 (Idaho 1986).

Section 16 of the bill would prevent liability from attaching to carriers, insurance service agents of self-insured employers and trade associations (a term that includes labor unions) for negligent safety inspections or negligent safety advisory services unless the negligence constituted intentional misconduct.

The policy issue is clear - either we rely solely upon the inspection and safety advisory services of OSHA and MS or we create a climate in which insurers and others, including labor unions, can perform voluntary safety inspections and services within the range of acceptable risk. If the reliance in the future is to be solely on governmental agencies, then the policy set forth in AS 21.89.015 should be repealed. AS 21.89.015 provides that "An insurer who provides workers' compensation insurance in this state shall establish and maintain a workplace safety rate reduction program, subject to the approval of the division." In other words, employers who adhere to strong safety principles and guidelines should benefit by insurance rate reductions. Rate reduction does not mean benefit reduction, but it does require those employers whose interest in safety is less than the norm to bear a larger share of the financial burden of supplying benefits.

## II. General Public Policy Considerations

(1) Insurers voluntarily provide safety engineering and loss control services for their policyholders in keeping with their general business practices. These include evaluating an employer's workplace risk to ascertain a fair premium and to give advice on how to prevent injuries which could give rise to claims under the insurance policy. These objectives necessarily force an employer and insurer to confront workplace safety problems, with the obvious socially desirable benefits of reducing hazards. The exposure of insurers to unlimited potential tort liability as a result of the Van Biene decision guarantees that insurers will take steps to reduce or eliminate this new, unexpected risk by reducing their loss control and safety services. The consequence will be less reliance on safety inspections which insurers now perform voluntarily.

The imposition of unlimited tort liability upon insurers through the Van Biene decision has significantly chilled insurers' willingness to engage in workplace safety activities.

(2) The unlimited liability exposure of insurers presently existing as a result of Van Biene will cause insurance rates to rise. Such increases could be prohibitive and will be especially hard on small employers, because smaller employers, generally, are less able to absorb higher costs than are larger employers. Small employers are often those who could benefit from assistance with their safety programs. A rise in manual rates (the "basic" rate) means that any reduction in an employer's "final" rate, as affected by experience rating and other discounts, will be from a higher base -- so that final rates will be higher. The increase in basic rates -- to account for an insurer's greater uncertainty from possible subsequent liability -- will penalize safer employers and subsidize less safe employers; all end up paying more.

Workers' compensation insurance responds to economic incentives. When the cost of this voluntary service increases, insurers will reduce the underwriting of this type of insurance and reduce the safety services they provide. Insurers may also offer safety inspections and/or programs only in conjunction with an indemnity and hold harmless agreement from employers. The present existing risk is unascertainable and cannot be objectively evaluation. Therefore, benefits which may derive from safety inspections and programs are surpassed by the potential costs of unlimited tort exposure.

(3) The potential tort liability is a result of Van Biene

Statement of Mary A. Nordale  
April 5, 1991  
Page 3

will interfere with delivery of workers' compensation benefits. The specter of employee and carrier locked in legal combat would force each into a defensive posture which could only defeat the speedy and efficient resolution of the employee's claims, especially in the overwhelming majority of routine cases. The potential litigants could readily become:

"... uncooperative adversaries for fear of making damaging admissions to be used against them at trial. Instead of fully disclosing the facts and circumstances surrounding a workplace injury, each party would assume a defensive posture early in the process in anticipation of future litigation." Kifer, v. Liberty Mutual Insurance Co., 777 F.2d 1325, 1336 (8th Cir. 1985).

Another court stated:

"To allow this action to prevail would relegate [the informal workers' compensation claims process] to one of deafening silence. An atmosphere of caution would pervade the [process], with each party reluctant and wary lest any statement made might be utilized in future [litigation], in which potential recovery and risks would be much greater. For example, the employee, previously not concerned with the question of his negligence since that would not preclude recovery under the Workmens' Compensation Act, now would be circumspect in explaining the circumstances surrounding the accidental injury. So, too, the insurer, while previously willing to accord the employee the benefit of doubt ... might now desist from that practice lest this concession be treated as an admission in a contemplated tort action against it by the employee." Barrett v. Travelers Insurance Co., 246 A.2d 102, 105-108 (Super.Ct.Conn. 1968).

As a result of Van Biene, the informal workers' compensation proceeding will become a birthplace of further litigation against the employer's carrier. The claimant may use statements, pleadings, and other evidentiary materials submitted with respect to the workers' compensation claim against the insurer in a later civil action for negligence.

(4) Insurers should be encouraged to take an active role in workplace safety. The U.S. Congress has not expanded OSHA's inspection resources, not only for budgetary reasons, but also in recognition that the OSHA Act expressly imposes responsibility for workplace safety and health, not on the government, but on employers for ensuring workplace safety and recognition that, as employers, they are optimally situated to ensure their own workers' safety. This is also the case in those states which, under authority granted by OSHA, operate their own health and safety programs.

Therefore, any steps which militate against voluntary workplace safety efforts would not produce a corresponding increase in federal OSHA directed safety and health activities. There are approximately 11,500 insurer safety personnel nationwide. They should not be discouraged from conducting active programs in the workplace.

(5) An insurer and employer are considered one and the same for the general purposes of the workers' compensation law, such as notice of injury, jurisdiction, and the binding effect on an insurer of an award against an employer. This policy recognizes an employer's statutory obligations and insurer's indivisible responsibility in carrying out an employer's statutory obligations, as well as an assurance of efficient delivery of benefits. Preserving the insurer's immunity for injury allegedly related to workplace safety is, therefore, consistent with the general policy of considering employer and insurer responsibility as indivisible.

### III. Immunity for Labor Organizations to Third Party Tort Actions

Senate Bill 219 provides immunity to a labor organization to the same extent as to an insurer. This would appear to be in the union's interest for several reasons:

(1) Notwithstanding a recent U.S. Supreme Court pronouncement holding an employee's state-law tort claim preempted by federal labor law, a union can still be held liable in tort.

The Court in IBEW, AFL-CIO v. Hechler, 481 U.S. 851 (1988) held the state-law tort claim was preempted by Section 301 of the Labor-Management Relations Act (LMRA) because the tort action rested on an interpretation of a collective bargaining agreement. That is, the union member's claim that the union breached its duty of care to provide her with a safe workplace was not sufficiently independent of the collective bargaining agreement to withstand

preemption. The trial court would have to ascertain whether the agreement in fact resulted in an implied duty of care on the union.

However, where a court would not have to look to a collective bargaining agreement, a state-law tort action could proceed because there would be no conflict with federal labor policy. Such a decision was reached in Rawson v. U.S. Steelworkers, 770 P.2d 794 (Idaho 1988). In light of the Supreme Court's holding in Hechler, the Idaho Supreme Court held a union could be liable in tort for negligence related to safety inspections where the union did undertake safety inspections. It remains an open question whether a labor organization can be liable for negligently not reporting apparent safety problems.

(2) By ensuring it is immune from state-law tort actions, the union need only concern itself about contractual liability imposed by freely-negotiated (and assumed) responsibilities under collective-bargaining agreements and, subject therefore, only to contractual actions for damages under Section 301 of the LMRA.

(3) This assurance should encourage unions to cooperate more fully with employers and insurers in various workplace safety programs, all to the ultimate benefit of the employees.

#### IV. Conclusion

Section 16 of the Senate Bill 219 represents a positive response by the Legislature to the decision by the Alaska Supreme Court in Van Biene and the Court's recognition that this issue is one of policy to be properly addressed by the Legislature. The cooperative and productive efforts made to enhance workplace safety by employers, insurers, and employee representatives, should be maintained through the passage of Senate Bill 508.

April 8, 1991

Alyeska - Paul Richards

AS 23.30.047

Concerned about additional cost to Alyeska since they keep employees on payroll already.

APR 1 8 1991

April 11, 1991

Senator Drue Pearce, Chairman  
Senate Labor and Commerce Committee  
Alaska State Legislature  
P.O. Box V (MS 3100)  
Juneau, Alaska 99811

Dear Senator Pearce:

As we sat through the hearing on Senate Bill 219 on Friday April 5, a number of concerns came to our attention which we would like to address in this letter. First it is obvious that the Ad Hoc Committee has been remiss in familiarizing the Labor and Commerce Committee with the background of the Ad Hoc Committee and its method of operation. Second, when we reviewed the Sectional Analysis of the Bill it was apparent that the author of the analysis did not fully understand that intent of the proposed Legislation. Finally, the Ad Hoc Committee believes that when the legislation was drafted, a number of sections were drafted in a manner which did not reflect the intent of the Committee. Hopefully this letter and the associated attachments will address these issues so that the Labor and Commerce Committee has a better understanding of the intent of the proposed legislation.

The Management/Labor Ad Hoc Committee was created in 1981 because neither representatives of the employee groups nor employer groups were satisfied with the traditional legislative approach to resolution of problems with the workers' compensation system. Representatives of labor and management agreed that a far better approach would be for a group representing the needs of injured workers and a group representing the interests of employers to work together to address deficiencies in the system. For ten years, five representatives of labor and five representatives of management have worked to refine the system so that the needs of the injured workers are addressed in a manner that is affordable to Alaskan employers. The process that has been developed is to present balanced bills which contain provisions beneficial to injured workers, provisions that are beneficial to employers, and provisions that deal with issues relevant to the administration. Since a proposed bill represents a compromise between the parties, attempts to modify the proposal as it progresses through the legislative process have been resisted unless it is believed that the change would not upset the delicate balance of the bill. The only concern of the Ad Hoc Committee is to improve the workers' compensation system so that it better serves the needs of the injured worker at a cost that is affordable to the Alaskan employer. It is the belief of the Ad Hoc Committee that by dealing with the problem in this manner, we are able to remove the resolution of workers' compensation issues from the

legislative process. The benefit to the Legislators is that this controversial issue is dealt with outside the legislative process.

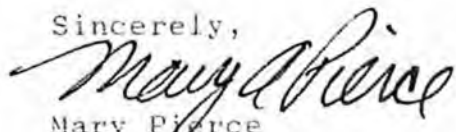
Enclosed as an attachment to this letter is the Ad Hoc Committee's Sectional Analysis of SB 219. You will see that it differs somewhat from the sectional analysis prepared by the Division of Legal Services. Our section analysis reflects the intent of the legislation as originally proposed. If, after review, it is determined that SB 219 as drafted does not reflect that intent, we would like to request that the draft be modified to reflect the intent set forth in our section analysis.

Also enclosed are recommended changes to SB 219. These reflect changes that we have identified as necessary to capture the intent of the section. Where necessary the reasons for the changes have been provided.

Lastly, we would like to address the issue of the fiscal notes that were attached to the legislation. We agree that the Division of Workers' Compensation may realize an minor impact from having to occasionally file the notice requirements from medical managers, but we believe that any additional cost will be more than offset from the cost savings realized from the reduction in hearings resulting from Sections 6 and 13 and the additional revenue produced under Sec. 11. Similarly, we have requested that the Division of Insurance prepare a statistical study but we had not intended that they incur travel costs to present their findings. A mailed report is satisfactory, and this possibly will remove their fiscal note.

Hopefully, this information will help the Committee better understand the intent of the Legislation and permit the bill to move forward. If we can provide any additional assistance on this matter, please let us know.

Sincerely,

  
Mary Pierce  
Co-Chair

  
Kevin Dougherty  
Co-Chair

SECTION ANALYSIS  
SB 218

The following is a section by section analysis of SB 219.

Section 1. Purpose of sections 16, 18, and 19.

Section 2. Changes the period covered by the reemployment benefits report submitted by the administrator. Adds to the administrator's duty to monitor the disclosure of the medical manager created in Section 9.

Section 3. Provides the administrator with the authority to review the file and determine whether an employee is eligible for an eligibility evaluation. The purpose of this amendment is to codify the rehabilitation administrator's current practice.

Section 4. For purposes of vocational rehabilitation benefits eligibility this section adds authority for para-medical personnel to determine physical capacities of employees in the case of muscular, skeletal or neurological injuries.

Section 5. Requires the rehabilitation specialist to certify that the reemployment plan meets the requirements imposed under AS 23.30.041(h). Requires amendment of a plan that does not meet statutory requirements, and prohibits an additional charge by the rehabilitation specialist for amending the plan unless approved by the rehabilitation administrator.

Section 6. This section provides for payment of 60 percent of the employee's spendable weekly wage for the time between reaching medical stability but before receiving an impairment rating. Payments during this time, except for the first 30 days, will be offset against the permanent impairment rating.

In addition, if a controversion or appeal of the employees claim delays completion of rehabilitation, the employer shall pay 60 percent of the spendable weekly wage during this period and the two year limit is tolled. This payment will not be offset against the permanent impairment rating.

Section 7. This section provides that the cost of the reemployment specialist shall be paid by the employer, may not be included in the cost of the reemployment plan, and allows the board to compare fees and determine the reasonableness of changes by the reemployment specialist.

Section 8. This section adds the definition of a medical manager.

Section 9. This section requires the medical manager to send a notice to the employee, employer, and the employee's physician defining the medical managers role.

2 ✓ Section 10. Employers who provide health insurance to employees and covered dependents will reimburse injured employees for replacement coverage or an amount equal to the employer's contribution, whichever amount is less. However, the employee must provide continued proof of coverage.

The employer will start payment when current coverage ceases and cease payments when employee is no longer receiving compensation for the injury or 18 months whichever is shorter. It provides a penalty for failure to make the required payment.

3 ✓ Section 11. This section establishes a civil penalty that the board may impose if the employer fails to obtain the required insurance.

✗ Section 12. This section requires that all attorney fees and costs awarded a prevailing employer disputing compensation with another employer be reasonable.

Section 13. This section corrects conflicting language regarding procedure and clarifies the method of determining employee's minimum weekly compensation rate. The purpose is to codify the board's current practice.

Section 14. This section requires an impairment rating be determined by a licensed physician or in some cases by paramedical personnel.

Section 15. This section clarifies the right to compensation that survives the death of the employee.

4 ✓ Section 16. This section limits the civil liability of an insurer, insurance service agent, or trade association for performing or failing to perform a safety inspection or safety advisory service.

Section 17. This section provides that a person acting as a volunteer emergency medical technician is considered an employee of the state for purposes of workers' compensation and specifies the calculation of gross weekly earnings.

Section 18. This section amends the definition of "gross weekly earnings" to include temporary disability compensation.

Section 19. This section amends the definition of "medical stability" to include lack of deterioration, as well as lack of improvement from the effects of an injury.

Section 20. This section provides definition of volunteer emergency medical technician.

Section 21. This section requires the division of insurance to prepare a report on implementation of a contracting classification premium adjustment program.

Section 22. This section provides a transition section for reporting on reemployment benefits.

Section 23. This section establishes an effective date.

RECOMMENDED MODIFICATIONS TO SB 219

1. Section 1(a) - add new sentence at the end to read.

"No change is intended regarding liability for conduct not concerning safety inspections or safety advisory services."

2. Section 1(b) should read:

It is the purpose of Section 18 of this act to amend AS23.30.265(15) to reaffirm the original intent of the 1982 amendments to include prior temporary total disability payments within the definition of gross wages.

3. Section 1(c) should read:

It is the purpose of Section 19 of this Act to amend AS 23.30.265(21) to assure that the presumption of compensability in AS 23.30.120(a)(1) continue to be applied <sup>to</sup> only the question of whether an injury is related to employment. This section also clarifies that medical stability results from a condition from which objectively measurable improvement or deterioration is not expected from further medical treatment, and that medical stability is presumed in the absence of improvement or deterioration after 45 days.

4. Section 2(7) should read:

(7) monitor the reporting activities of medical managers assigned by the carrier to an injured employee.

5. Section 4 should be modified to read:

(e) An employee is eligible for benefits under this section upon the employee's written request and by having a licensed physician or other licensed para-medical personnel, predict that the employee will have permanent physical capacities, based on objective and verifiable data, that . . .

6. Section 6 (k)(2) should be modified as follows:

(2) if the employee reaches medical stability and has requested a rehabilitation plan, or has been . . .

7. Section 6 (k)(4) should be modified as follows:

(4) if the employee reaches medical stability before an impairment rating is given as provided in AS 23.30.190, the employee shall . . .

8. Section 6 (k)(6)

(6) if the employer controverts the employee's claim or appeals a ruling of the administrator or the board and the controversion or appeal delays completion of an evaluation,

development, commencement or completion of a plan and the employee is successful in the claim or appeal, . . .

9. Section 7. The last sentence should read as follows:

Fees charged by and paid to a rehabilitation specialist for services must be reasonable as compared to fees for similar services in the community in which the services are performed, as determined by the board.

10. Section 10 (b). The last sentence should read as follows:

Payments required under this section commences when the employee's health insurance provided by the employer's contribution ceases and shall continue for 18 months, or until the employee is no longer receiving compensation described in (a) of this section, whichever period is shorter.

11. Section 10 (c) should be changed to read as follows:

Payment is not required under this section until the employee provides on-going proof of health insurance coverage. In this subsection, "health insurance" includes an individual policy of health insurance, an individual conversion policy, or a notice of self-payment for continuance of coverage under COBRA or a union health or welfare trust agreement.

12. Section 12 is modified as follows:

When payment of benefits are controverted ....

The final sentence in this section should read as follows:

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

13. Section 14. The final sentence should be modified as follows:

An impairment rating shall be determined by a licensed physician. Measurements of mobility may be made by para-medical personnel.

# Municipality of Anchorage



P.O. BOX 15555  
ANCHORAGE, ALASKA 9 1519-6850  
(907) 343-4425

TOM FINK,  
MAYOR

## DEPARTMENT OF EMPLOYEE RELATIONS

April 15, 1991

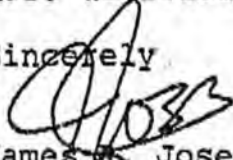
To Whom It May Concern:

The Municipality of Anchorage is opposed to SB 219 (L&C) "An Act relating to Workers Compensation, and providing an effective date".

### Reasons:

1. Although the main thrust of the bill is commendable as we interpret it, i.e., the shift of Workers Compensation to managed care principles, i.e., prospective and retrospective utilization management, early intervention on potential problem cases and return-to-work programs, there is continuing concern about developing a new penalty structure and setting higher fines for workplace health and safety violations. Employers whose unsafe policies and actions either knowingly or carelessly place workers in jeopardy should be sanctioned.
2. This bill lumps all employers together and even the diligent employer working in good-faith who "unknowingly" violates this bill will be subject to imprisonment and penalties equal to three times the manual rate that would have been charged for an employers insurance premium during the period the employer failed to obtain insurance. This is excessive and over reactive.
3. Establish legislation that requires employers to examine the cause of accidents, the results, develop new techniques for investigations and help create a new workplace environment where accidents will be declining and huge savings as well as improved production will result, is a more desirable approach.

Sincerely,

  
James M. Jose  
Director, Employee Relations



TELECOPY COVER SHEET

SENATOR DRUE PEARCE'S OFFICE

VOICE (907) 465-4993 FAX (907) 463-5352

To: DEPT. OF LABOR Fax: 465-2784

Attn: COMMISSIONER USERA Phone:

Transmitted by: Date: 4/22/91

Re: WORKER'S COMPENSATION

Comments: HERE IS AD AOC'S LATEST

LETTER. THIS AND SB 217 WILL BE

TOPICS OF TODAY'S 2:30

TELE CONFERENCE

PLEASE CALL 465-3844 AT 2:30 PM.

TODAY. THANKS - Rod.

Number of Pages: 8 Including Cover Sheet.



April 23, 1991

Dear :

for 1991.

was before it  
is presently

The Senate Labor & Commerce Committee ~~has been faced with taking action on~~ Senate Bill 219 which reflects the Ad Hoc Committee's legislative priorities. (The discomfort level of the committee began rising when it seemed that no one was either willing or able to explain why elements other than the VanBiene decision and offsetting medical benefits sections were included in the legislation.)

The important charge of the Ad Hoc Committee is to do preliminary work, identify areas of concern and suggest alternatives. The committee should be commended for its work in this area.

# However, the draft legislation submitted by the committee was developed with little or no public input. There were no notices of meetings being held to discuss legislation. None the less, when it was forwarded to the legislature, the draft legislation carried the message that it had been carefully crafted and was a balanced bill. In order to maintain support for the legislation the legislature was told that it had to be adopted in its entirety and without substantive change.

Throwing another element of doubt on the legislation was the recent resignation of two of the Ad Hoc Committee members. Integrity remained unquestioned but the substance of the legislation came into doubt. Were the resignations somehow connected to the legislation?

Elements of last years's SB 508 seem appropriate and have received significant public discussion. As a result, the Labor & Commerce Committee is having drafted a committee substitute bill that addresses two items mentioned in those comments, the Van Biene decision remedy and the issue of offsetting medical benefits.

Bearing in mind that the legislature has a desire to improve the

workers' compensation process and that it is the legislature that sets public policy, I urge the Ad Hoc Committee to meet during the interim and include in the meetings representatives of the Department of Labor and the Legislature. Through the work of this consensus group legislation can be drafted which can be finalized through the public hearing and legislative processes.

The role the Ad Hoc Committee plays in this process is an important one. Its members work together to identify and suggest ways to address deficiencies. Balance in legislation is an admirable achievement but only if reached through public participation.

I look forward to working with you on this important legislative issue in the future.

Sincerely,

Drue Pearce

DP:rrm

cc: Honorable Nancy Bear-Use'a, Commissioner  
Department of Labor

Members

Ad Hoc Committee on Workers Compensation

Bruce?

Members

Senate Labor & Commerce Committee

← This  
is who  
it's to  
|||

# Alaska State Legislature

Senator Druce Pearce, Chair  
Senator Virginia Collins, Vice Chair  
Senator Dick Eliason  
Senator Rick Halford  
Senator Jay Kerttula



## SENATE LABOR AND COMMERCE COMMITTEE

WHILE IN JUNEAU  
P.O. BOX V  
JUNEAU, ALASKA 99811  
(907) 465-3844

3111 C STREET, SUITE 150  
ANCHORAGE, ALASKA 99504  
(907) 561-2018

TO: Mike Ford, Legal Counsel  
Legal Services Division

FROM: Rod Mourant, Legislative Aide  
Senate Labor & Commerce Committee

DATE: April 23, 1991

RE: SB 219

Mike, per Senator Pearce's request, would you please compare the recommended changes in the attached April 11th letter from the Ad Hoc Committee on Workers' Compensation with the applicable provisions in SB 219 version 7-LS1004\A.

In that comparison would you note which changes are style changes and which are substantive changes. In the case of substance changes, please explain the significance of the change.

Your timely attention to this matter would be appreciated.

Thanks.

Attachment

# DIVISION OF LEGAL SERVICES

## LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

P.O. Box Y, Juneau, Alaska 99811  
(907) 465-3867 or 465-2450  
FAX (907) 465-2029

Deliveries to: 240 Main Street  
Court Plaza, Room 500  
Mail Stop 3101

### MEMORANDUM

April 24, 1991

**SUBJECT:** Workers' compensation - (SB 219)  
**TO:** Senator Drue Pearce  
**FROM:** Michael F. Ford *M.F.*  
Legislative Counsel

You have asked for a comparison of changes recommended by the ad hoc committee on workers' compensation with the provisions of SB 219. The following is a section by section analysis of the recommended changes:

#### Section 1 -

(a) The recommended change would further clarify the purpose of section 16. The change has no substantive effect.

(b) The recommended change expands on the purpose of section 18. The recommended change has no substantive effect.

(c) The first sentence of the recommended change would relate to a purpose not reflected by changes in section 19. The question of whether an injury is related to employment is a different issue than the issue raised by changing the definition of "medical stability" as made in section 19. The second sentence of the recommended change is presently contained in SB 219. This subsection has no substantive effect.

Section 2 - The recommended change is contained in SB 219. The SB 219 provision does contain additional modifying language not contained in the language recommended by the ad hoc committee.

Section 3 - No recommended changes.

Section 4 - The recommended changes would substitute "para-medical personnel" for "licensed physical or occupational therapist" in AS 23.30.041(e). The language would be a substantive change.

Section 5 - No recommended changes.

Section 6 - The recommended change to subsection (k)(2) is in part contained in SB 219. The part not included in SB 219 is duplicative of an existing provision of law contained in AS 23.30.041(e). The recommended change to subsection (k)(4) would delete the phrase "except for the first 30 days". This would be a substantive change. The recommended change to subsection (k)(6) is contained in SB 219 with the exception of a requirement that the employee be "successful in the claim or appeal." This language was omitted because it was unclear what would occur if the employee was not successful in the claim or appeal. This language would be a substantive change.

Section 7 - The recommended change is contained in SB 219, with only minor form and style changes from the language of the ad hoc committee.

Section 8 - No recommended changes.

Section 9 - No recommended changes.

Section 10 - The recommended change to subsection (b) is contained in SB 219. The recommended changes to subsection (c) are contained in SB 219, with the exception of form and style changes.

Section 11 - No recommended changes.

Section 12 - The recommended change to the first sentence of AS 23.30.155(d) is not contained in SB 219. This would be a substantive change. The recommended change to the last sentence of that section is contained in part in SB 219. The insertion of "reasonable" before "costs" instead of "attorneys" would be a minor substantive change.

Section 13 - No recommended changes.

Section 14 - The recommended changes are contained in part in SB 219. The part not presently in SB 219 is the second sentence of the recommended change. This would be a substantive change.

Sections 15 - 23 - No recommended changes.

MFF:lmb  
91-138.lmb

# Alaska State Legislature

Senator Drue Pearce, Chair  
Senator Virginia Collins, Vice Chair  
Senator Dick Eliason  
Senator Rick Hallford  
Senator Jay Kerttula



WHILE IN JUNEAU  
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3111 C STREET, SUITE 150  
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(907) 561-2018

## SENATE LABOR AND COMMERCE COMMITTEE

April 25, 1991

Mary Pierce, Co-Chair  
Ad Hoc Committee on Workers' Compensation  
4000 Old Seward Highway, Suite 203  
Anchorage, AK 99503

Dear Ms. ~~Pierce~~: *Mary*

The Senate Labor and Commerce Committee has Senate Bill 219 under consideration. It reflects the Management/Labor Workers' Compensation Ad Hoc Committee's proposals for legislation this session.

The Committee is familiar with the background of the Ad Hoc Committee. We agree that the group can play an important role by doing preliminary work to identify areas of concern and by suggesting alternatives to address deficiencies in the worker's compensation system. We appreciate the need for continued improvement of the system so that it better serves the needs of injured workers at an affordable cost.

However, we cannot agree with the stated belief of the Ad Hoc Committee that the resolution of worker's compensation issues should be removed from the legislative process. The draft legislation submitted to our Committee was developed with little or no public input. There were no public notices of the meetings, to our knowledge. The Ad Hoc group presented us with a bill they considered to be balanced and members have asserted that we should not change any provisions lest we lose the support of the group even though there has been no public input. Quite frankly, we do not plan to perform in that manner.

There is some real concern on the part of the Committee about this bill. First, while no person's integrity has been questioned, two Ad Hoc committee members who represented management have resigned from their positions with the Worker's Compensation Committee of Alaska but not from the Ad Hoc committee. We understand from the WCCA that the resignations were caused by concerns about the proposed legislation. This raises questions about the process and the makeup of the Ad Hoc group.

We are also concerned that there are elements of the bill that no group claims to have initiated. Further, during the public hearing on April 5th no testimony was offered to justify most of the elements contained in the bill or to adequately justify those requested late by the Ad Hoc Committee.

We also believe that the Department of Labor's Division Director and the Legislature should be involved in the process of the working group at some point before draft legislation is presented for introduction.

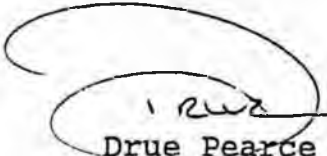
Bearing in mind that this legislature has a desire to improve the worker's compensation system just as you do, and that it is our responsibility to set public policy through a time honored process, we would urge the Ad Hoc Committee to continue to meet in a more open manner to suggest alternatives to the present laws. We want to work with you to reach a balanced compromise through public participation.

We have chosen to take elements of the bill which were included in last year's ill-fated SB508 in a CS that we will be passing from Committee. The two items, the Van Biene decision remedy and the issue of offsetting medical benefits, have had significant public review and seem appropriate. We would hope that you will continue to support these elements, as you have in the past.

We would also hope that you will be willing to work with us during the interim to refine further changes in the statutes that you have identified as needing attention.

Thank you.

Sincerely,



Drue Pearce

DP:rm

cc: Honorable Nancy Bear-Usera, Commissioner  
Department of Labor

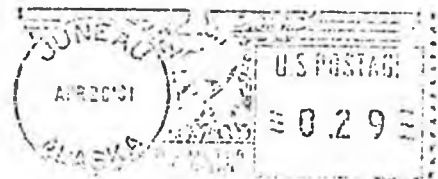
Bruce Kendall, Legislative Liaison  
Office of the Governor

Pat Smutz, Representative  
State AFL/CIO

Warren L. Dvorak, President  
Workers's Compensation Committee of Alaska

Committee Members  
Senate Labor & Commerce Committee

Drue Pearce  
State Legislature  
Street, Suite 150  
ge, Alaska 99503  
ring Session  
P.O. Box V  
u, Alaska 99811



Kevin Dougherty  
Ad Hoc Committee on Workers' Compensation  
1818 W. Northern Lights Blvd.  
Anchorage, AK 99517  
01

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AS ADDRESSED  
UNABLE TO FORWARD  
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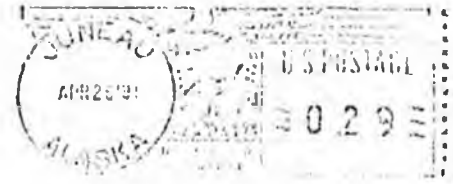


**Drue Pearce**

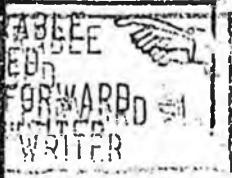
State Legislature

Street, Suite 150  
Anchorage, Alaska 99503

Spring Session  
P.O. Box V  
Anchorage, Alaska 99811



Jeff Wertz *e/o* *MACHINIST UNION LOCAL 601*  
Ad Hoc Committee on Workers' Compensation  
1818 W. Northern Lights Blvd.  
Anchorage, AK 99517



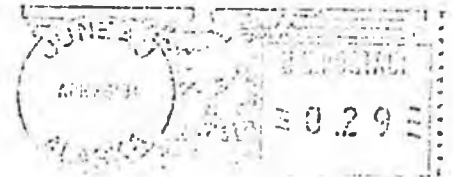
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**Drue Pearce**

State Legislature

Street, Suite 150  
Anchorage, Alaska 99503

Spring Session  
P.O. Box V  
Anchorage, Alaska 99811



Joe Thomas  
Ad Hoc Committee on Workers' Compensation  
1818 W. Northern Lights Blvd.  
Anchorage, AK 99517



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Drue Pearce

State Legislature

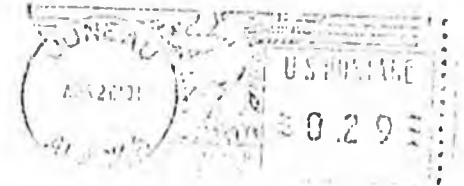
Street, Suite 150

age, Alaska 99503

ring Session

P.O. Box V

u, Alaska 99811



Matt Grotskie  
Ad Hoc Committee on Workers' Compensation  
1818 W. Northern Lights Blvd.  
Anchorage, AK 99517

ABLE  
SED  
FORWARD  
WRITER



Drue Pearce

State Legislature

Street, Suite 150

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ring Session

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u, Alaska 99811



Steve Boyd  
Ad Hoc Committee on Workers' Compensation  
1818 W. Northern Lights Blvd.  
Anchorage, AK 99517

ABLE  
SED  
FORWARD  
WRITER



# Alaska State Legislature

Senator Drue Pearce, Chair  
Senator Virginia Collins, Vice Chair  
Senator Dick Elvason  
Senator Rick Halford  
Senator Jay Kerttula



WHILE IN JUNEAU  
P.O. BOX V  
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(907) 465-3844

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ANCHORAGE, ALASKA 99504  
(907) 561-2018

## SENATE LABOR AND COMMERCE COMMITTEE

April 25, 1991

Elaine Taylor  
Ad Hoc Committee on Workers' Compensation  
1301 E. 71st  
Anchorage, AK 99518

Dear Ms. Taylor: *Elaine*

The Senate Labor and Commerce Committee has Senate Bill 219 under consideration. It reflects the Management/Labor Workers' Compensation Ad Hoc Committee's proposals for legislation this session.

The Committee is familiar with the background of the Ad Hoc Committee. We agree that the group can play an important role by doing preliminary work to identify areas of concern and by suggesting alternatives to address deficiencies in the worker's compensation system. We appreciate the need for continued improvement of the system so that it better serves the needs of injured workers at an affordable cost.

However, we cannot agree with the stated belief of the Ad Hoc Committee that the resolution of worker's compensation issues should be removed from the legislative process. The draft legislation submitted to our Committee was developed with little or no public input. There were no public notices of the meetings, to our knowledge. The Ad Hoc group presented us with a bill they considered to be balanced and members have asserted that we should not change any provisions lest we lose the support of the group even though there has been no public input. Quite frankly, we do not plan to perform in that manner.

There is some real concern on the part of the Committee about this bill. First, while no person's integrity has been questioned, two Ad Hoc committee members who represented management have resigned from their positions with the Worker's Compensation Committee of Alaska but not from the Ad Hoc committee. We understand from the WCCA that the resignations were caused by concerns about the proposed legislation. This raises questions about the process and the makeup of the Ad Hoc group.

# Alaska State Legislature

Senator Druce Pearce, Chair  
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Senator Dick Eliason  
Senator Rick Halford  
Senator Jay Kerttula



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## SENATE LABOR AND COMMERCE COMMITTEE

April 25, 1991.

Dick Cattanach  
Ad Hoc Committee on Workers' Compensation  
8101 Old Seward Highway  
Anchorage, AK 99518

Dear Mr. Cattanach: *LUCK*

The Senate Labor and Commerce Committee has Senate Bill 219 under consideration. It reflects the Management/Labor Workers' Compensation Ad Hoc Committee's proposals for legislation this session.

The Committee is familiar with the background of the Ad Hoc Committee. We agree that the group can play an important role by doing preliminary work to identify areas of concern and by suggesting alternatives to address deficiencies in the worker's compensation system. We appreciate the need for continued improvement of the system so that it better serves the needs of injured workers at an affordable cost.

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Senator Virginia Collins, Vice Chair  
Senator Dick Ellasen  
Senator Rick Halford  
Senator Jay Kerttula



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## SENATE LABOR AND COMMERCE COMMITTEE

April 25, 1991

Richard Whitbeck  
Ad Hoc Committee on Workers' Compensation  
1048 E. Whitney Road  
Anchorage, AK 99501

Dear Mr. ~~Whitbeck~~: Richard

The Senate Labor and Commerce Committee has Senate Bill 219 under consideration. It reflects the Management/Labor Workers' Compensation Ad Hoc Committee's proposals for legislation this session.

The Committee is familiar with the background of the Ad Hoc Committee. We agree that the group can play an important role by doing preliminary work to identify areas of concern and by suggesting alternatives to address deficiencies in the worker's compensation system. We appreciate the need for continued improvement of the system so that it better serves the needs of injured workers at an affordable cost.

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# Alaska State Legislature

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Senator Jay Kerttula



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(907) 561-2018

## SENATE LABOR AND COMMERCE COMMITTEE

April 25, 1991

Terry McCarty  
Ad Hoc Committee on Workers' Compensation  
3000 A  
Anchorage, AK 99503

Dear Mr. McCarty: Terry

The Senate Labor and Commerce Committee has Senate Bill 219 under consideration. It reflects the Management/Labor Workers' Compensation Ad Hoc Committee's proposals for legislation this session.

The Committee is familiar with the background of the Ad Hoc Committee. We agree that the group can play an important role by doing preliminary work to identify areas of concern and by suggesting alternatives to address deficiencies in the worker's compensation system. We appreciate the need for continued improvement of the system so that it better serves the needs of injured workers at an affordable cost.

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(907) 561-2018

## SENATE LABOR AND COMMERCE COMMITTEE

April 25, 1991

Kevin Dougherty, Co-Chair  
Ad Hoc Committee on Workers' Compensation  
2501 Commercial Drive, Suite 140  
Anchorage, AK 99501

Dear Mr. ~~Dougherty~~. *Kevin*

The Senate Labor and Commerce Committee has Senate Bill 219 under consideration. It reflects the Management/Labor Workers' Compensation Ad Hoc Committee's proposals for legislation this session.

The Committee is familiar with the background of the Ad Hoc Committee. We agree that the group can play an important role by doing preliminary work to identify areas of concern and by suggesting alternatives to address deficiencies in the worker's compensation system. We appreciate the need for continued improvement of the system so that it better serves the needs of injured workers at an affordable cost.

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(907) 561-2010

## SENATE LABOR AND COMMERCE COMMITTEE

April 25, 1991

Matt Grotskie  
Ad Hoc Committee on Workers' Compensation  
1818 W. Northern Lights Blvd  
Anchorage, AK 99517

Dear Mr. Grotskie: *Mat*

The Senate Labor and Commerce Committee has Senate Bill 219 under consideration. It reflects the Management/Labor Workers' Compensation Ad Hoc Committee's proposals for legislation this session.

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## SENATE LABOR AND COMMERCE COMMITTEE

April 25, 1991

Jeff Wertz  
Ad Hoc Committee on Workers' Compensation  
1818 W. Northern Lights Blvd  
Anchorage, AK 99517

Dear Mr. Wertz: *Jeff*

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## SENATE LABOR AND COMMERCE COMMITTEE

April 25, 1991

Steve Boyd  
Ad Hoc Committee on Workers' Compensation  
1818 W. Northern Lights Blvd  
Anchorage, AK 99517

Dear Mr. Boyd: *Steve*

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(907) 561-2018

## SENATE LABOR AND COMMERCE COMMITTEE

April 25, 1991

Joe Thomas  
Ad Hoc Committee on Workers' Compensation  
1818 W. Northern Lights Blvd  
Anchorage, AK 99517

Dear Mr. Thomas: *Joe*

The Senate Labor and Commerce Committee has Senate Bill 219 under consideration. It reflects the Management/Labor Workers' Compensation Ad Hoc Committee's proposals for legislation this session.

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April 25, 1991

Drue -

RE: SB 219 Title

Spoke with Nordale. She thinks bill will get killed if title too tight. She suggests -

"An Act relating to workers' compensation and civil liability for workplace safety inspections; and providing for an effective date."

dx

Rod

Drue

4/25

**THE J.R. HEESCH COMPANY**

**PUBLIC RELATIONS • MARKETING • COMMUNICATIONS**

**Jack R. Heesch**  
President

523 W. 8th Avenue                      P.O. Box 201608  
Anchorage, Alaska 99520-1608

(907) 279-0478                      FAX (907) 279-8261

Ben Esch  
ATTORNEY AT LAW, P.C.

310 K Street  
Suite 709  
Anchorage, Alaska 99501

April 29, 1991

(907) 272-4475  
FAX: (907) 276-6592

Rod Mourant  
Senate Committee on  
Labor and Commerce  
P. O. Box V  
Juneau, AK 99811

Dear Mr. Mourant:

This letter will be in follow-up to our telephone conversation of April 25 concerning the ramifications of the recent Alaska Supreme Court decision of Lesuer-Johnson v. Rollins-Burdick Hunter. I have taken the liberty of enclosing a copy of that opinion so that you may read it yourself. It held (without any substantial analysis) that a person playing softball for a company-sponsored team, when injured is entitled to workers' compensation coverage. This broad view of coverage adopted by the Supreme Court could result in a substantial impact to my client, the Anchorage Softball Association, thousands of players and other recreational leagues across the state.

The Alaska Workers' Compensation Act is premised on the existence of the employment relationship at the time of the injury. (A.S. 23.30.010 & .020) While I appreciate that the Supreme Court views the coverage of the Act very expansively, I don't believe that it is reasonable for an employer who merely pays a registration fee to potentially incur liability under his compensation policy for any injuries occasioned on the sports field. I believe it is unlikely that the sponsors of teams in church dart leagues, lawyers bowling leagues, even the legislative softball league understand that now any employee who is injured in these sporting events, if the injury occurs while on a company sponsored team, has a valid workers' compensation claim, nor I believe the legislature intended such when it established current Title 23, Chapter 30.

I believe, however, there is a relatively easy solution to this problem which would entail a minor modification to AS 23.30.265. The Workers Compensation Board apparently found the basis for liability predicated upon the definitional section of that statute. That is, they found that the sports injury was incurred because it arose out of and in the course of Lesuer-Johnson's employment. The payment of a league fee made the facility "available" to the employee, and that fee, together with some other factors, demonstrated employer "sanction". I believe

April 29, 1991  
Rod Mourant  
Page 2

that such findings could not occur in the future if Subsection 2 was modified as follows:

"Arising out of and in the course of employment" includes employer-required or supplied travel to and from a remote job site; activities performed at the direction or under the control of the employer; and employer-sanctioned activities at employer-provided facilities; but excludes activities of a personal nature away from employer-provided facilities [.] or voluntary participation in any off-duty recreational, social or athletic activity not constituting part of the employee's work-related duties, except where these activities are a reasonable expectancy of, or expressly or impliedly required by, the employment.

The source of this language is the Cal. Labor Code, § 3600(9) (West 1990). The California Act specifically excludes from coverage the type of injury which gave rise to the recent decision.

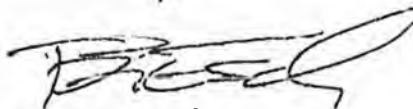
The addition of this language would alleviate the situation which now exists. Notice that there would be no blanket exclusion of these injuries, merely the creation of a presumption that such injuries are excluded unless the injured party can demonstrate that the activity giving rise to the accident is closely related to their work duties. Under the amended statute the decision on coverage would be based on something similar to the four-part analysis which the trial court directed the Workers' Compensation Board to use on remand. This would allow coverage in appropriate cases but would eliminate the presumption of coverage for these injuries which is the current state of the law.

I recognize that there is not a great deal of time remaining in this legislative session; nevertheless, this will be a matter of substantial concern to the Sports Association and its many members here in Anchorage, and will likewise affect recreational sports leagues around the State. I believe it may be very difficult in the future to find employers willing to sponsor teams, because their insurance carriers will adjust rates upwards to offset the added risk. This reduced financial support works to the detriment of the leagues and ultimately, to all of the players. Hopefully, an existing vehicle can be amended to include this proposed change to minimize the impact on these otherwise innocent

April 29, 1991  
Rod Mourant  
Page 3

individuals. Should you have any specific questions, I would appreciate you giving me a call; and to the extent that I or my client can provide any further assistance, please feel free to contact me directly.

Yours,

A handwritten signature in black ink, appearing to read "Ben Esch", with a stylized, cursive flourish.

Ben Esch

BE/cag  
enclosure

Ben Esch  
ATTORNEY AT LAW, P.C.

310 K Street  
Suite 709  
Anchorage, Alaska 99501

(907) 272-4475  
FAX: (907) 276-6592

FACSIMILE TRANSMISSION COVER SHEET

DATE: 4/29

NUMBER OF PAGES INCLUDING

TIME: 10:45

COVER SHEET 4

TO: (Company) ROD MOURANT

(Attention) \_\_\_\_\_

FAX NO.: 463-5352

FROM: BEN ESCH

MESSAGE: \_\_\_\_\_

RE SOFTBALL

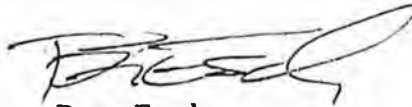
FOR A REPLY -  
OUR FAX NUMBER IS

(907) 276-6592

April 29, 1991  
Rod Mourant  
Page 3

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Ben Esch

BE/cag  
enclosure

MAY 8 1991

**CARR  
GOTTSTEIN** FOODS CO.

LEGAL DEPARTMENT  
Michael Moxness, General Counsel

May 3, 1991

The Honorable Drue Pearce  
Alaska State Senate  
P.O. Box V  
Juneau, Alaska 99811

Re: Workers' Compensation Decision

Dear Senator:

I am sure you are aware of the recent workers' compensation decision in LeSuer-Johnson v Rollins Burdick Hunter. It is now the law that injuries incurred during employer-sanctioned recreational events are covered by workers' compensation benefits.

Carr-Gottstein Foods Co. employs over 2,500 people in Anchorage, Fairbanks, Kenai, Homer, Seward, Valdez, Palmer and Wasilla. At the present, we are sponsoring 12 employee athletic teams around the state. In the coming months, we would have been sponsoring running, hockey and basketball teams, in addition to many special recreational events. We are self-insured for workers' compensation. We cannot risk several hundreds of thousand dollars of exposure each time an enthusiastic amateur team takes the field. Unless there is legislative action reversing the LeSuer decision, we will have to withdraw support from all of these teams and events.

The Workers' Compensation system was designed just after the turn of the century to address the horrible cost of injuries in the factories and mills of the new industrial age. No one ever intended that it cover injuries incurred while playing softball.

We are immensely proud of our employees and hope we can continue assisting them by sponsoring family and community recreational programs. I hope that you will enthusiastically support the proposed legislation exempting recreational activities from the workers' compensation system.

Very truly yours,



Michael Moxness

MM:klb

MAY 10 1991



# ALASKA STATE MEDICAL ASSOCIATION

4107 Laurel Street • Anchorage, Alaska 99508-5334 • (907) 562-2662

May 6, 1991

Senator Drue Pearce  
Senate Labor and Commerce Committee  
P O Box V  
Juneau, Alaska 99811

Dear Senator Pearce,

We have become aware of your proposal to handle SB219 outlined in your April 25 letter.

That seems to be appropriate action at this time regarding the portions of the proposed legislation which deal with physicians. We had shared some of the confusion which you mentioned about the overall process.

If the Alaska State Medical Association can be of any help in providing information about the medical aspects of treatment or evaluation of injured workers, feel free to contact us. We share in your desire for an effective and efficient system to deal with the problems of injured workers.

With regards,

Douglas G. Smith, M.D.  
Workers' Comp Council  
Alaska State Medical Association

DGS/js

CC: Rick Urion  
Senator Virginia Collins

# Alaska State Legislature

3111 C Street, Suite 150  
Anchorage, Alaska 99503  
(907) 561-2038  
FAX: (907) 561-4194




During Session:  
P.O. Box V  
Juneau, Alaska 99811  
(907) 465-4993  
FAX: (907) 463-5352

## Senator Drue Pearce

District G

TO: ALL SENATORS

FROM: Senator Drue Pearce, Chair   
Senate Labor & Commerce Committee

DATE: May 6, 1991

RE: SB 219 - "An Act relating to workers' compensation and civil liability for work place safety inspections; and providing for an effective date."

The Sixteenth Legislature considered SB 508 - relating to workers' compensation in numerous public hearings and committee debate. That bill passed the Senate on a vote of 18 to 2. It later became bogged down in the other House and did not reach the floor for a vote.

Three sections from that legislation are of critical importance to employers and employees and are included in the legislation before us today. Section 2 of CSSB 219(L&C) provides that employers will provide health insurance or the equivalent employer contribution payments to an injured employee for 18 months following a work related injury.

Section 3 allows the Workers' Compensation Board to assess a penalty against an employer who fails to obtain the required insurance coverage. The employer may appeal this penalty to the Commissioner of the Department of Labor and finally to the courts.

Section 4 is based on a court decision in the case of Van Biene v. ERA Helicopter, Inc.. It limits the civil liability of an insurer, insurance agent or a trade association for performing or failing to perform a safety inspection or safety advisory service to acts of intentional misconduct.

Section 5 clarifies existing statute in regard to recreational activities. If an employee participating in a recreational activity that is not a condition of employment is injured, they would not be eligible for workers' compensation.

All of these provisions have the support of the WCCA and the Ad Hoc Committee on Workers' Compensation.

I urge your support for this important legislation.

May 10, 1991

TO: Senator Drue Pearce, Chairperson  
Senate Labor and Commerce Committee

FROM: Nanci Watkins, Personnel Manager  
Spenard Builders Supply

SUBJECT: SB 219

We have just received a copy of SB 219. We have concerns regarding the verbiage in the bill's "little COBRA" medical coverage provisions.

Many employers already extend medical coverage for employees who are disabled as a result of work related injuries. As in our case, Spenard Builders Supply continues coverage for 90 days after the date of disability. Once the ninety days are over the employee is then eligible to self-pay the premiums at 102% of our rate for an additional fifteen months. This meets the provisions of COBRA under federal law.

We believe this to be a fair benefit for our employees as the majority who are injured, whether work related or not, return to work well before the 90 days are up. This relieves us of considerable administration costs in taking an employee off the regular plan, adding them to the COBRA plan, then re-enrolling in upon return to work. Additionally, should the employee require COBRA coverage the three months of employer provided benefit is credited to the eighteen month extended coverage provision under COBRA.

As SB 219 is written, it is not consistent with federal regulations under COBRA and would cause considerable confusion, litigation and expense to administer. We believe this should be re-written for consistency to allow some ease of administration even though it adds to the continually spiralling medical insurance costs which are ultimately absorbed by employees as well as the employers. This would require consistent time-lines for notification of benefit, current plan modifications, application for coverage and payment of premiums as well as exclusions such as dual coverages and the cessation of plan agreements.

# STATE OF ALASKA

WALTER J. HICKEL, GOVERNOR

## DEPARTMENT OF LABOR

### OFFICE OF THE COMMISSIONER

P.O. BOX 21149  
JUNEAU, ALASKA 99802-1149  
PHONE: (907) 465-2700

FAX: (907) 465-2784

May 10, 1991

The Honorable Dave Donley  
House of Representatives  
Alaska State Legislature  
P.O. Box V  
Juneau, AK 99811

Dear Representative Donley:

Thank you for the opportunity to review your proposed amendments to Senate Bill 219. We are supportive of efforts to clarify and provide cost-effective enhancements to worker protection programs. We feel SB 219, together with the proposed amendments, meet these criteria. Following are comments on the more significant provisions.

As I have discussed with Becky Bear of your staff, the Department is particularly supportive of the amendments dealing with confidentiality of workers' compensation medical records and the notification requirements with respect to frivolous contraversions. I certainly agree that access to the medical records of injured workers should be restricted to the parties; and clarification of the notification requirements when frivolous contraversions occur will provide opportunity for timely remedial action.

With regard to the proposed reporting provisions, the information required is consistent with that needed to properly and fully evaluate and analyze workers' compensation systems. Accordingly, I am in philosophical agreement with the proposal. However, I do have some concerns with the January 1, 1992 timeline inasmuch as we do not have the automated systems in place at this time to generate all of the data needed to formulate the reports.

I understand you have reconsidered the draft amendments dealing with willful, serious, and repeat safety violations which result in injury to an employee and the amendment dealing with the negotiability of checks. Accordingly, I am not commenting on them at this time.

The Honorable Dave Donley -2-

May 10, 1991

Your proposed amendments would not have a fiscal impact on the Department. Accordingly, our zero fiscal note would not change.

I appreciate the opportunity to review and comment on your proposals.

Thank you.

Sincerely,

A handwritten signature in cursive script, appearing to read "Nancy Bear Usera".

Nancy Bear Usera  
Commissioner

NBU:kh

## SECTIONAL ANALYSIS OF HCSSB 219 (JUDICIARY)

### SECTION 1

- (a) Describes the purpose of Section 11 which is to resolve the policy question of the liability of insurers for the performance of safety inspections
- (b) Describes the purpose of Section 14 which is to include prior temporary total disability payments within the definition of gross wages
- (c) Describes the purpose of Section 15 which is to clarify that medical stability results when measurable improvement or deterioration is not expected from further medical treatment

### SECTION 2

Provides for payment of compensation to an employee eligible for reemployment benefits and establishes the type of compensation to be paid. Limits the benefits related to the reemployment plan to two years.

### SECTION 3

Provides that when a person is assigned to provide medical management services they have to notify the employee as to who they work for and the extent of the services they would provide.

### SECTION 4

Provides that an injured employee shall receive continued coverage under their

existing coverage if it had been provided on the job at the time of injury

- SECTION 5 Establishes a civil penalty that the board may impose if the employer fails to obtain the required worker's compensation insurance
- SECTION 6 Provides the parameters of employer financial responsibility for out of state medical evaluation and depositions
- SECTION 7 Provides that an injured worker's personal medical records are not public information
- SECTION 8 If the Board determines that the employee's injury resulted from the employers violation of occupational safety or health guidelines the violation shall be reported to the Division of Labor Standards and Safety
- SECTION 9 Provides that the division of worker's compensation shall report frivolous and unfair controversions to the Division of Insurance for investigation under the unfair claims settlement act.
- SECTION 10 Provides that compensation due an employee shall be in a form that the employee may negotiate within three business days
- SECTION 11 Resolves the policy question of the liability of insurers for the performance of safety inspections
- SECTION 12 Provides that a volunteer emergency technician who is injured in the course of the performance of his/her job is considered an employee of the State for the purpose of determining worker's compensation

- SECTION 13 Clears up the issue of employer liability for employee participation in after-hours sports activities
- SECTION 14 Includes prior temporary total disability payments within the definition of gross wages
- SECTION 15 Clarifies that medical stability results when measurable improvement or deterioration is not expected from further medical treatment
- SECTION 16 Defines volunteer emergency technician
- SECTION 17 Requires the Division of Insurance to prepare a report on the feasibility of implementing a contracting classification premium adjustment program to provide premium credits for employers who purchase workers' compensation insurance
- SECTION 18 Requires the Division of Workers' Compensation to prepare a report that looks at ways to cut costs for workers' compensation and increase workplace safety
- SECTION 19 Immediate effective date

DD/bb  
May 18, 1991

Alaska State Legislature  
HOUSE OF REPRESENTATIVES  
*Office of the Chief Clerk*

MESSAGE TO THE SENATE

May 19, 1991

Mr. President:

The House has passed CS FOR SENATE BILL NO. 219 (L&C) with the following amendment:

HOUSE CS FOR CS FOR SENATE BILL NO. 219 (JUDICIARY) am H  
"An Act relating to workers' compensation and civil liability  
for workplace safety inspections.

and it is transmitted for consideration.

*Concur 2*

*CFM*

*Concur Sen. Elvira  
Wesley  
Zhang  
Blaine*

*Dustin Gray*  
CHIEF CLERK OF THE HOUSE

**DIVISION OF LEGAL SERVICES**

**LEGISLATIVE AFFAIRS AGENCY  
STATE OF ALASKA**

P.O. Box Y, Juneau, Alaska 99811  
(907) 465-3867 or 465-2450  
FAX (907) 465-2029

Deliveries to: 240 Main Street  
Court Plaza, Room 500  
Mail Stop 3101

**MEMORANDUM**

May 19, 1991

**SUBJECT:** Workers' compensation - (HCS CSSB 219(Jud))

**TO:** Representative Max Gruenberg

**FROM:** Michael F. Ford *m.f.*  
Legislative Counsel

The attached amendment would correct the problem caused by adoption of the amendment to the amendment offered by Representative Kubina, described on pages 1594 and 1595 of the House Journal, dated May 18, 1991. I believe that the intention of the amendment to the amendment was to replace the language of the first amendment with the attached language. If this was in fact the intention of Representative Kubina, then the problem can be solved by correcting the House Journal to reflect this intention. This will of course require that the body accept the Journal correction.

Please contact me if you have further questions.

MFF:gc  
91-265.glc

Attachment

A M E N D M E N T

OFFERED IN THE HOUSE

Amendment to Amendment No. 1 to HCS CSSB 219 (JUDICIARY)

Delete all material in Amendment No. 1.

Insert "Page 6, line 15, after 'determination',:

Insert 'or the gross weekly earnings paid to the person in the person's regular full-time employment, whichever is greater,' "



Real - reaction from  
Virginia? we  
need to answer.

SHELBY L. NUENKE-DAVISON  
BRUCE E. DAVISON, P.E.\*

May 20, 1991

Senator Drue Pearce  
P.O. Box V  
Juneau, AK 99811

Post-It™ brand fax transmittal memo 7871		# of pages	2
To	Senator Drue Pearce	From	Shelby Davison
Co.		Co.	
Dept.		Phone #	276 6555
Fax #	463-5352	Fax #	276 7873

\*MEMBER OF  
ALASKA AND  
WASHINGTON  
STATE BAR

Re: Senate Bill 219 as amended by the House Judiciary Committee

Dear Senator Pearce:

I am a workers' compensation defense attorney and have been practicing in this area over the last eight years. Because you are a senator in my district, (I live at 7155 Lowell Circle, Anchorage, Alaska 99502 which is in Tanaina Valley Sub-Division) and the original sponsor of SB 219, I am writing to you at this time to express my grave concerns over this bill being passed with the amendments made by the Judiciary Committee.

The amendments added in by the judiciary committee under section 10, AS 23.30.155(o) and section 19 will have a serious impact on businesses in the State of Alaska, and will give an enormous amount of power to the Workers' Compensation Division. Furthermore, additional staff will probably be required to implement sections 10 and 19 and thus, I wonder if a fiscal note should be attached to these sections.

Before the recent amendment made by Representative Donley to AS 23.30.155(o) this section was being utilized by the Division of Workers' Compensation as a vehicle to go through old and closed workers' compensation files to look for any controversions that may have been filed at some date and time throughout the life of the claim, for a determination as to whether any controversions were frivolous or unreasonable. This was true, notwithstanding the fact that the claimant may have received all benefits due and owed to him. Thus, the adjuster was forced to defend his or her controversion because not to do so would have resulted in that controversion being referred to the Division of Insurance under the allegations of the controversion being frivolous or unreasonable. This could place an insurance adjusters license on the line<sup>1</sup>. Prior to the new amendments, the Division of Workers' Compensation, after making a preliminary determination, at least provided to the adjuster a "hearing" as .155(o) as previously written provided for a "Board" determination of a frivolous or unreasonable controversion.

The new amendments to .155(o) has the potential of allowing the Division of Workers' Compensation to conduct a witch hunt against

1 I was involved in five of the claims that were pursued by the Division of Workers' Compensation.

various adjusters against whom they may have personal vendettas, by deeming the controversions on a file frivolous or unfair and reporting them to the Division of insurance without providing them a hearing. Because the new amendments to .155(o) allow a determination to be made that a controversion is frivolous or unfair without affording the adjuster an opportunity to be heard could potentially result in a deprivation of a property interest (i.e. a license) without the right to due process of law. Therefore, it is my opinion that section .155(o) as amended is unconstitutional. Notwithstanding the unconstitutionality of this statute, the impact of this provision on employers in the State of Alaska is simply going to be that more questionable workers' compensation claims and/or medical bills will be picked up and paid because the insurance adjuster is not going to risk that some Division member may come in at some later date and deem what they have done to be frivolous or unreasonable. Thus, a lot more questionable workers' compensation claims and/or medical bills will be paid that shouldn't and that of course will ultimately impact insurance premiums.

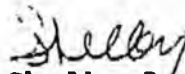
Section 19 is mandating that the Division of Workers' Compensation report to the legislature by 1-1-92 on a list of issues that not only will take an enormous amount of time and state resources but are issues that are primarily one-sided on the behalf of claimants. This is contrary to the administrative goal of reducing the bureaucracy.

Secondly, the report favors employees. Shouldn't the division of workers' compensation also report on fraudulent "frivolous" or "unreasonable" applications made by claimants for workers' compensation benefits and the impact of these fraudulent or frivolous claims on employers, insurance premiums, and ultimately the consumer!

I strongly urge you to vote "NO" on Senate Bill 219, as amended by the house judiciary committee or do whatever you can to delete these provisions. If you want to call me for more specifics on this, please do so.

Sincerely,

DAVISON & DAVISON

  
Shelby L. Nuenke-Davison  
Attorney at Law

SLND/ger/s0065  
cc: Office of the Governor\  
Attention: Laurie Nottingham  
Senator Virginia Collins  
Senator Rick Uhleing

VIA FACSIMILE

DAVISON & DAVISON

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 R E ROBERTSON (1885-1961)  
 M E MONAGLE (1932-1985)

F O EASTAUGH (RETIRED)

JAMES F CLARK  
 PAUL M HOFFMAN  
 D ELIZABETH CUADRA  
 MARY A NORDALE  
 ROBERT P BLASCO

ADMITTED IN WASHINGTON D.C.  
 AND ALASKA

ADMITTED IN VIRGINIA \*\*  
 WASHINGTON D.C. AND ALASKA

ALL OTHERS ADMITTED  
 IN ALASKA

May 30, 1991

Hon. Walter J. Hickel  
 Governor of Alaska  
 P. O. Box A  
 Juneau, Alaska 99811

Re: Requested Veto of S. B. 219

Dear Governor Hickel:

I represent the American Insurance Association, an umbrella industry group comprised of insurance companies primarily engaged in writing property and casualty insurance. The members of the group in the aggregate represent approximately 38 percent of the Alaska workers' compensation insurance market. Because of that market participation, AIA followed the progress of Senate Bill 219 with great interest. I write to urge that you veto the bill.

The impetus behind SB 219 was the desire on the part of employers and insurers to overrule the holding of the Alaska Supreme Court in Van Biene v. Era Helicopters, Inc., 779 P.2d 315 (1989), in which the Court ruled that an injured worker may have a cause of action against his employer's workers' compensation insurer for a negligently performed safety inspection. Prior to that decision, it was generally understood that the exclusivity of remedy available to the employer was also available to the insurer because the condition giving rise to the worker's injuries was under the exclusive control of the employer. Because of Van Biene some insurers have ceased conducting safety inspections and premium rates could rise if the safety inspections in connection with the employers' risk management programs are not resumed.

As you know, workers' compensation is a strict liability program. All the worker needs to do is to show that his injury was work related in order to receive benefits. Findings of fault,

Hon. Walter J. Hickel  
May 30, 1991  
Page 2

either with respect to the employer or to the employee, are irrelevant. Because of this fact, insurers generally do not take active roles in the formulation of program benefits, except to advise employers and others of the probable costs to incorporate certain benefits in the program. Once management and labor have agreed upon the benefits to be made available, the insurers price the agreement and establish rates.

In Alaska, management has been represented by the WCCA, the Workers Compensation Committee of Alaska, and labor has been represented by various unions. Over the last few years, labor and management have formed the so-called Ad Hoc Committee to negotiate workers' compensation changes and the Ad Hoc Committee has submitted those negotiated changes to the Legislature for enactment. That process of negotiation produced SB 219 as originally introduced in the Senate on March 20, 1991, by the Senate Labor & Commerce Committee. Hearings were held almost immediately, before most of the affected employers had an opportunity to analyze the bill, and, therefore, most of the support by employers was generated by the urgency of a remedy of the Van Biene problem. The Senate Labor and Commerce Committee perceived some serious drafting and economic problems with the Ad Hoc Committee's proposal, so when the bill was reported out, it was stripped of a number of the original provisions and contained only six sections:

Section 1 stated the legislative intent of Sec. 4 to provide that insurers would not be liable for providing or failing to provide safety inspections. The exact language of Sec. 4 was:

A carrier, an insurance service agent to a self-insured employer, or a trade association is not liable for civil damages as a result of an act or omission in performing or failing to perform a workplace safety inspection or a safety advisory service unless the carrier's, agent's, or association's act or failure constitutes intentional misconduct.

While the language was not satisfactory to the American Insurance Association, the language was tolerable to some Alaska domestic carriers. However, what emerged in the bill as passed and now before you is the following language:

Sec. 11....A carrier, an insurance service agent to a self-insured employer, or a trade association is not liable for civil damages as a result of an act or omission in performing or failing to perform a

workplace safety inspection or a safety advisory service unless the carrier's, agent's, or association's act or failure to act constitutes reckless or intentional misconduct.

It is the opinion of AIA as an industry group and those of its constituent members, principally Industrial Indemnity and Firemen's Fund, that the quoted language, especially with the inclusion of "reckless or", codifies third-party actions in workers' compensation cases and will generate litigation between claimants and their employers' insurance carriers in most, if not all, instances of workplace injuries. This codification of third-party actions is believed to have several possible consequences: 1) limited assistance to employers in their risk management programs, probably requiring employers to contract for safety inspections and advisory services, now furnished without charge by insurers; 2) limited participation in the market, reducing availability; 3) ultimately increased premiums because of the need for insurers to recover in premiums funds with which to litigate these third-party claims; 4) potential increase in workplace injuries because of the lack of skilled services for risk management; 5) increased costs to the court system because of the increased numbers of cases filed.

The language of Sec. 11 places an insurer at risk if a safety inspection is performed or if the insurer refuses to perform an inspection, a kind of "damned if you, damned if you don't" situation. Alaska represents approximately one-third of one percent of the national market for workers' compensation insurance. Large carriers may not be willing to remain in the Alaska market because of the exposure to risk Sec. 11 offers. Withdrawal of some carriers from the Alaska market may mean that workers' compensation insurance becomes unavailable to some employers, with the result that some employers will be unable to continue their businesses.

When the bill was considered in the House, both in the House Labor & Commerce and Judiciary Committees, requests for fiscal notes and economic analyses were ignored.

Section 2 of the Senate version retained the language recommended by the Ad Hoc Committee to require continuation of the employer's health benefit program for the benefit of injured workers' dependents for a period of 18 months and it also appears as Section 4 of the bill as passed. If found constitutional, the provision will result in an increase in workers' compensation premiums from two to five percent. During the course of hearings in the House, the case of New Jersey Business & Industry Association v. State of New Jersey, 1991 WL 56059, April 1, 1991,

was brought to the attention of the committee, in which the New Jersey court had found that a similar provision in New Jersey's code violated the U.S. Constitution, holding that 29 U.S.C. 1003 preempted state law with respect to employer benefit plans, with narrow exceptions. Litigation on this issue is also going forward in the District of Columbia and may have been commenced in several of the other states that have incorporated this type of provision in their worker compensation codes.

An opinion from the Attorney General should be obtained as to the constitutionality of Sec. 4 before the cost of providing such continued coverage is imposed on employers.

In addition to imposing increased costs, Sec. 4 creates two classes of workers' compensation claimants. Is this wise within the context of workers' compensation? If it is the intent that all workers have continued health benefits, a broad-based program of health insurance is the answer so that discrimination is not built into the system.

Section 3 of the Senate version appears as Section 5 of the passed version, and there appears to be no objection. Section 3, or 5 as the case may be, would authorize the Board to impose a civil penalty on employers who fail to provide workers' compensation insurance, in addition to the criminal sanctions already in law.

Section 4 of the Senate version contained the so-called Van Biene language quoted earlier.

Section 6 of the Senate version was designed to overturn the holding of the Alaska Supreme Court in LeSuer-Johnson v. Rollins-Burdick Hunter of Alaska et al., No. 3681, April 12, 1991, which held that an employer could be liable for workers' compensation for injuries incurred in employer-sponsored recreational activities, and the language of the Senate version was as follows:

(2) "arising out of and in the course of employment"...excludes recreational activities sponsored by the employer, unless participation is required as a condition of employment...

The same problem is addressed in the passed version in Section 13, but the language is significantly different:

(2) "arising out of and in the course of employment"...excludes recreational activities

sponsored by the employer that are performed at nonremote facilities not owned or leased by the employer, unless participation is required as a condition of employment...

Remote job-site employers would remain liable for injuries incurred in recreational activities if they are "employer-sanctioned" at "employer-provided facilities." Questions arise as to the meaning of "nonremote." Would that include intra- or inter-company tournaments at locations remote to the normal workplace or softball field? The use of the word "nonremote" incorporates a great deal of ambiguity into the section and, undoubtedly, will provoke a great deal of litigation. The Court's decision has already resulted in a significant cessation of employer-sponsored sports.

The last section, Section 6, of the Senate version provided for an immediate effective date.

In contrast to the leanness of the Senate version, the version as passed incorporated a number of provisions, some sponsored by the Ad Hoc Committee and some which did not appear in the final committee substitute until the bill was presented on the floor of the House for final passage. Several of the House Judiciary additions are designed specifically to assist lawyers, not claimants. Among the provisions which were included at the last minute are the following:

1. Section 2 of the passed version requires employers to continue to pay benefits during the period of controversion or appeal. No provision is made for recovery of those costs if the controversion is upheld or the employer wins on appeal. This section was included in the Ad Hoc Committee's version, but the Ad Hoc Committee never furnished estimates of the actual cost of its recommendation to employers, and it was objected to as adding significant cost. It was omitted from the Senate bill for that reason so no one knew what the cost might be, just that it would be considerable.

2. Section 3 of the passed version would require persons performing medical management to notify the employee, employer and the employee's physician of those persons' employment and the scope of services they are to perform. The Ad Hoc Committee recommended this provision, but no one else knows why and no satisfactory explanation of the benefit of this added paperwork was given. It merely adds to the expense of administration of the employer's program.

3. Section 6 requires an employer to furnish transportation and per diem to an employee for examination by the employer's physician and transportation and per diem for an attendant if recommended by the employee's physician. Section 6 also requires the employer to furnish transportation and per diem to the employee for one trip if the deposition of the employer's physician is to be taken.

This section was vigorously objected to by employer representatives, but they were given little opportunity to voice their objections to the House Judiciary Committee. Section 6 became known as the family Hawaii vacation provision. Employers already have to pay transportation and per diem to claimants in excess of sums allowed by IRS when requiring them to be examined by the employer's physician. To impose greater costs when only "recommended" but not certified by a physician as "necessary" will increase the costs to employers for exercising their rights of controversion and examination for no discernible benefit. Moreover, there appears no reason why a claimant should be furnished with transportation and per diem simply to attend the deposition of the employer's physician. The claimant can recover costs of pursuing his claim, if successful, but this provision offers no opportunity for cost recovery by the employer if the employer is successful.

4. Section 7 of the passed version requires that medical records held by the board be confidential and not subject to public inspection. In a civil action involving an injury, the injured plaintiff can be required to produce all medical records for inspection by the defendant. The language of Section 7 appears to require that an employer seek a court order in order to review all of the medical records of an injured worker. This double standard makes no sense, especially in view of the fact that workers' compensation is a no-fault, strict liability program, and the provision may be unconstitutional. By requiring an employer to obtain a court order in order to inspect the medical records of a claimant, the cost of controversion and litigation are significantly increased. It increases attorney work, but does not appear to be of a like benefit to the claimant. The constitutionality of the dual system of access to evidence should be the subject of an opinion of the Attorney General.

5. Section 8 of the passed version provides that if the board should decide that the claimant's injury arose from "wilful, serious, and repeated violation" of federal and state occupational safety and health guidelines, the board shall report "the violation" to the Division of Labor Standards and Safety. No provision is made for an evidentiary hearing. Presumably, the

ambiguities in this provision could be cured by regulations, but because the section contains no standards of interpretation, litigation is likely to be significant and expensive.

6. Section 9 requires the Division of Workers' Compensation to notify the Division of Insurance if it determines that an employer's insurer or an adjuster for a self-insured employer files an "apparently frivolous or unfair" controversy. This notice is required even if the claimant does not dispute the controversy or the claimant does dispute the controversy, the controversy is upheld and no compensation is awarded to the claimant. This provision does not require a finding of fact by the board, but would allow the Division of Workers' Compensation to exercise unfettered and subjective discretion.

7. Section 10 requires that compensation be paid by negotiable instrument "that can be cashed" within three business days of issuance. This may be an impossible standard and conflicts with the UCC provisions relating to clearing of instruments. It can also provoke litigation over loss of use of proceeds, interest and other damages because a claimant did not present his check at the issuing bank.

8. Section 14 includes in "gross earnings" any deferred wages and temporary disability compensation. Under existing law, benefits are based on the worker's pre-injury earnings and are calculated by adding wages received in the preceding two years and dividing by 100. Section 14 would raise the net workers' compensation benefits for claimants with prior work-related disability, and it may be compounded by the intent expressed in Section 1 of the bill relating to the 1980 amendments. If the effect of this intent language is an interpretation that the 1980 law has always included temporary disability benefits in the definition of wages, it would retroactively increase benefits on old claims. Insurers did not establish rates under policies in effect over that time and will not be able to recover in future rates for this retroactive change in the law.

The Attorney General should be asked for an opinion as to the constitutionality of Sec. 14 because of its potential retroactivity and its impairment of contracts of insurance.

The Division of Insurance was not asked for and, consequently, did not furnish to the House Judiciary Committee any information on the effect upon rates and premiums. Although people made an effort to have the House Judiciary Committee respond to their questions regarding costs, their efforts were unsuccessful.

Hon. Walter J. Hickel  
May 30, 1991  
Page 8

9. Section 15 amends the definition of "medical stability." Under existing law a disability is no longer "temporary" when the claimant reaches medical stability, that is, when improvement in his condition is not reasonably expected. Section 15 would define "medical stability" as the condition of the claimant when neither improvement nor deterioration is reasonably expected. By including "deterioration" in the definition, the period of temporary disability is prolonged, with no offsetting reduction in eventual permanent disability compensation. Section 15 would raise temporary disability costs and will encourage more litigation over the existence of permanency, in effect overturning the reforms enacted in 1988.

Section 15 was an Ad Hoc Committee proposal but, again, when asked for an explanation of costs, the Committee failed to produce them and, for that reason, the section was omitted in the Senate version. By the time the House Judiciary Committee version emerged, May 18, it was too late for most employers to present testimony as to the economic impact of the bill. In fact, on at least one occasion, and there are rumors of more, members of the House Judiciary Committee held secret and exclusive "negotiations" with less than a handful of lobbyists who were not representative of the employer community in Alaska.

Section 18 requires the Division of Workers' Compensation to report to the Legislature no later than January 1, 1992, on matters relating to attorneys representing claimants and employers, particularly emphasizing whether or not attorneys for employers should have their fees reduced.

SB 219 is a flawed and dangerous bill. If allowed to become law, many of the provisions will cause severe hardship to employers and the likelihood of obtaining remedies in subsequent sessions of the Legislature is remote, at best. Although overturning of the Van Biene decision is crucial to the continuation of adequate workplace safety programs, one more year will not cause the hardship that incorporating the language of SB 219 would impose. Overturning Van Biene should not, therefore, be used as a reason for allowing the other, highly objectionable portions of the bill to become law.

Your favorable consideration of vetoing the bill is urgently sought.

Sincerely yours,

  
Mary A. Nordale



MELISSA

SHELBY L. NUENKE-DAVISON  
BRUCE E. DAVISON, P.E.\*

\*LICENSED IN  
ALASKA AND  
WASHINGTON

Arliss Sturgulewski  
STURGULEWSKI/CAMPBELL HEADQUARTERS  
2505 Barrow  
Anchorage, AK 99503

Dear Arliss:

I know you are very busy with your campaign at this time, but I thought I would send you this information to inform you of the problems at the Workers' Compensation Board. Please call me at your earliest convenience so that we can discuss this further.

Thank you.

Sincerely,

DAVISON & DAVISON

*Shelby L. Nuenke - Davison*  
Shelby L. Nuenke-Davison  
Attorney at Law

SLND/ger.s0009  
Enclosure

# HOUSE LABOR AND COMMERCE COMMITTEE

ALASKA STATE LEGISLATURE

P.O. BOX Y, JUNEAU 99811

(907) 465-3892



October 3, 1990

Alaska Workers' Compensation Board  
Division of Workers' Compensation  
P.O. Box 107019  
Anchorage, Alaska 99510-7019

Dear Board Member:

I am writing to express my concern over recent Board decisions interpreting AS 23.30.155(o), a provision relating to unfair or frivolous controversions that was added by the House Labor and Commerce Committee during our deliberations on the 1988 Alaska Workers' Compensation Reform Act.

Specifically, I am referring to the boards ruling in both Cress and Tofson, that so narrowly and incorrectly interprets AS 23.30.155(o) as to render the section inoperative. Worse, the precedent set by the ruling may result in restricting actions the Division had taken previously to enactment of 155(o) to discourage frivolous or unfair controversions.

AS 23.30.155(o) states:

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

In enacting 155(o), it was the legislatures intent to discourage controversions, specifically those that were unfair or frivolous. The reasons are obvious. Such controversions harm injured employees, waste everyone's time, and greatly and unnecessarily add to the cost of the system.

We were aware that Division staff routinely "watchdogged" insurers for these practices. However, we sought to address several problems by enacting 155(0): to protect staff and the Board by specifically granting them statutory authority to do what they were already doing, to encourage

them to do more, and to implement a reporting procedure to assure that the Division of Insurance was informed.

I understand that the hearing officers and the two board members who rendered a decision in Cress and Tofson these cases were laboring under a tremendous disadvantage. It was the first time the board had considered application of 155(o). Further, the two board members involved were not part of the development of the 1988 Reform Act and were not privy to the public testimony that guided the legislature in adopting 155(o). Finally, the board did not have the advantage of legal counsel to counter the arguments presented by counsel to the carriers and were therefore left to render a decision without having all the facts before them.

Because of the latter, I'd like to commend the board for making a determination that 155(o) applied to self insurers as well as other carriers. That was clearly the intent of the legislature and the board was able to determine that in spite of legal arguments by counsel to the contrary.

However, due to the disadvantages listed above, in Cress and Tofson, the Board apparently agreed with counsel to the carriers that:

- \* The "threshold issue" was whether compensation was due. This is in fact not an issue at all, only a function of boiler plate legal language. The "compensation due" language in 155(o) simply recognizes that a controversion can only occur when a worker has applied for some benefit that may be due them under the system. The true "threshold issue" under 155(o) is whether a controversion was frivolous or unfair.
- \* That a controversion is not frivolous or unfair if there is any basis for it even if the actual basis is not clearly stated in the controversion notice or if the carrier amends a frivolous controversion notice at a later date by providing a valid reason . This interpretation essentially renders 115(o) inoperable. Section 115(o) requires insurers to make reasoned, valid controversions under threat of sanctions by the Division of Insurance for failure to do so. Under Cress and Tofson by disincentive for unfair or frivolous controversions is removed.
- \* That 155(o) applies only to cases which get before the board for other reasons. As stated above, in adopting 155(o) the legislature intended to augment what the division staff and board were already doing, not

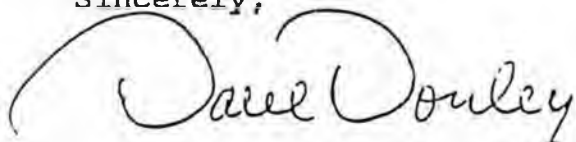
restrict their consideration of frivolous or unfair controversions to the five percent of the cases that come before the board for other reasons.

The arguments set forth in Cross and Tofson regarding 115(o) must not stand unchallenged. The purpose of this letter is to assist the board in reevaluating the implementation of 115(o) so that future cases can be considered with full information at hand and without the taint of the precedent set in these cases.

In closing let me add that I find it hard to understand how counsel for the carriers could present the arguments they did with a straight face. These arguments deliberately misinterpret the scope and intent of 115(o). The legislature simply did not anticipate any problem with 115(o) because we felt the language was clear and unambiguous. Further, counsel was aware of the reasons the legislature adopted 115(o) because they, unlike the board members, participated in the public hearing process and legislative deliberations that led to implementation of the Reform Act.

In short, the board was misled by specious arguments designed to undermine a sound public policy provision that will help to reduce frivolous and unfair controversions and significantly decrease the cost of the workers' compensation system. I urge you to take whatever steps are necessary to implement 115(o) as written and as intended by the legislature.

Sincerely,



Representative Dave Donley, Chair  
House Labor and Commerce Committee

Enclosure

cc: Commissioner Jim Sampson, Department of Labor  
Shari Kochman, Division of Workers' Compensation  
Dave Walsh, Division of Insurance

dd/gb

a:155(o)

# HOUSE LABOR AND COMMERCE COMMITTEE

ALASKA STATE LEGISLATURE

P.O. BOX Y, JUNEAU 99811

(907) 465-3892



September 14, 1990

Jan Hansen, Chief of Adjudications  
Division of Workers' Compensation  
P.O. Box 107019  
Anchorage, Alaska 99510

Dear Ms. Hansen:

I am writing to request an update on how certain consumer protection provisions of the 1988 Workers' Compensation Reform Act are working.

Specifically, I'm interested in AS 23.30.155(o) and other provisions dealing with unfair or frivolous controversions by insurance carriers. As you know, the intent of sections such as AS 23.30.255(o) was that they be interpreted in the broadest sense to augment the efforts of the Division staff and the Board to keep the Division of Insurance informed about actions by carriers.

Testimony before the legislature prior to adoption of the Act indicated that some carriers were routinely controverting claims, frivolously denying workers medical coverage, and may be using provisions under the law to harass injured workers by requiring them to submit to unnecessary procedures and testing in order to discourage them from pursuing a rightful claim.

Since only the Division of Insurance can initiate action against an insurance carrier for these kinds of practices, it was necessary to assure that they were informed when such practices occur by the people most likely to be aware of them - the Division of Workers' Compensation staff and the Board. Hence the inclusion of specific provisions requiring reports to the Division of Insurance.

In adopting these provisions it was the intent of the legislature that they be interpreted in the broadest possible sense. We were aware that Division staff did "watchdog" carriers for these practices. However, we were concerned that their efforts were hampered by the lack of specific statutory authority to do so. Further we were concerned that the Board may not be adequately informed about what the staff knew since no reporting mechanism was

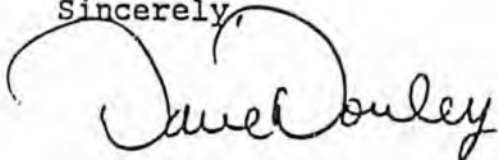
in place and that the Division ultimately responsible for enforcing fair settlement practices would not get the information they needed to do their job as a result.

By mandating reporting requirements, we sought to augment current staff efforts and to protect both the Board and the staff by placing them under a statutory requirement so they could not be accused of overstepping their authority. Personally, I remain concerned that we may not have chosen the right words to get that message across.

Specifically, I'd like to know how the Board has interpreted these provisions, how staff practices have been effected that that interpretation, whether the statutory change is working the way we intended and, if not, what we should do to clarify the language.

Your timely response to this inquiry will be much appreciated.

Sincerely,

A handwritten signature in cursive script that reads "Dave Donley". The signature is written in dark ink and is positioned below the word "Sincerely,".

Representative Dave Donley, Chair  
House Labor and Commerce Committee

cc: Jim Sampson, Department of Labor  
Dave Walsh, Division of Insurance

dd/gb  
a:hansen

# STATE OF ALASKA

## DEPARTMENT OF LABOR

### WORKERS' COMPENSATION DIVISION

6 see me  
STEVE COWPER, GOVERNOR

3301 EAGLE STREET  
P.O. BOX 107019  
ANCHORAGE, ALASKA 99510-7019  
PHONE: (907) 264 2424

September 21, 1990

Representative Dave Donley, Chair  
House Labor and Commerce Committee  
P.O. Box Y  
Juneau, AK 99811

RE: AS 23.30.155(o)

Dear Representative Donley:

Thank you for your September 14, 1990, letter requesting information about the application of AS 23.30.155(o).

Since you also specifically requested how the board has interpreted the statute, the effect of staff practices, whether the statute is working according to the intent you set out in your letter, and whether statutory language needs to be clarified, I think that I can best update you by providing a series of documents which I will index and comment upon in this letter.

In late 1989 the Workers' Compensation Division (Division) finally got to AS 23.30.155(o) and began to work on procedures. By about February or March of 1990 the staff began to apply its procedures as set out in ATTACHMENT #1. The board and some Division employees had already questioned subsection 155(o) violations in a few letters and decisions before then, but no formal action or referrals had been made. At the board's meeting in April 1990, I reported the procedures the Division had worked out to deal with subsection 155(o) and asked the board if it wanted to write any regulations dealing with subsection 155(o). The board instructed the Division to implement the procedures, and then, after some experience in the implementation, report the outcome at a future board meeting so it could determine if regulations were needed.

Following the board meeting, I instructed my staff to implement the procedures in earnest. ATTACHMENT #2, a May 18, 1990 letter from attorney Shelby Nuenke-Davison representing an adjuster, and ATTACHMENT #3, my June 11, 1990 response to Davison, indicate the types of arguments being raised against subsection 155(o), our application of it, and the Division's understanding of the purpose of subsection 155(o).

The staff pushed two cases involving controversions believed to be patently frivolous under anyone's interpretation of the word

LETTER TO REPRESENTATIVE DAVE DONLEY (CONT.)  
RE: AS 23.30.155(o)  
SEPTEMBER 21, 1990

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to hearing before the board on June 1, 1990. As a result of those two hearings the board issued ATTACHMENT #4, Cress v. State of Alaska, AWCB No. 900147 (June 29, 1990), and ATTACHMENT #5, Tofson v. Doggie Motel, AWCB No. 900152 (July 11, 1990). I have commented upon the various board findings and conclusions at length in ATTACHMENT #6, a July 20, 1990 memo from me to my staff regarding AS 23.30.155(o), the board's interpretation of it in Cress and Tofson, and how I think it should be applied in several cases.

For the purpose of getting to what I think you are most concerned about, I will mention three of the board's interpretations here.

(1) In both Cress and Tofson, the board concluded that based on the "compensation due" language in subsection 155(o), the threshold question in any frivolous/unfair controversion inquiry must be whether compensation was due, with "due" meaning actually payable, at the time the controversion was filed. I admit that I didn't see that interpretation coming. The result is that adjusters can file truly outrageous controversions with impunity as long as compensation is not payable at the time. (For some examples, see ATTACHMENT #6 at pages 5-7.) The Division is planning to get some more cases before the board next month in the hope of getting a different panel to reverse that interpretation. If the board does not reverse that interpretation, there will be few cases that can be referred to the Division of Insurance (DOI), no matter how ridiculous the controversion.

(2) In Cress the board did interpret the word "compensation" expansively to include not only time loss payments but medical benefits as well.

(3) In Cress the board also decided that subsection 155(o) should apply to adjusters handling cases for self-insured employers as well.

ATTACHMENTS #7 AND #8 set forth my ideas about what I think is or might be frivolous or unfair in various case settings. The purpose of these memos was to provide some guidance and education to the staff in preparing cases for hearing. ATTACHMENT #9 explains how I believe the Division can use the unfair claims settlement practices regulations to help try to control improper adjuster behavior in view of the severe limitations of AS 23.30.155(o).

The Division is in the process of preparing several cases for board hearing. ATTACHMENTS #9, #10, and #11 are correspondence from attorney Davison to my staff, my response, and Davison's reply in relation to five of those cases. I believe Davison's letters indicate the zealous approach that has been taken to the Division's

LETTER TO REPRESENTATIVE DAVE DONLEY (CONT.)  
RE: AS 23.30.155(o)  
SEPTEMBER 21, 1990

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attempts to apply subsection 155(o).

With regard to the effect of the Division's attempts to apply subsection 155(o), here are the numbers of controversion notices filed since January 1990:

Month	Compensation Reports Filed (No.)	Controversion Notices Filed (No.)	Percentage of Controversions to Compensation Rpts
January	1,776	624	35%
February	1,862	517	28%
March	1,950	567	29%
April	1,989	530	27%
May	1,949	419	21%
June	2,063	561	27%
July	1,985	506	26%
August	2,196	631	29%

Although there is not an absolute relationship between the number of compensation reports filed and the number of controversions filed, compensation reports reflect time loss claims activity. Accordingly, as a general rule, when more decisions are being made about time loss payments (more compensation reports being filed), I would expect more decisions to deny benefits (more controversion notices being filed) to be made, so I think the percentage is helpful. As you can see, there was a marked decrease in the percentage of controversion notices filed in May. I think it was related to the realization that the Division was taking a pretty stringent look at subsection 155(o). However, as you can also see, the numbers have pretty much returned to prior levels in June, July and August. It appears to me that the Division's application of subsection 155(o) has had little effect on the numbers of controversion notices filed.

However, since we do continue to review every controversion notice filed, we can say that adjusters have generally improved the quality of the information they provide on controversion notices. Though I consider subsection 155(o) a disappointment because the board's interpretation of it to date has so limited it, I think that some benefit has resulted from it. Nonetheless, before

LETTER TO REPRESENTATIVE DAVE DONLEY (CONT.)  
RE: AS 23.30.155(o)  
SEPTEMBER 21, 1990

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subsection 155(o), I think there is no doubt that the Division would have reported the Tofson controversion to DOI. The Cress controversion would not have been reported because the employer was self-insured, and DOI takes the position that because the board has jurisdiction over self-insurance, DOI has no jurisdiction over adjusters for self-insureds. In sum, I think that subsection 155(o) has produced some limited benefits to the system, but the Division was freer to refer adjuster misbehavior to DOI before subsection 155(o)'s enactment.

In view of the interpretations already given to subsection 155(o) and some of the arguments being raised, I would suggest that it be amended somewhat along the following lines:

(o) The board shall promptly notify the division of insurance if the board determines that the employer's insurer has filed a notice of controversion for a frivolous or unfair reason [FRIVOLOUSLY OR UNFAIRLY CONTROVERTED COMPENSATION DUE UNDER THIS CHAPTER]. After receiving notice from the board, the division of insurance shall determine if the insurer has committed an unfair claims settlement practice under AS 21.36.125. When the board determines that the adjuster for a self-insured employer has filed a notice of controversion for a frivolous or unfair reason, the board shall consider the self-insured employer's claims adjusting practices in determining whether to cancel or renew a self-insurance certificate.

This proposed language eliminates the "compensation due" interpretation problem in Cress and Tofson. It also eliminates any potential narrow interpretation of the meaning of the word "compensation." Finally, it requires the board to look at the work of self-insureds' adjusters as closely as that of insurers' adjusters. The one problem it doesn't fix that I am concerned about is the argument raised by Davison (and others), and obviously persuasive to board member Donald R. Scott in Cress, that subsection 155(o) applies only to cases which get before the board for other reasons (less than 5% of the cases). I don't know how to fix that.

Because I want to be sure that no one can show that they have not received a fair hearing before the board, I have kept ATTACHMENTS #6, #7, #8, #9, and #11 out of the board files. I do not want the board to see them while any of the cases referred to in them might be under consideration. I would appreciate your keeping these documents confidential until I let you know that there is no longer any need for concern.

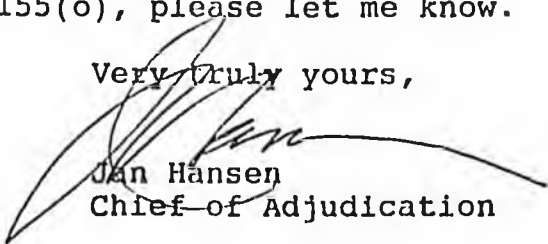
If you need any further information about the application and

LETTER TO REPRESENTATIVE DAVE DONLEY (CONT.)  
RE: AS 23.30.155(o)  
SEPTEMBER 21, 1990

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effects of AS 23.30.155(o), please let me know.

Very truly yours,



Jan Hansen  
Chief of Adjudication

Encls.

cc: Jim Sampson, Commissioner, Department of Labor  
Shari Kochman, Director, Workers' Compensation Division  
Dave Walsh, Director, Division of Insurance

PAT SMUTZ  
5800.5657

LABOR  
w/c



ALEX MILLER MGMT

w/c

WC LEGISLATION

WILLEM VAN HEERDEN  
CRAW FLOOR  
562-3252

WORKERS COMP -  
SOTAD HANDLING  
AROUND 3/18

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SITARON MACKLIN

## W. C. C. A. Membership

<u>Company</u>	<u>City /State/Zip</u>
AAA Fence, Inc	Anchorage, AK
ABC Company	Anchorage, AK
Acme Drafting Service	Anchorage, AK
Acme Fence Company	Anchorage, AK
Acreage Systems, Inc.	Anchorage, AK
Adjustco of Alaska, Inc.	Anchorage, AK
AeroMap U. S., Inc	Anchorage, AK
AK Department of Labor, Workers' Comp	Anchorage, AK
Alascom, Inc.	Anchorage, AK
Alaska Airlines	Seattle, WA
Alaska Airlines	Seattle, WA
Alaska Airlines, Inc	Anchorage, AK
Alaska Business Insurance	Anchorage, AK
Alaska Business Insurance	Anchorage, AK
Alaska Business Insurance	Anchorage, AK
Alaska Cleaners	Anchorage, AK
Alaska Corporation	Wasilla, AK
Alaska Council On Prevention Of Alcohol &	Anchorage, AK
Alaska Glacier Seafood Co.	Petersburg, AK
Alaska Housing Finance Corporation	Anchorage, AK
Alaska Mechanical, Inc.	Anchorage, AK
Alaska Medical Maintenance	Anchorage, AK
Alaska Miners' Association	Fairbanks, AK
Alaska National Insurance Company	Anchorage, AK
Alaska National Insurance Company	Anchorage, AK
Alaska National Insurance Company	Anchorage, AK
Alaska National Insurance Company	Anchorage, AK
Alaska Oil Marketer's Association	Fairbanks, AK
Alaska Oilfield Maintenance	Soldotna, AK
Alaska Petroleum Contractors	Anchorage, AK
Alaska Professional Career Counselors	Anchorage, AK
Alaska Professional Counselors	Anchorage, AK
Alaska Pulp Corporation	Seattle, WA
Alaska Pulp Corporation	Sitka, AK
Alaska Pulp Corporation	Sitka, AK 99835
Alaska Rubber and Supply	Anchorage, AK

## W. C. C. A. Membership

<u>Company</u>	<u>City /State/Zip</u>
Alaska Rural Electric Cooperative Association	Anchorage, AK
Alaska Sales & Service	Anchorage, AK
Alaska Schools Insurance Company	Juneau, AK
Alaska Sheet Metal	Anchorage, AK
Alaska Spring Company	Anchorage, AK
Alaska State Chamber of Commerce	Juneau, AK
Alaska State Chamber of Commerce	Anchorage, AK
Alaska State Medical Association	Anchorage, AK
Alaska Support Industry Alliance	Fairbanks, AK
Alaska Timber Insurance Exchange	Ketchikan, AK
Alaska Truss & Millwork	Anchorage, AK
Alaska Underground Electric Company	Anchorage, AK
Alaska-West Express, Inc	Anchorage, AK
Alchem, Inc.	Anchorage, AK
Allied Constuction Services	Anchorage, AK
Allvest Laboratories	Anchorage, AK
Alyeska Air Service	Anchorage, AK
Alyeska Pipeline Service Company	Anchorage, AK
Alyeska Pipeline Service Company	Anchorage, AK
Alyeska Resort	Girdwood, AK
American Roofing	Anchorage, AK
American Society of Safety Engineers -	Anchorage, AK
Anchorage Cold Storage	Anchorage, AK
Anchorage Nissan	Anchorage, AK
Anchorage Refuse, Inc	Anchorage, AK
Anchorage Sand & Gravel Company	Anchorage, AK
Anchorage School District	Anchorage, AK
Anchorage School District	Anchorage, AK
Anchorage Telephone Utility	Anchorage, AK
Anchorage Towing & Recovery	Anchorage, AK
Aoki Bothers Construction	Anchorage, AK
Applegate Constuction	Anchorage, AK
APSI	Fairbanks, AK
ARCO Alaska, Inc	Anchorage, AK
ARCO Alaska, Inc	Anchorage, AK
ARCO Alaska, Inc	Anchorage, AK

## W. C. C. A. Membership

<u>Company</u>	<u>City /State/Zip</u>
ARCO Alaska, Inc	Anchorage, AK
Arctic Adjusters, Inc.	Anchorage, AK
Arctic Coiled Tubing	Anchorage, AK
Arctic Coiled Tubing, Inc	Anchorage, AK
Arctic Foundations, Inc.	Anchorage, AK
Arctic Slope Regional Corporation	Barrow, AK 99723
Arctic Welding Supply	Anchorage, AK
Associated General Contractors' - Alaska	Anchorage, AK
Aurora Towing	Anchorage, AK
Autocraft	Anchorage,
Automated Laundry Systems	Anchorage, AK
Bailey's Rent-All	Anchorage, AK
Bailey's Rent-All	Anchorage, AK
Barron Constuction	Anchor Point, AK
Beese, Epps, & Potts	Anchorage, AK
Belarde Brothers	Anchorage, AK
Bell Homes	Anchorage, AK
Bendell & Associates	Anchorage, AK
Best Western Barrett Inn	Anchorage, AK
Best Western Barrett Inn	Anchorage, AK
BP Exploration Company	Anchorage, AK
BP Exploration Company	Anchorage, AK
BP Exploration Company	Anchorage, AK
Bristol Bay Contractors, Inc	King Salmon, AK
Burger King of Alaska	Anchorage, AK
Burger King of Alaska	Anchorage, AK
Burkhart's Stores	Palmer, AK 99645
Burnett & Son Constuction	Juneau, AK
Bushnell & McMahon	Wasilla, AK
C. H. I. of Alaska, Inc.	Anchorage, AK
C & H Mechanical Insulation	Douglas, AK
Canal Marine Company	Haines, AK 99827
Carrs Quality Centers	Anchorage, AK
Carrs Quality Centers	Anchorage, AK
Catering Contractors International	Anchorage, AK
Central Alaska Construction	Soldotna, AK

## W. C. C. A. Membership

<u>Company</u>	<u>City /State/Zip</u>
Central Plumbing and Heating, Inc	Anchorage, AK
CH2M Hill, Inc.	Anchorage, AK
Channel Corporations	Juneau, AK
Charter College	Anchorage, AK
Chugach Electric Association, Inc	Anchorage, AK
Chugach Timber	Anchorage, AK
Cigna Companies	Anchorage, AK
Cimarron Holdings, Inc	Prudhoe Bay, AK
City and Borough of Sitka	Sitka, AK 99835
City of Fairbanks	Fairbanks, AK
City of Fairbanks	Fairbanks, AK
Club Paris	Anchorage, AK
CMW Company	Anchorage, AK
Cold Weather Contractors, Inc	Anchorage, AK
Collins and Associates	Anchorage, AK
Collins & Associates	Anchorage, AK
Cominco Alaska, Inc	Anchorage, AK
Cominco Alaska, Inc	Kotzebue, AK
Commercial Claims Service	Anchorage, AK
Compensation Risk Consultants	Fairbanks, AK
Compensation Risk Consultants	Fairbanks, AK
Comprehensive Rehabilitation Services	Anchorage, AK
Comprehensive Rehabilitation Services, Inc	Anchorage, AK
Conam Alaska	Anchorage, AK
Conam Alaska	Anchorage, AK
Consolidated Enterprises	Anchorage, AK
Construction Machinery, Inc	Anchorage, AK
Control Craft, Inc	Anchorage, AK
Cook Inlet Regional, Inc	Anchorage, AK
Corporate Communication Strategies	Anchorage, AK
Corroon & Black, Inc.	Anchorage, AK
Costello Custom Jewelry Design	Anchorage, AK
Crawford & Company	Fairbanks, AK
Crawford & Company	Anchorage, AK
Crawford & Company	Anchorage, AK
Crawford Health & Rehabilitation Service	Anchorage, AK

## W. C. C. A. Membership

<u>Company</u>	<u>City /State/Zip</u>
Crossroads Lounge	Anchorage, AK
CRW Engineering Group	Anchorage, AK
CTI, Inc	Anchorage, AK
Delta Door Sales	Anchorage, AK
Dar-Con Corporation	Anchorage, AK
Davison & Davison, Inc	Anchorage, AK
DeBarr Quality Cleaners & Laundromat	Anchorage, AK
Delaney, Wiles, Hayes, Reitman	Anchorage, AK
Denali Drilling Company	Anchorage, AK
Denali Insurance Brokers	Anchorage, AK
Denali Transportation Corporation	Fairbanks, AK
Denny's of Alaska, Inc	Anchorage, AK
Designer Realty	Kenai, AK 99611
Diamond	Anchorage, AK
DJ's Alaska Rentals	Anchorage, AK
Doyon Drilling, Inc., J.V.	Anchorage, AK
Doyon Drilling, Inc, J.V.	Anchorage, AK
DVR - Evaluation Center	Anchorage, AK
Dynair Services	Anchorage, AK
E. C. Phillips & Son, Inc.	Ketchikan, AK
E & T Electronics	Anchorage, AK
Eagle Pacific Insurance	Anchorage, AK
Earthmovers, Inc	Fairbanks, AK
Ensearch Alaska Construction, Inc	Anchorage, AK
Ensearch Alaska Constuction, Inc	Anchorage, AK
ENSTAR	Anchorage, AK
Equipment Engineering & Rebuild	Soldotna, AK
Eyak Native Corporation	Cordova, AK
F&W Construction Co, Inc	Anchorage, AK
Fairbanks Chamber of Commerce	Fairbanks, AK
Fairbanks Distributors	Fairbanks, AK
Fairbanks Machine & Steel	Fairbanks, AK
Fairbanks Memorial Hospital	Fairbanks, AK
Fairbanks Memorial Hospital	Fairbanks, AK
Fairbanks Newsminer	Fairbanks, AK
Fairbanks North Star Borough	Fairbanks, AK

## W. C. C. A. Membership

<u>Company</u>	<u>City /State/Zip</u>
Fairbanks North Star School District	Fairbanks, AK
Faulkner, Banfield, Doogan, & Holmes	Anchorage, AK
Florcraft, Inc	Fairbanks, AK
Foster's Fine Finishes	Anchorage, AK
Fountain Development, Inc	Fairbanks, AK
Four Star Terminal	Anchorage, AK
Fracmaster, Ltd	Anchorage, AK
Fracmaster, Ltd	Anchorage, AK
GE Government Services	Anchorage, AK
General Communication, Inc	Anchorage, AK
Ghemm Company	Fairbanks, AK
Global Services, Inc	Anchorage, AK
Golden Wheel Amusement Co	Anchorage, AK
Greater Fairbanks Chamber of Commerce	Fairbanks, AK
Greater Sitka Chamber of Commerce	Sitka, AK 99835
Greens Creek Mining Company	Juneau, AK
Gross Alaska Inc	Juneau, AK
GSL Oilfield Services	Anchorage, AK
GTE Alaska Incorporated	Anchorage, AK
H & H Contractors	Fairbanks, AK
H & S Warehouse, Inc.	Anchorage, AK
H & S Warehouse, Inc	Fairbanks, AK
Halsingland Hotel	Haines, AK 99827
Hanson Dispute Resolution Service	Kenai, AK 99611
Hartig, Rhodes, Norman, Mahoney &	Anchorage, AK
Herridon and Thompson	Homer, AK 99603
Hickel Investment Corporation	Anchorage, AK
Hickel Investment, Inc.	Anchorage, AK
High Drive Drilling and Blasting	Sitka, AK 99835
Hoffman Constuction Company	Anchorage, AK
Holland American Lines	Seattle, WA
Holland & Sons Construction Company	Kenai, AK 99611
Homer Electric Association	Kenai, AK 99611
Homer Medical Clinic	Homer, AK 99603
Homestate Insurance Brokers of Alaska, Inc.	Anchorage, AK
Hope Cottages	Anchorage, AK

## W. C. C. A. Membership

<u>Company</u>	<u>City /State/Zip</u>
Horst Construction Company	Juneau, AK
Hotel Captain Cook	Anchorage, AK
Humana Hospital	Anchorage, AK
Icicle Seafoods	Seward, AK
IICC	Anchorage, AK
Industrial Indemnity	Anchorage, AK
Industrial Roofing, Inc	Anchorage, AK
Inlet View Services	Anchorage, AK
Interior Builders' Association	Fairbanks, AK
International In-Flight Catering Service	Anchorage, AK
International Mechanical, Inc	Anchorage, AK
Irish Trucking	Fairbanks, AK
J. D. Dozer & Equipment Service Co	Tok, AK 99780
J D Glass and Door	Juneau, AK
J & S Steamway	Anchorage, AK
Jackovich Tractor & Equipment	Fairbanks, AK
Jay D Smith Insurance	Wasilla, AK
JBCS Consulting	Anchorage, AK
Jerry Reinwand	Juneau, AK
Jimmy Gibbs Mechanical	Soldotna, AK
Joe's Oilfield Service, Inc	Anchorage, AK
John's Self Serve Chevron	Anchorage, AK
Johnson-Brisk, Inc	Nome, AK 99762
K. S. K., Inc	Nenana, AK
K&L Distributors	Anchorage, AK
Kay, Saville, Coffey, Hopwood & Schmid	Anchorage, AK
Ken's Electronic Service	Anchorage, AK
Kenai Chamber of Commerce	Kenai, AK 99611
Kenai Peninsula Borough	Kenai, AK 99611
Kenai Peninsula Builders Association	Kenai, AK 99611
Kenai Penninsula Borough	Kenai, AK 99611
Ketchikan Pulp Company	Ketchikan, AK
Ketchikan Pulp Company	Ketchikan, AK
KFAR Radio	Fairbanks, AK
KIMO-TV Channel 13 ABC	Anchorage, AK
Klawock Heenta Corp	Klawock, AK

## W. C. C. A. Membership

<u>Company</u>	<u>City /State/Zip</u>
Kluane Construction	Anchorage, AK
Kluane Construction	Anchorage, AK
Klukwan Forest Products, Inc	Juneau, AK
Klukwan Inc	Juneau, AK
Koncor Forest Products	Anchorage, AK
Korobkin Construction of Alaska	Anchorage, AK
KSRM	Soldotna, AK
KTBY - TV Channel 4	Anchorage, AK
Kumin Associates	Anchorage, AK
Kurt's Construction	Delta Junction,
L&D Mechanical	Anchorage, AK
Lamonts	Anchorage, AK
Lamonts	Bellevue, WA
Linford of Alaska	Anchorage, AK
Linford of Alaska, Inc	Anchorage, AK
Little Red Services, Inc	Anchorage, AK
Livingston Slone, Inc.	Anchorage, AK
Long Island Development, Inc.	Juneau, AK
Lynden Incorporated	Anchorage, AK
Lynden Incorporated	Anchorage, AK
Lynden Incorporated	Anchorage, AK
M & B Plumbing	Anchorage, AK
M&O Auto Parts, Inc	Fairbanks, AK
M-W Drilling, Inc	Anchorage, AK
Madison Lumber and Hardware	Ketchikan, AK
Mammoth of Alaska	Anchorage, AK
Mapco Petroleum, Inc	North Pole, AK
Mapco Petroleum, Inc	Fairbanks, AK
Marathon Oil Company	Anchorage, AK
Marathon Oil Company	Anchorage, AK
Mark Air	Anchorage, AK
Marketing & Management Consultants	Anchorage, AK
Mary Conrad Center	Anchorage, AK
Mat-Su Borough School District	Palmer, AK
Mat-Su Borough School District	Palmer, AK 99645
Mat-Su, Inc	Anchorage, AK

## W. C. C. A. Membership

<u>Company</u>	<u>City /State/Zip</u>
Matanuska Telephone Association	Palmer, AK 99645
Matanuska Telephone Association	Palmer, AK 99645
Matrix Construction Company	Anchorage, AK
McDonalds of Ketchikan	Ketchikan, AK
Meaux, Bowers, & Cronin	Anchorage, AK
Mechanical Contractors of Fairbanks	Fairbanks, AK
Medical Data Systems	Eagle River, AK
Medical Indemnity Corporation of Alaska	Anchorage, AK
Midas Muffler Shop	Anchorage, AK
Midas Muffler Shop	Anchorage, AK
Mitkof Lumber	Petersburg, AK
Moore Heating, Air Conditioning, &	Anchorage, AK
Moritz Painting, Inc	Anchorage, AK
Multiple Risk Managers	Anchorage, AK
Multiple Risk Managers, Inc.	Anchorage, AK
Municipality of Anchorage	Anchorage, AK
Mush Inn	Anchorage, AK
Nabors Alaska	Anchorage, AK
Nabors Alaska Drilling, Inc.	Anchorage, AK
NANA/Marriott	Anchorage, AK
Natchiq, Inc	Anchorage, AK
National Bank of Alaska	Anchorage, AK
National Electrical Contractors Assn.	Anchorage, AK
NCCI	Agoura Hills, CA
NCP Constuction Company	Anchorage, AK
NFIB	Auke Bay, AK
Nibert's Remodel & Repair Company	Anchorage, AK
Norgasco, Inc	Anchorage, AK
North Country Design & Development	Anchorage, AK
North Country Drywall	Wasilla, AK
Northern Adjusters, Inc	Anchorage, AK
Northern Adjustors, Inc.	Anchorage, AK
Northern Air Cargo	Anchorage, AK
Northern Oilfield Services, Inc.	Anchorage, AK
Northern Rehabilitation Services	Fairbanks, AK
Northern Rehabilitation Services	Anchorage, AK

## W. C. C. A. Membership

<u>Company</u>	<u>City /State/Zip</u>
Northland VFW Post 10252	Anchorage, AK
Northwest Technical Services, Inc.	Anchorage, AK
Nutak Trading Company	Juneau, AK
Nye Frontier Ford	Wasilla, AK
Oriental Gardens	Anchorage, AK
Our Lady of Compassion Care Center	Anchorage, AK
PA Productions	Anchorage, AK
Pacific American Commercial Co	Seattle, WA
Pacific Movers	Anchorage, AK
Pacific Rim Publishing	Anchorage, AK
Pacific Telecom	Vancouver, WA
PacRim Construction Services	Anchorage, AK
Palmer Chevron	Palmer, AK 99645
Pan Alaska International Inc	Anchorage, AK
Parker Drilling Company	Anchorage, AK
Parker Drilling Company	Anchorage, AK
PEAK Oilfield Service Co	Anchorage, AK
Penner Construction Company	Soldotna, AK
Petersburg Insurance Center	Petersburg, AK
Physical Therapy Center	Juneau, AK
Pink Elephant Car Wash	Anchorage, AK
Piquiniq Management Corporation	Anchorage, AK
Pool Arctic Alaska	Anchorage, AK
Pool Arctic Alaska, Inc.	Anchorage, AK
Pool Company	Anchorage, AK
Price CIRI Constuction	Anchorage, AK
Price-CIRI Constuction Company	Anchorage, AK
Professional Adjustors of Alaska	Anchorage, AK
Professional Staff Leasing	Anchorage, AK
Prosser Constuction Company	Anchorage, AK
Providence Hospital	Anchorage, AK
QWIK Lube	Anchorage, AK
R G & B Contractors, Inc.	Anchorage, AK
R. Robert Bell & Associates	Anchorage, AK
R & T Constuction, Inc	Anchorage, AK
R&S Fleet	Homer, AK 99603

## W. C. C. A. Membership

<u>Company</u>	<u>City /State/Zip</u>
Rain Proof Roofing Company, Inc	Anchorage, AK
Reeve Aleutian Airways	Anchorage, AK
Reeve Aleutian Airways, Inc	Anchorage, AK
Resource Agency	Juneau, AK
Resource Development Council	Anchorage, AK
RG & B Contractors	Anchorage, AK
Ribelin Lowell & Co	Anchorage, AK
Ribelin Lowell & Co	Anchorage, AK
Richards Enterprises, Inc	Anchorage, AK
Risk System Development	Anchorage, AK
Robert Powell Construction Company	Anchorage, AK
Robertson, Monagle, and Eastaugh	Anchorage, AK
Roll'n Alaska	Anchorage, AK
Rollins Burdick Hunter	Anchorage, AK
Ron's Oilfield Services Company	Kenai, AK 99611
RSVP Maid Service	Anchorage, AK
S & S Welding	Anchorage, AK
Safeway Stores	Bellevue, WA
Sandstrom and Sons	Anchorage, AK
Saupe Enterprises	Fairbanks, AK
Schafer Enterprises	Anchorage, AK
Scott Wetzel Services, Inc.	Anchorage, AK
Scott Wetzel Services, Inc	Anchorage, AK
Sea-land, Inc	Anchorage, AK
Sealaska Corporation	Juneau, AK
Sealaska Corporation	Juneau, AK
Sealaska Timber	Ketchikan, AK
Sears, Roebuck & Company	Anchorage, AK
Shell Western E&P, Inc	Kenai, AK 99611
Sitka Sound Seafoods	Sitka, AK 99835
SM & W Company	Anchorage, AK
Small Business Development Center	Anchorage, AK
Smith International	Anchorage, AK
Smyth Moving Service, Inc	Anchorage, AK
Soderberg Logging and Constuction	Ketchikan, AK
Spenard Builders Supply	Anchorage, AK

## W. C. C. A. Membership

<u>Company</u>	<u>City /State/Zip</u>
Spenard Builders Supply, Inc	Anchorage, AK
Staley Dellsio Cook & Sherry Inc	Anchorage, AK
State Department of Labor	Juneau, AK
State Farm Insurance	Anchorage, AK
State Farm Mutual Insurance Co	Anchorage, AK
Steel Fabricators, Inc	Anchorage, AK
Steffenworks	Sitka, AK 99835
Stewart Title Company of Alaska	Anchorage, AK
Stikline Inn	Wrangell, AK
Stone, Waller, & Jenicek	Anchorage, AK
Sunset Inn	Fairbanks, AK
Superior Plumbing and Heating	Anchorage, AK
Swanson General Contractors	Anchorage, AK
T&K Enterprises	Eagle River, AK
Tab Electric	Anchorage, AK
TAB Electric, Inc.	Anchorage, AK
Tanadqusix Corporation	Anchorage, AK
Taylorred Construction Services, Inc	Anchorage, Ak
Terminal Oil Sales, Inc	Homer, AK 99603
Tesoro Alaska	Kenai, AK 99611
The Alliance	Anchorage, AK
The Anchorage Hilton	Anchorage, AK
The Anchorage Hilton	Anchorage, AK
The Andrews Group, Inc	Anchorage, AK
The Equitable Life Insurance Society	Anchorage, AK
The Office Place	Anchorage, AK
The Sullivan Group	Anchorage, AK
The Woodcutters	Craig, AK 99921
TMI Management	Fairbanks, AK
Toppers Oil Corporation, Inc.	Anchorage, AK
Totem Ocean Trailer Express	Anchorage, AK
Totem Ocean Trailer Express, Inc.	Seattle, WA
U-Haul Company	Anchorage, AK
Udelhoven Oilfield System Services, Inc	Anchorage, AK
Underwater Construction Company	Anchorage, AK
Underwater Constuction	Anchorage, AK

## W. C. C. A. Membership

<u>Company</u>	<u>City /State/Zip</u>
Unified Fairbanks	Fairbanks, AK
Unit Company	Anchorage, AK
Unitech of Alaska	Anchorage, AK
Universal Services	Anchorage, AK
University of Alaska	Fairbanks, AK
Unocal	Kenai, AK 99611
Unocal Chemical Division	Kenai, AK 99611
Unocal Corporation	Los Angeles, CA
Unocal Oil & Gas Division	Anchorage, AK
US Aviation Underwriters	Anchorage, AK
Usibelli Coal Mine, Inc.	Healy, AK 99743
Valley Restaurant	Sitka, AK 99835
VECO, Inc.	Anchorage, AK
VECO, Inc	Anchorage, AK
VERC	Anchorage, AK
Vertecs Corporation	Anchorage, AK
Visiting Senators Office	Anchorage, AK
Walters & Olson, Inc	Kenai, AK 99611
Warning Lites of Alaska, Inc.	Anchorage, AK
Watterson Construction Company	Anchorage, AK
Weona Corporation	Anchorage, AK
West Coast Stevedoring Corp	Juneau, AK
Westmark Hotels	Anchorage, AK
WETCO	Anchorage, AK
William F. Tull & Associates	Palmer, AK 99645
Wilsyk Alaska, Inc	Anchorage, AK
Workers' Compensation Division	Juneau, AK
Workers' Compensation Division	Anchorage, AK
Wrangell Forest Products	Wrangell, AK
Wrangell Sentinel	Wrangell, AK
Yenney and Associates Construction, Inc	Homer, AK 99603
Young Signs	Anchorage, AK
Yukon Equipment	Anchorage, AK
Yukon Mining Company	Anchorage, AK
ZAT Inc DBA/Pickle Barrel Deli	Anchorage, AK

# Alaska State Legislature

Senator Drue Pearce, Chair  
Senator Tim Kelly  
Senator Rick Halford  
Senator Paul Fischer  
Senator Al Adams



WILFRID JUNEAU  
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(907) 485 4991

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ANCHORAGE, ALASKA 99503  
(907) 561 2038

## SENATE SPECIAL COMMITTEE ON OIL AND GAS

Rd.

Call Warren D. of WCCRA

Find out if WCCRA is going to

close the 500,000 acre lease

people - or where they are

from.  
Ask him what he thinks  
should happen w/ Hoka -

Did - also to the 400,000 acre?

play what is at risk of  
bill.

No more trading tips scheduled  
for LAC after this week - how  
hard to get you no to

cc: Nancy  
LaComm.  
Bruce

Letter to @ Ad hoc members

cc @ Smutz

cc @ Warren Durak

- discomfort that we are willing or able to explain why elements other than Jon Birme - medical benefits there
- believe Ad hoc importance is to do preliminary work - identify issues of concern and suggest alternatives - concern that we public input. no notice of duty - but then deal "to be followed"
- no person's integrity has been questioned - but resignation of two members have called into question the process.
- elements of last yr's ~~SOB~~ appear to be fair - have had lots of public discussion
- so pulling CS w/ only those elements
- Ad hoc should work this interim - bring leg. + dept in -
- 

be firm that legislature sets policy - we, too, want to improve system - but resolution s/ltb removed from public, legislative process

Believe they have a place - work - gather to identify + suggest ways to address deficiencies. (sp)  
Balance is great - but only if reached publicly.

No minutes, no notice = deal but we can't support in good conscience.

etc. etc.

transmitted



TELECOPY COVER SHEET

SENATOR DRUE PEARCE'S OFFICE

VOICE (907) 465-4993 FAX (907) 463-5352

To: WARREN DVORAK Fax: 267-2296

Attn: Phone:

Transmitted by: ROD MOURANT Date: 5/10/91

Re: HCS FOR CS SB 217 (JUDICIARY)

Comments: THE TECHNICAL CHANGES ON PG 4  
LINE 22 WILL BE CARRIED OUT IN  
HOUSE LABOR & COMMERCE COMMITTEE.

WOULD YOU PLEASE REVIEW THE  
OTHER SECTIONS AND COMMENT.

THANKS, RD

Number of Pages: 10 Including Cover Sheet.





From the desk of:  
**Rod Mourant**

Senator Drue Pearce's Office  
P.O. Box V  
Juneau, AK 99811  
Capitol, Room 101  
(907) 465-4993

Approved A. 7

ALL RATES GO UP  
WHAT IS COST - PUNISH EMPLOYERS?

---

~~A. 6~~ ALL REPORTS ARE  
ALREADY DOWN OR PENDING

---

A. 6 ?

---

A. 10 REEKS REGULATORY  
DOE ALREADY DOES NOT WANTING FOR  
CONFIDENTIALITY - WHO'S OPINION  
SUPPORTS

---

A. 8 ?

STICKS AND STONES

A. 4 - POTS IN STATUTE  
WHAT IS ALREADY DONE

RARE OCCURRENCE

A. 5

# Ruling rattles Alaska softball

## Supreme Court rules some injured players eligible for workman's comp

By BETH BRAGG

Daily News assistant sports editor

The Alaska Supreme Court threw a curve at softball when it ruled this month that players are entitled to workman's compensation if they are injured while playing for a team sponsored by their employer.

The ruling could mean increased insurance rates for a majority of the companies that sponsor Alaska's nearly 1,000 softball teams, which in turn could mean fewer sponsors.

"This could be kind of scary,"

said state softball commissioner Pat Lillian. "Sponsors are the life-line of the whole amateur sports organization."

Of the estimated 15,000 people who play softball in Alaska, only those who are employed by the same company that sponsors their team would be eligible for workman's comp. Lillian estimated that at least 50 percent of the teams in Alaska feature at least one player who is employed by the sponsor.

"Nobody has a crystal ball, but I think it has a substantial potential to discourage team sponsors,"

said Ben Esch, who is the attorney for the Anchorage Sports Association, the organizing body for more than 400 Anchorage softball teams. "(And) if the sponsors back out, if there's no sponsor's fee, you can only increase players' fees."

The Alaska Supreme Court ruled earlier this month in favor of Judi LeSuer-Johnson, who was injured in a 1986 softball game in Anchorage while playing for Rollins-Burdick Hunter, her employer and the sponsor of an Insurance League softball team.

LeSuer-Johnson filed a claim for

workman's comp, and the Workers' Compensation Board ruled in her favor. After appeals, the state Supreme Court upheld the original ruling, which was based on a 1982 statute that says work-related injuries include those occurring at "employer-sanctioned activities at the employer-provided facilities."

Although Anchorage Sports Association teams play on municipal fields, they are maintained by the association, which collects entry fees to help pay for their maintenance. "My belief is that simply paying a league fee would be ade-

quate (evidence that an employee is providing facilities)," Esch said.

Chancy Croft, the attorney who represented LeSuer-Johnson, said Saturday that by paying a team entry fee, Rollins-Burdick Hunter helped make a softball field available to its team. Without entry fees, "they wouldn't have had a regular field at the time they had it," he said. "They wouldn't have been able to play the schedule."

Though the ruling was the result of an accident in the loosely orga-

Please see Page D-4, **SOFTBALL**

Baseball players, owners and sports agents are captured one night on videotape.



# peace in Bush

In a few years, get ready for a new television mini-series: "Failed Blast-Off: Rocket Ismail's Life In a Bush League." Starring Denzel Washington as the Rocket, Don Knotts as Lou Holtz and John Candy as himself.

Will it be a blockbuster or a bomb? In a few years, will anybody await the Rocket's re-entry? Will anybody remember his name?

Sure, Canada's a great place to live. It's got national health insurance, it's close to Greenland, and you'll never run out of plaid shirts.

But what about cuisine? Have you ever heard anybody say, "Hey, let's go out for Canadian food." Or, "Honey, I've got a great idea. Instead of taking that Caribbean cruise, let's go have some laughs in Canada."

Canada has given the world hockey players, Alan Thicke and a currency that



**ALAN GREENBERG**

McNall is a bi-country kind of guy who engineered the trade that brought Wayne Gretzky to La-la land, leaving all of Canada in tears. McNall is a chubby, extroverted, forty-something guy who is buddy-buddy with his superstars, flies them around in his private plane. The Rocket said what he liked about the Argos was

# SOFTBALL: Supreme Court ruling could scare off team sponsors

Continued from Page D-1

nized Insurance League, the Supreme Court's ruling is expected to affect almost all recreational sports leagues.

Lillian, Esch and others hope to amend the law before the effect is widespread.

"There's less than a month left in the (legislative) session, so it's not possible at this date to introduce a new bill," Esch said. "So the question would be, is there an existing vehicle that could be amended? The next question is, what is the likelihood of it passing?"

Esch thinks the answer to both questions is yes. He said there is a bill pending in the Senate Labor and Commerce committee that could be amended to prevent sponsors of recreational sports teams from being

held liable for workman's comp claims. Esch thinks getting an amendment introduced and passed this session "is within the realm of possibility."

If it isn't, sponsors who might be affected by the supreme court decision have a handful of options. One is to not let any of their employees play on their team. Another is to pay higher insurance rates, although companies whose insurance is paid through this summer shouldn't have to worry about rates increasing for the current softball season, which begins next weekend. With any luck, said Esch, the issue will have been resolved by next summer.

Another option is to pull out of the league, although Anchorage Sports Association director Rod Hill said



chances are slim those who do will get their entry fee refunded. "We tell people all the time if somebody wants to take your (team's) place, we'll gladly refund your money," he said. "Otherwise it's out of the question. We'd be tearing schedules apart all season."

Just how many sponsors will back out of their commitment to sponsor teams is critical to the future of recreational sports in Alaska.

"It wouldn't change my attitude about having a team," said Rick Nerland of Nerland/Mystrom Associates, which sponsors a coed team that includes several of

his employees. "I would probably have to check and see what the stipulations of our workman's comp policy would be. (But) the bottom line is, I believe it's a worthwhile enough activity that we will ... resolve the issue and play ball."

Dr. Jay Caldwell, who sponsors a coed team that involves several of his employees at the Alaska Sports Medicine Clinic, said much the same thing.

"It wouldn't stop me from sponsoring a team, but I can see that more prudent employers than I would," he said.

Jerry Grilly, publisher of the Anchorage Daily News, counts himself as one of the prudent ones. The News sponsors a team that is almost entirely made up of employees of the newspaper.

"My reaction is I'm probably going to talk to my lawyer and (the personnel office) and reconsider," Grilly said. "We're just trying to do something recreationally for our employees, and all of a sudden it gets complicated and complex."

"It's not like (playing softball) is a job. It's recreational. They're doing it in their own time. It's real unfortunate. You're just trying to be a good employer and support employees. We're really reaping nothing in this endeavor."

Croft disagrees. "I think a lot of times companies sponsor teams because they get a lot of benefit from it — increased morale, advertising, increased efficiency, more stability in the work force," he said.

any other woman to do a reporting job.

But now Lisa Olson has done what so many Ameri-

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Notice: This is subject to formal correction before publication in the Pacific Reporter. Readers are requested to bring typographical or other formal errors to the attention of the Clerk of the Appellate Courts, 303 K Street, Anchorage, Alaska 99501, in order that corrections may be made prior to permanent publication.

THE SUPREME COURT OF THE STATE OF ALASKA

JUDI J. LESUER-JOHNSON,	)	
	)	Supreme Court No. S-3493
Appellant,	)	
	)	Trial Court No.
v.	)	3AN-88-9367 Civil
	)	
ROLLINS-BURDICK HUNTER	)	<u>O P I N I O N</u>
OF ALASKA and NATIONAL	)	
UNION FIRE INSURANCE CO.,	)	
	)	[No. 3681 - April 12, 1991]
Appellees.	)	
	)	

Appeal from the Superior Court of the State of Alaska, Third Judicial District, Anchorage, Ralph Stemp, Judge.

Appearances: Chancy Croft, Anchorage, for Appellant. Patricia L. Zobel, Deirdre D. Ford, Staley, DeLisio, Cook & Sherry, Anchorage, for Appellees.

Before: Matthews, Chief Justice, Rabinowitz, Burke, Compton, and Moore, Justices.

PER CURIAM

Appellant Judy LeSuer-Johnson (LeSuer) was injured on June 4, 1986, while playing softball at an Anchorage ballpark for the Rollins-Burdick Hunter (RBH) team against an "insurance league" opponent. The injury occurred after work hours, on a field rented by the insurance league. LeSuer, an employee of RBH, filed a claim for workers' compensation, alleging that the injury arose out of and in the course of her employment. An Alaska statute enacted

in 1982 defines "arising out of and in the course of employment" to include

employer-required or supplied travel to and from a remote job site; activities performed at the direction or under the control of the employer; and employer-sanctioned activities at the employer-provided facilities; but excludes activities of a personal nature away from employer-provided facilities.

AS 23.30.265(2).

LeSuer's argument that her injury arose out of and in the course of her employment is based on her employer's connection to the softball team. RBH provided balls, bats, T-shirts and caps for the team members. It paid \$250 to the league's organizers who rented the ballfield and purchased bases. RBH encouraged its employees to either play on the team or attend the game as spectators. In her job interview LeSuer was asked if she played softball and if she would like to play on the company team. She stated that joining the team was voluntary, but she personally felt pressured to play by co-employees who wanted to be sure that RBH had enough players to field the team each week.

The Workers' Compensation Board found for LeSuer. The board concluded that participation on the softball team was both employer-sanctioned and that it occurred at an employer-provided facility:

We find RBH gave support and encouragement for their employees to participate on the team. By paying the league fee, providing part of the uniform, providing bats and balls and permitting employees to perform activities such as picking up the T-shirts and hats as part of their work duties RBH sanctioned the activity. . . .

Next we consider whether the injury occurred at an employer-provided facility. Defendants argued that the injury was not on Employer's premises. However, the legislature chose to use the term "facility" and not premises. We find this terminology distinction is important. Thus the injury does not have to occur on an employer's property to be compensable.

The term "provide" is defined in Webster at 1144 as "to make available, supply, afford; furnish with . . . ." We find that paying the league fee RBH made available to its employees a field on which to play softball. We conclude that the softball game was at an employer-provided facility.

RBH appealed the board's decision to the superior court. The court held that where, as here, a remote job site was not involved, a four-part test rather than the two-part test set out in the statute was appropriate. The court stated:

The criteria analyzed in Larson, 1A The Law of Workman's Compensation § 22.24(a)-(f), for determining whether an injury on a company team is compensable are the appropriate factors to weigh in deciding this case. They are primarily the time and place of the recreation, the degree of the employer initiative and encouragement, the financial support and equipment furnished, and the benefit to the employer.

The court remanded this case to the board for an analysis using these factors. On remand, the board found in favor of RBH with one member dissenting.

LeSuer then appealed to the superior court, which affirmed the board's decision on remand. LeSuer now appeals this decision.

3631

In our view, the first decision of the board was correct. That portion of AS 23.30.265(2) which pertains to employer-sanctioned activities at employer-provided facilities is not limited to remote job sites as the statute is written. If the legislature had intended such a limitation it could have easily been expressed. The board's conclusions that playing for the RBH softball team was employer-sanctioned and that the injury occurred at an employer-provided facility are supported by substantial evidence.

For the above reasons, the decision of the superior court is REVERSED and this case is REMANDED to reinstate the first decision of the board.

3531

# Alaska State Legislature

During Session  
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Juneau, Alaska 99811  
(907) 465-2828

---


During Interim  
3111 C Street, Suite 510  
Anchorage, Alaska 99503  
(907) 561-2040

---

**Senator Virginia Collins**

## MEMORANDUM

TO: REPRESENTATIVE DONLEY  
HOUSE JUDICIARY CHAIR

FROM: SENATOR VIRGINIA COLLINS 

SUBJECT: WORKERS COMPENSATION BILL  
HOUSE CS FOR SENATE CS FOR SB219 AM H

PLEASE CONSIDER THE FOLLOWING CHANGES TO SECTION 9 BOTH  
AS23.30.155 AND AS 21.36.125 TO REFLECT

A FULL BOARD HEARING IS NECESSARY TO DETERMINE WHETHER OR NOT  
THERE HAS BEEN A FRIVOLOUS CONTROVERSION. THIS HEARING WILL BE  
CALLED ONLY IF THE ISSUE INVOLVES THE PAYMENT OF COMPENSATION. IF  
THE BOARD DETERMINES THAT THERE HAS BEEN A FRIVOLOUS  
CONTROVERSION, THE MATTER IS THEN REFERRED TO THE DIVISION OF  
INSURANCE.

# Alaska State Legislature

During Session  
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Juneau, Alaska 99811  
(907) 465-2828

---


During Interim  
3111 C Street, Suite 510  
Anchorage, Alaska 99503  
(907) 561-2040

---

## Senator Virginia Collins

### Memorandum

To: Senator Drue Pearce, Chair  
Senate Labor and Commerce

From: Senator Virginia Collins 

Subject: Workers Compensation Bill

Due to the changes the Workers' Compensation Bill has undergone, I request that the Senate not concur with the House amendments and that the bill be referred to a conference committee. I would like to be on this conference committee. Hopefully if we have the powers of a free conference, we can get a better balance to the bill.

Many parts of the House Judiciary Committee Substitute bill are new and very controversial. The bill coming out of House Judiciary is not a balanced bill. It will escalate the cost of workers compensation insurance. I feel this bill needs some further work and feel confident that through the free conference process we can achieve a well balanced bill.

I am available to discuss this bill at your convenience.

  
**TECHNICAL CHANGES**

CS FOR SENATE BILL NO. 219 (L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - FIRST SESSION

BY THE SENATE LABOR AND COMMERCE COMMITTEE

Offered:

Referred:

Sponsor(s): SENATE LABOR AND COMMERCE COMMITTEE BY REQUEST

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to workers' compensation and civil liability for workplace safety  
2 inspections; and providing for an effective date."

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

4 \* Section 1. PURPOSE OF SECTION 4. It is the purpose of sec. 4 of this Act to amend AS 23.30  
5 to provide that an insurer is not liable for providing or failing to provide safety inspections or safety  
6 advisory services; this amendment would decide a public policy question concerning the liability of an  
7 insurer for the performance of a safety inspection or safety advisory service raised in Van Biene v. ERA  
8 Helicopters, Inc., 779 P.2d 315 (Alaska 1989).

9 \* Sec. 2. AS 23.30 is amended by adding a new section to read:

10 Sec. 23.30.047. BENEFITS FOR HEALTH INSURANCE. (a) An employer who pays  
11 compensation to an injured employee under AS 23.30.041(k), 23.30.180, 23.30.185, 23.30.190,  
12 23.30.200, or 23.30.215, and who provided health insurance to the employee at the date of injury  
13 shall also reimburse the employee for health insurance coverage for the employee and covered  
14 dependents, as provided in this section.

1 (b) Payment required under this section is equal to the employer's current contribution  
2 for health insurance or the amount paid by the employee for replacement coverage, whichever  
3 amount is less. Payment required under this section commences when the employee's health  
4 insurance provided by the employer's contribution ceases and shall continue until the employee  
5 is no longer receiving compensation described in (a) of this section, or for 18 months, whichever  
6 period is shorter.

7 (c) Payment is not required under this section until the employee provides proof of health  
8 insurance coverage. In this subsection, "health insurance" includes an individual policy of health  
9 insurance, or a notice of self-payment <sup>or COBRA OR</sup> continuance of coverage under a union health or welfare  
10 trust agreement.

11 (d) If benefits required under this section are not paid within 30 days after the employer  
12 receives a request for payment, the employer shall pay a penalty equal to 25 percent of the  
13 amount due.

14 \* Sec. 3. AS 23.30.075(b) is amended to read:

15 (b) If an employer fails to insure and keep insured employees subject to this chapter or  
16 fails to obtain a certificate of self-insurance from the board, upon conviction, the court may  
17 [SHALL] impose a fine of up to \$10,000 and may impose a sentence of imprisonment for not  
18 more than one year. In addition, the board may impose a civil penalty of up to three times  
19 the manual rate that would have been charged for the employer's insurance premium  
20 during the period the employer failed to obtain insurance. If an employer is a corporation,  
21 all persons who, at the time of the injury or death, had authority to insure the corporation or  
22 apply for a certificate of self-insurance [,] and the person actively in charge of the business of  
23 the corporation shall be subject to the penalties prescribed in this subsection and shall be  
24 personally, jointly, and severally liable together with the corporation for the payment of all  
25 compensation or other benefits for which the corporation is liable under this chapter if the  
26 corporation at that time is not insured or qualified as a self-insurer.

27 \* Sec. 4. AS 23.30 is amended by adding a new section to read:

28 Sec. 23.30.232. CIVIL LIABILITY FOR WORKPLACE SAFETY INSPECTIONS. A  
29 carrier, an insurance service agent to a self-insured employer, or a trade association is not liable  
30 for civil damages as a result of an act or omission in performing or failing to perform a  
31 workplace safety inspection or a safety advisory service unless the carrier's, agent's, or

1 association's act or failure to act constitutes intentional misconduct.

2 \* Sec. 5. AS 23.30.265(2) is amended to read:

3 ~~#17~~ (2) "arising out of and in the course of employment" includes employer-required  
4 or supplied travel to and from a remote job site; activities performed at the direction or under the  
5 control of the employer; and employer-sanctioned activities at employer-provided facilities; but  
6 excludes recreational activities sponsored by the employer, unless participation is required  
7 as a condition of employment, and activities of a personal nature away from employer-provided  
8 facilities;

9 \* Sec. 6. This Act takes effect immediately under AS 01.10.070(c).

**HEALTH, DISABILITY & LIFE PROTECTION  
PREPARED FOR:  
THE ALASKAN INDEPENDENT TRUCKER**

**PRESENTED BY:  
DAVE BRANGAN & MART WILSON  
277-5757 or 257-5250**



**The Alaskan Independent Trucker**

N.A.S.E COMPARISON

THE ALASKAN INDEPENDENT TRUCKER PROPOSAL VS. WORKERS COMPENSATION

BENEFITS	NASE	W.C.
1) ACCIDENT PROTECTION WHILE ON THE JOB	YES	YES
2) ILLNESS PROTECTION ON THE JOB	YES	?
3) ACCIDENT AND ILLNESS PROTECTION OFF THE JOB	YES	NO
4) FULL FAMILY PROTECTION, INCLUDING MATERNITY OPTION	YES	NO
5) WORLDWIDE COVERAGE	YES	NO
6) BENEFITS GUARANTEED	YES	NO
7) TWO (2) YR. RATE GUARANTEE AVAILABLE	YES	NO
8) CUSTOMIZED TO MEET YOUR PARTICULAR NEEDS AND WANTS	YES	NO
9) TRAVEL AND OTHER ASSOCIATION BENEFITS	YES	NO
10) AFFORDABLE COVERAGE FOR YOUR FAMILY, YOU AND YOUR BUSINESS	YES	?

Group  
**BASIC**  
Hospital  
Expense  
Insurance  
Plan

---

ENDORSED BY THE NATIONAL ASSOCIATION FOR  
THE SELF-EMPLOYED



UNDERWRITTEN BY PFL LIFE INSURANCE COMPANY  
PFL 5150 Br 191 REV

## BEFORE YOU CONSIDER OUR PROGRAM ...

... Let's consider what insurance program you already have, and what we have to offer to you.

Your answers to these questions will help us as we work with you to make an educated choice regarding your insurance needs.

Who is your current coverage with, and approximately what is your monthly premium?

Who would you be insuring and what are their current ages?

Do you enjoy good health?

Is anyone currently undergoing treatment or taking medication for a medical problem?

What made you decide on your current coverage?

What do you like or dislike most about your current coverage?

If you were to design a new program, what benefits would you like to see in the plan?

- 24-hour a day coverage?
- Your choice of doctors?
- Protection from being singled out for cancellation or rate increases?
- Money back?

This brochure is a brief description of the coverage. The actual Group Policy (Form #GHP 5 788) is the contract and will control. Your Certificate, which should be read immediately upon receipt, describes in detail the rights and obligations of both you and the Company under the Group Policy. Specific coverage available in your state may vary.

HERE'S AN  
AFFORDABLE WAY

TO HELP CONTROL YOUR COSTS FOR  
MEDICAL PROTECTION:

The NASE-  
Endorsed  
Basic Hospital  
Expense  
Insurance Plan

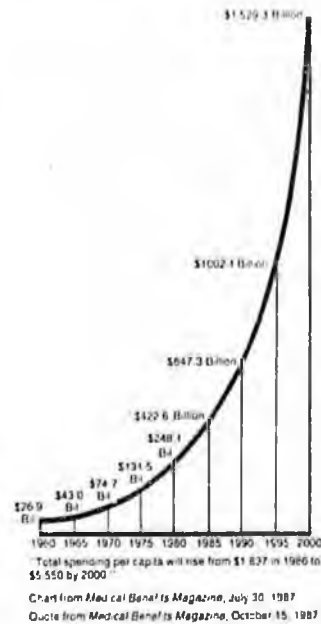
This Plan, exclusively for  
Members of the National  
Association for the  
Self-Employed, is designed  
to provide scheduled benefits  
to help defray hospital  
costs for the Association  
Member on a tight budget,  
or with a need to supplement  
other coverage.

Exploding  
health care  
costs are a  
problem for all  
Americans

Here are some  
recent examples  
of actual Doctor  
and Hospital  
expenses:

Source: PFL Life files

The Health Insurance Association of America states the average cost of a day in a hospital semiprivate room has risen dramatically, from \$91 in January 1977 to \$315 in July 1990.\*



- ☒ Cancer (Lymphoma) ...  
23 days in hospital and chemotherapy  
\$22,767.55
- ☒ Gastro-intestinal hemorrhage ...  
126 days in hospital  
\$83,223.78
- ☒ Intestinal Obstruction ...  
Four Confinements totaling 89 days  
\$77,378.41
- ☒ Auto Accident ...  
Three confinements  
totaling 150 days  
\$219,026.00

Could you afford to get sick?  
Without insurance, you may not even get into  
the hospital of your choice

***Protect your assets!***

## THE NASE DELIVERS VALUE FOR YOUR PREMIUM DOLLAR!

Here's how insurance companies determine your premium costs:

- Size of group
- Claims costs
- Enrollment and administrative costs
- Type of coverage

Here are the advantages of our Group Enrollment:

- Designed for the self-employed — not the general public
- Each program can be individually designed
- You cannot be singled out for a rate increase
- You cannot be singled out for cancellation
- Employee coverage available
- Transportable coverage (If the owner or employee leaves the company, coverage can be continued.)
- Worldwide coverage
- Your choice of doctor
- Coverage 7 days a week, 24 hours a day
- Return-of-premium available
- 2-year rate guarantee available

About the  
insurance group  
selected by the  
NASE Board of  
Directors

Sign up for the  
NASE-Endorsed  
Plans in just  
four easy steps

NASE-Endorsed Plans are underwritten by

### PFL Life Insurance Company

people who have been insuring the American public for over a quarter of a century.

- Rated "Excellent" by A.M. Best, the independent rating service for U.S. insurance companies
- A division of AEGON USA, a multi-billion dollar holding company
  - Financially stable — over \$6 billion in assets
  - \$40 billion of insurance in force through subsidiaries like PFL Life
- Top quality service

- 1) Choose the plan that's right for you.
- 2) Complete the application package, including medical history.
- 3) Select your premium payment mode, including convenient automatic bank transfer.
- 4) Attach your initial premium and one-time administrative fee.

Upon approval of your enrollment application by the Company, you will be informed as to when your coverage begins.

If not approved, all insurance premiums — including administrative fee — are refunded to you.

## WE WANT YOU TO KNOW

To help keep your premium rates reasonable, your Basic Hospital Expense Insurance Plan does have some exclusions and limitations.

Self-Employed Business Owners, please note:

Your Plan does not cover expenses that result directly or indirectly from:

- Any act of war, declared or undeclared
- Any intentionally self-inflicted injury
- Mental or nervous disorder
- Any routine physical exam
- Drug abuse or addiction or overdose of drugs, narcotics, or hallucinogens, unless taken as prescribed by a doctor
- Cosmetic surgery, except when resulting from an injury and incurred within 2 years from the date of the injury, or due to a congenital anomaly incurred by an Insured who has been continuously covered under the Group Policy from birth
- Pre-existing conditions unless loss occurs after the Insured's coverage has been in force for 2 years
- Normal childbirth unless provided by supplemental rider
- In vitro fertilization
- Care provided solely as a convenience, or care which is experimental or unproven
- Radial keratotomy
- Dental care, treatment, or surgery except when resulting from an injury to sound natural teeth. Expenses must be incurred while hospital confined and within 1 year of the injury
- Temporomandibular joint dysfunction (TMJ) or TMJ pain syndromes
- Being intoxicated, under the influence of intoxicants, or under the influence of any narcotic unless taken as prescribed by a doctor
- Charges for which benefits are not specifically provided by the Group Policy
- Mandibular or maxillofacial surgery to correct growth defects after 1 year from the date of birth
- Jaw disproportions or malocclusions, or to increase vertical dimension or reconstruct occlusion
- Charges for blood, plasma, or blood derivatives
- Hernia or hemorrhoids, unless the expense is incurred 6 months after the Insured becomes covered under the Group Policy
- The commission of, or attempt to commit, a felony or any medical expense incurred while engaging in an illegal occupation or illegal activity

Self-employed Insureds are covered for occupational injury and or sickness. In the case of Insured employees, the Plan does not cover expenses that result directly or indirectly from any injury or sickness arising out of, or in the course of, employment for wage or profit *unless the Insured is ineligible for coverage* under any Workers' Compensation Act, Occupational Disease Act, or similar act or law.

# THE \$3,000,000 COMBINED PROTECTION PLAN

Adding the Catastrophic Expense Benefit (Form #CEB 1 788) to your Basic Hospital Expense Insurance Plan provides you with the extra protection you've been looking for.

Pays 100% of the Covered Expenses — up to \$500,000 in Benefits — after the Deductible you choose:  
 \$6,000       \$12,000

The benefits provided are **in addition** to the benefits provided by the Basic Hospital Expense Insurance Plan. \*

The **Lifetime** maximum benefit provided by this Rider for all Injuries and Sicknesses is \$2,000,000, thus, giving you a **total Lifetime Maximum Benefit of \$3,000,000.**

The rider deductible must be satisfied with the Covered Expenses for each Injury or Sickness. Pays 100% of the "usual and customary" (not to be confused with "reasonable") covered expenses.

There is no waiting period for either sickness or injury.

## Covered Expenses While Confined as an Overnight Patient in a Hospital:

<b>100%</b>	of the daily Semi-Private Hospital Room and Board rate
<b>100%</b>	of the usual and customary Surgeons' and Assistant Surgeons' fees
<b>100%</b>	of the Miscellaneous Charges such as necessary services and supplies furnished by the hospital when you are hospitalized, including but not limited to the following items: <ul style="list-style-type: none"> <li>• x-rays</li> <li>• medicines</li> <li>• anesthesia</li> <li>• casts and splints</li> <li>• braces for neck, back, arms, legs, ribs</li> <li>• operating room</li> <li>• recovery room</li> <li>• oxygen equipment</li> <li>• surgical dressings</li> <li>• laboratory services</li> <li>• use of wheelchair</li> </ul>
<b>100%</b>	of the usual and customary fees for the attending Doctor for a daily visit during hospitalization, if the Doctor is other than the Surgeon
<b>100%</b>	of the usual and customary charges for Anesthesiologists' fees during a covered surgery
<b>100%</b>	of the usual and customary charges for the professional fees of Radiologists and Pathologists for the interpretation of diagnostic tests or studies
<b>100%</b>	of the Hospital Intensive Care Unit rate, up to three times the Semi-Private room rate

## Covered Expenses for Treatment in a Same-Day Surgery Facility:

<b>100%</b>	of the charges for operating and recovery rooms, medicines, drugs, and other miscellaneous services and supplies
<b>100%</b>	of the professional fees of Radiologists and Pathologists
<b>100%</b>	of the usual and customary Surgeons' and Assistant Surgeons' fees
<b>100%</b>	of the professional fees of Anesthesiologists for covered surgery

\* Total benefits paid under the Basic Covered Expense section of the Group Policy and paid by this Rider will never exceed the actual Covered Expenses, as defined in the Rider, incurred for any injury or sickness.

# HERE'S WHAT YOUR NASE-ENDORSED PLAN PAYS FOR:

## BASIC COVERED EXPENSES

BENEFIT DESCRIPTION	MAXIMUM BENEFIT
<b>IN HOSPITAL</b>	
<b>Hospital Room and Board:</b> (No limit on number of days)	\$150 per day
<b>Intensive Care:</b> (No limit on number of days)	\$300 per day
<b>Miscellaneous Inpatient Charges:</b> (drugs, x-rays, sutures, etc.)	80% of \$3,000 Example: If you incur \$3,000 in covered Miscellaneous Inpatient charges, the maximum benefit of 80% would be \$2,400 or, if you incur \$2,000 in covered Miscellaneous Inpatient Charges, the maximum benefit would be \$1,600. Or you can select an option paying 80% of \$6,000 or 80% of \$9,000.
<b>Surgery: Surgeon</b>	\$3,000 (based on the Surgical Schedule in the Certificate.) Or you can select an option paying \$6,000 or \$9,000.
Assistant Surgeon	\$750 (based on the Surgeon's Benefit)
Anesthesiology	\$750 (based on the Surgeon's Benefit)
Second Surgical Opinion	\$75
<b>Doctor Visits:</b> 1 visit per day is allowed	\$30 per visit Allows for a total of 40 visits per Injury or Sickness

## ADDITIONAL COVERED EXPENSES

BENEFIT DESCRIPTION	MAXIMUM BENEFIT
<b>IN HOSPITAL</b>	
<b>Private Duty Nursing:</b>	\$30 per shift with a maximum of 50 shifts
<b>Ambulance:</b> (trips to and from hospital or nursing home)	\$150 per trip – No limit on number of trips
<b>NURSING HOME CARE</b>	
<b>Room and Board:</b> (Payable for a confinement beginning within 14 days following a hospitalization of at least 3 days)	\$75 per day for up to 90 days
<b>OUTPATIENT SERVICES</b>	
<b>Outpatient Hospital Charges:</b> (emergency room, operating room, radiology and pathology services, chemotherapy charges)	\$600 for each Injury or Sickness
<b>Surgery:</b> Plan allows for outpatient surgery at a hospital, or a same day surgery facility	Same as In-Hospital Schedule
<b>Doctor Visits:</b> In office or at home	\$30 per visit (Allows for a total of 40 visits per Injury or Sickness)
<b>HOSPICE CARE</b>	
Inpatient stay at Hospice and Hospice Programs for the terminally ill	\$1,500

## GROUP INSURANCE PROGRAM FOR ASSOCIATION MEMBERS

### Standard Features and Benefits

- \$1,000,000 Lifetime Maximum Benefit for all Injuries and Sickness
- Your choice of three deductibles
- Your choice of four room and board rates
- Hospital Bill Audit Benefit

Your cash deductible reduces to 0 after age 65 or upon eligibility for Medicare at any age! The Plan pays **100%** on covered expenses in excess of the amounts which are, or would be, payable under Medicare. The Plan will not duplicate any payments made under Medicare.

### Lifetime Deductible for Further Savings

Each Insured has one lifetime deductible for each particular injury or illness, no matter how many times or how often it requires treatment.

### No Preadmission Certification

You are not required to obtain permission from us prior to hospitalization.

### Use the Doctors and Hospitals of Your Choice — Worldwide

Our Plan does not require that you use member or affiliate hospitals or doctors. You continue your care with the doctors and hospitals of your choice, and coverage applies to you worldwide.

### Wide Range of Care Is Covered

- In-hospital Expenses
- Certain Outpatient Expenses
- Nursing Home Care
- Hospice Care

### Family Security Benefit

If you should die while your coverage is in force, we will continue coverage of your covered dependents for 12 full months at no cost to your family.

## ADD FEATURES AND BENEFITS TO YOUR BASE PLAN

### Outpatient Chemotherapy Benefit

(Form #GCR 2 1284)

- Covers actual outpatient expense incurred for Radiation Therapy or Chemotherapy treatment of cancer
- No deductible
- Maximum daily benefit is \$1,000
- Lifetime Maximum Benefit is \$100,000
- Benefits under this Rider are not subject to the Base Plan deductible
- Initial diagnosis of cancer and subsequent treatment must occur while this Rider is in force

### Double/Triple Miscellaneous Benefit

You can increase the amount of Miscellaneous Inpatient Charges covered while hospital confined by choosing either:

- the Double Benefit option, which raises the maximum benefit to 80% of \$6,000 ...
- ... or the Triple Benefit option, which raises the maximum benefit to 80% of \$9,000

### Double/Triple Surgical Benefit

You can increase the amount of Surgical Charges covered by choosing either:

- the Double Benefit option, which raises the maximum benefit to \$6,000 ...
- ... or the Triple Benefit Option, which raises the maximum benefit to \$9,000

### Accident Expense Benefit

(Form #GOP 2 487)

- Provides for treatment of Accidental Injury when treatment begins within 48 hours of accident
- Coverage per accident lasts through the first 30 days following an injury
- Benefits are in addition to any benefit provided by the Group Policy and are not subject to the Base Plan deductible. However, total benefit paid under the Group Policy and the Rider will not be greater than the actual expense incurred.
- Your choice of maximum benefit payable under this option is:
  - \$600
  - \$1,000

## Outpatient Ambulatory Care Benefit

(Form #ACR 11189)

Maximum Lifetime Benefit per Insured

■ \$100,000

Maximum benefit payable per Insured during any one 24-hour period

■ \$1,000

Deductible per Insured per calendar year

■ \$250

Coverage provides payment for the following medically necessary Covered Expenses incurred for services provided in Hospital emergency rooms and Outpatient Facility, Same-Day Surgery Facilities, Clinics, and Doctor's Offices:

- Diagnostic X-rays including interpretation
- Laboratory and pathological exams
- Physical, occupational, and speech therapy (In-Hospital Outpatient Facilities only)

Services must be related to and necessary for the diagnosis or treatment of a Sickness or Injury, including but not limited to:

- CAT scans
- Sonogram
- Myelogram
- Electrocardiogram
- Stress tests
- Ultrasound
- Upper/lower G.I. series
- Electroencephalogram
- Nerve conduction study
- Magnetic resonance imaging
- Blood or serum analysis assays
- Microbiological blood assays
- Audiology evaluation including air/bone conduction studies, audiograms
- Angiogram
- Pyelogram
- Cytologic studies
- Electromyogram
- Mammogram

Benefits for physical, occupational, and speech therapy will only be payable in connection with the same Sickness or Injury for which the Insured was Hospital Confined or in connection with surgical care.

Benefits will not be payable for:

- Checkups
- Physical examinations
- Treatment planning consultations
- Doctors office visit charges
- Spinal manipulations
- Prescription drugs and medicines
- Radiation or chemotherapy for the purpose of modification or destruction of cancerous tissue.

Benefits will not be payable for physical, occupational, and speech therapy which:

- a) commences more than six months after discharge from a Hospital or the date surgical care was rendered, or
- b) which extends beyond 365 days from the date of discharge from a Hospital or the date surgical care was rendered.

## Childbirth Benefit

(Form #GMB 2 983)

- Complications of pregnancy will be considered as a sickness and will be payable in accordance with all Group Policy provisions, including the benefits, definitions, and exceptions
- Provides benefits for medical expenses incurred as a result of normal childbirth, up to the maximum you select
- Payment will be made only if the birth occurs no less than 10 months from effective date of this option
- Option may only be selected at the time of enrollment in the Group Plan or when a dependent spouse is added to coverage
- Once selected, the maximum benefit payable cannot be increased.
- Your choice of maximum benefit payable under this option is:
  - \$1,000 (\$1,500 Elective Cesarean)
  - \$2,000 (\$3,000 Elective Cesarean)
  - \$3,000 (\$4,500 Elective Cesarean)
  - \$4,000 (\$6,000 Elective Cesarean)
  - \$6,000 (\$9,000 Elective Cesarean)

## Term Life Insurance Benefit

(Form #GLR 1 688)

- Benefits are payable for death from any cause and are incontestable after insurance has been in force for 2 years
- In the event of suicide during the first 2 years, the Company's liability is limited to the return of premiums paid
- The maximum benefit payable shall be:

Actual Age at Death	Primary Insured's Death Benefit	Insured Spouse's* Death Benefit
to 29	\$50,000	\$10,000
30 — 34	40,000	10,000
35 — 39	30,000	10,000
40 — 44	20,000	10,000
45 — 49	15,000	7,500
50 — 54	10,000	5,000
55 — 59	7,500	3,750
60 — 69	5,000	2,500

### All Qualified Children's Death Benefit

0 — 14 Days \$0  
 15 Days — 6 Months \$500  
 6 Months — 19 Years \*\* \$2,000

\* Spouses' Death Benefit is based on Primary Insured's attained age

\*\* Children who are full-time students are covered to age 24

## How the Combined Protection Approach Works

### STEP 1:

The full benefits to which you are entitled under your Basic Hospital Expense Plan are calculated and paid.

### STEP 2:

Then the full benefits to which you are entitled under the Catastrophic Expense Benefit Rider are separately calculated. To the extent there are benefits available to you after the rider deductible is met, we will also pay these benefits.

### STEP 3:

The benefits provided by the Catastrophic Expense Benefit Rider are in addition to the benefits provided by the Basic Hospital Expense Plan. However, the total benefits paid under the Basic Covered Expenses section of the Group Policy and paid by this rider will never exceed the actual Covered Expenses, as defined in the rider, incurred for any Injury or Sickness.

## 24-Month Rate Guarantee Benefit

If this Rate Option is selected, we guarantee that your rates, for the coverage as issued, will not change for 2 years.

## UNIQUE TO THE NASE-ENDORSED PLANS:

### The Return-of-Premium Benefit (Form #GRPR 1 385)

## Now you can get back every penny you've paid for your NASE-Endorsed Insurance Program!

If this option remains continuously in force from its effective date until you reach age 65, we will return 100% of your premiums, less any claims paid, for you and your covered dependents. You can even get a partial refund (less any claims paid) after only five years.

Here's how our Return-of-Premium works:

- Assume an Insured and spouse, both age 40, are paying \$200 per month in premium.
- If insurance premiums increased only an average of 8 percent each year because of increasing age and inflation, that means that \$175,460 in premiums will have been paid by age 65.
- If the Insured and covered dependents had been fortunate enough to have no claims, we would refund \$175,460 at age 65.
- Even if we paid \$30,000 in claims over this 25-year period, we would refund \$145,460 to help sweeten your retirement years.
- If we paid a truly catastrophic claim (\$200,000 for example), it's obvious there would be no refund at age 65, since claims paid would be more than premiums paid. You can delete your Return-of-Premium by simply calling us toll-free. The premium will be reduced accordingly.
- This feature is available exclusively to NASE Members age 18 through 50, and is effective until age 65. Coverage ends when premium is refunded.

**Enrollment Application to:  
PFI. LIFE INSURANCE COMPANY**

**BAPP**

<p>FOR HOME OFFICE USE ONLY</p> <p>Number _____</p> <p>Special Request: _____</p>	<p>Health Insurance Applied For:</p> <table style="width:100%;"> <tr> <td><input type="checkbox"/> CHE</td> <td><input type="checkbox"/> BHE</td> <td><input type="checkbox"/> D<sup>1</sup></td> <td rowspan="2"><input type="checkbox"/> OTHER (Describe)</td> </tr> <tr> <td>MAX. BEN. <input type="checkbox"/> \$500,000</td> <td>DAILY BEN. <input type="checkbox"/> \$150 <input type="checkbox"/> \$200</td> <td>WKLY. BEN. <input type="checkbox"/> \$ _____</td> </tr> <tr> <td><input type="checkbox"/> \$ _____</td> <td><input type="checkbox"/> \$250 <input type="checkbox"/> \$300</td> <td>EP _____</td> <td></td> </tr> <tr> <td></td> <td><input type="checkbox"/> \$ _____</td> <td>BP _____</td> <td></td> </tr> <tr> <td>Ded. \$ _____</td> <td>Ded. \$ _____</td> <td><input type="checkbox"/> HC Rider</td> <td></td> </tr> </table>	<input type="checkbox"/> CHE	<input type="checkbox"/> BHE	<input type="checkbox"/> D <sup>1</sup>	<input type="checkbox"/> OTHER (Describe)	MAX. BEN. <input type="checkbox"/> \$500,000	DAILY BEN. <input type="checkbox"/> \$150 <input type="checkbox"/> \$200	WKLY. BEN. <input type="checkbox"/> \$ _____	<input type="checkbox"/> \$ _____	<input type="checkbox"/> \$250 <input type="checkbox"/> \$300	EP _____			<input type="checkbox"/> \$ _____	BP _____		Ded. \$ _____	Ded. \$ _____	<input type="checkbox"/> HC Rider		<p>OTHER COVERAGE (if any)</p> <table style="width:100%;"> <tr> <td><input type="checkbox"/> Accident Benefit</td> <td>Amount</td> <td>Additional Premium</td> </tr> <tr> <td><input type="checkbox"/> Childbirth Benefit</td> <td>\$ \$</td> <td>\$</td> </tr> <tr> <td><input type="checkbox"/> OP Chemotherapy Ben.</td> <td>\$</td> <td>\$</td> </tr> <tr> <td><input type="checkbox"/> Ret. of Premium Ben.</td> <td>\$ \$</td> <td>\$</td> </tr> <tr> <td><input type="checkbox"/> Pre &amp; Post Hosp. Ben.</td> <td>\$ \$</td> <td>\$</td> </tr> <tr> <td><input type="checkbox"/> Cat. Expense Ben.</td> <td>\$</td> <td>\$</td> </tr> <tr> <td><input type="checkbox"/> Double Misc. Benefit</td> <td>\$ \$</td> <td>\$</td> </tr> <tr> <td><input type="checkbox"/> Life Ins. Benefit</td> <td>\$</td> <td>\$</td> </tr> <tr> <td><input type="checkbox"/> Other</td> <td>\$</td> <td>\$</td> </tr> <tr> <td colspan="2">Total Additional Premium</td> <td>\$</td> </tr> </table>	<input type="checkbox"/> Accident Benefit	Amount	Additional Premium	<input type="checkbox"/> Childbirth Benefit	\$ \$	\$	<input type="checkbox"/> OP Chemotherapy Ben.	\$	\$	<input type="checkbox"/> Ret. of Premium Ben.	\$ \$	\$	<input type="checkbox"/> Pre & Post Hosp. Ben.	\$ \$	\$	<input type="checkbox"/> Cat. Expense Ben.	\$	\$	<input type="checkbox"/> Double Misc. Benefit	\$ \$	\$	<input type="checkbox"/> Life Ins. Benefit	\$	\$	<input type="checkbox"/> Other	\$	\$	Total Additional Premium		\$
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<input type="checkbox"/> Other	\$	\$																																																	
Total Additional Premium		\$																																																	
Beneficiary (Name and Relationship): _____																																																			

1. PRINT name of applicant and each member of the family (including wife's maiden name)	Relationship	State of Birth	Sex	Date of Birth			Present Age	Height	Weight		Premium
				Mo.	Day	Yr.			Now	1 Yr. Ago	
(1)	Applicant										\$
(2)	Spouse										
(3)											
(4)											
(5)											
(6)											

Pay mode: Monthly  Quarterly  Semi-Annually  Annually  Total Premium \_\_\_\_\_

2. Addresses: Number and Street or R.F.D. \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_ Telephone \_\_\_\_\_

Special Notice To:

a. Permanent U.S. Residence \_\_\_\_\_ ( )

b. Business Name \_\_\_\_\_

c. Business Address \_\_\_\_\_ ( )

3. Occupation (Member 01) \_\_\_\_\_ Duties (Describe) \_\_\_\_\_

4. Are any family members covered under Medicaid or Medicare? \_\_\_\_\_  
Name(s) \_\_\_\_\_

5. I am a member of the NATIONAL ASSOCIATION FOR THE SELF EMPLOYED. ....  Yes  No

6. Do any of you now have hospitalization insurance? ...  Yes  No  
If "Yes," names of companies \_\_\_\_\_

7. Will this insurance be used to replace any existing coverage? If YES, give company name and policy number:  Yes  No

8. Has any person proposed for insurance:

a. Ever been rejected or deferred for military service? ....  Yes  No

b. Ever had an application or reinstatement for life or accident and sickness insurance declined, postponed, rated up, modified, or terminated? .....  Yes  No

c. Had a drivers license suspended or revoked in the last two years? .....  Yes  No  
Give details if any question is answered "Yes" \_\_\_\_\_

9. Are all children or stepchildren of the applicant proposed for insurance by this application, currently unmarried and under the age of nineteen (19) years and residing at the applicant's principal place of residence; or under the age of twenty-four (24) years and enrolled as a full-time student at an accredited college or university? .....  Yes  No  
If answer is "No," give name(s) and reason: \_\_\_\_\_

10. During the past two years, has any person proposed for insurance: Flown in any aircraft other than as a passenger, engaged in any racing, parachuting, scuba diving activities, or other hazardous avocations or does he/she intend to do so in the next 12 months? If "Yes," give details. \_\_\_\_\_  Yes  No

11. Family Physician/Physician who would have medical records.

a. For Applicant:  
Name \_\_\_\_\_  
Address \_\_\_\_\_  
City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_  
Date last seen \_\_\_\_\_ Reason \_\_\_\_\_

b. For Spouse:  
Name \_\_\_\_\_  
Address \_\_\_\_\_  
City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_  
Date last seen \_\_\_\_\_ Reason \_\_\_\_\_

c. For Children:  
Name \_\_\_\_\_  
Address \_\_\_\_\_  
City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_  
Date last seen \_\_\_\_\_ Reason \_\_\_\_\_

12. Within the past 5 YEARS has any person proposed for insurance:

a. Had or been advised to have surgical operation, electrocardiogram, x-ray or other diagnostic test? ..  Yes  No

b. Been in or advised to enter a hospital or other institution for consultation, examination or treatment? .....  Yes  No

c. Consulted or been examined by any physician or other practitioner? .....  Yes  No

d. Used sedatives, hallucinogenic or narcotic drugs other than those prescribed by a physician or received treatment for drug habit? .....  Yes  No

e. Used alcohol to excess or received treatment or advice for excessive use of alcohol? .....  Yes  No

13. Is any proposed insured now pregnant? .....  Yes  No





# INSTRUCTIONS FOR USAGE AND AUTHORIZATION

TO: The bank named on the reverse side

So that you may comply with your depositor's request, this Company agrees:

1. To indemnify you and hold you harmless from any loss you may suffer as a consequence of your actions resulting from or in connection with the execution and issuance of any check, draft or order, whether or not genuine, purporting to be executed by this company and received by you in the regular course of business for the purpose of payment (under this plan), including any costs or expenses reasonably incurred in connection therewith
2. In the event that any such check, draft or order shall be dishonored whether with or without cause and whether intentionally or inadvertently, to indemnify you for any loss even though dishonor results in a forfeiture of insurance or other right
3. To defend at our own cost and expense any action which might be brought by any depositor or any other persons because of your actions taken pursuant to the foregoing request, or in any manner arising by reason of your participation in the foregoing plan of payment collection

Authorized in a resolution adopted by the Board of Directors of

PFL Life Insurance Company—January 30, 1976

## NATIONAL ASSOCIATION FOR THE SELF-EMPLOYED

William K. Witcher, President

## PFL LIFE INSURANCE COMPANY

Donald J. Shepard, President

### PFL Life Insurance Company

Please Read This Before Signing!

To: The Applicant

The best business relationships are those in which there is complete and clear understanding between the parties. Accordingly, we ask that you read and sign the following statement after the representative has made a complete presentation of the plan to assure yourself that you completely understand the coverage

#### CONFIRMATION OF PRESENTATION AND ACKNOWLEDGEMENT OF DELIVERY

Attention: Underwriting Department

Upon my request, your representative, whose signature appears below, visited me to determine my interest in applying for insurance with your company. Your representative was courteous and fully and completely explained to me from the same certificate all the provisions as contained in the certificate, including every benefit, exclusion, limitation, waiting period, and deductible, if any. Your representative asked each question on the enrollment application, which I signed only after a full review of the provisions and all the answers had been filled in. The answers to the health questions were fully answered to the best of my knowledge, and all the answers on the application are exactly those, with nothing left out, which I in any way related or stated to the representative. I fully understand and agree that if any material information is omitted from the application, it could provide the basis for the Company to refuse coverage and to refund all my premium as though my coverage had never been in force. In signing this form, I agree that I have carefully examined and understand the provisions of the specimen certificate and application, and that the Company is not bound by any knowledge of or statement made by or to the representative, unless set forth here on the application.

I hereby acknowledge receipt of the **OUTLINE OF COVERAGE** for Group Basic Hospital Expense Plan. I understand that coverage is not effective unless and until approved and issued by the Company.

I acknowledge that I have received this Outline of Coverage

Applicant \_\_\_\_\_ Date \_\_\_\_\_

Maximum Room and Board Rate Selected \$ 150 per day

Cash Deductible Amount Base Plan \$ \_\_\_\_\_ Cat. Exp. Rider \$ \_\_\_\_\_

I certify that I have delivered this Outline of Coverage

Representative \_\_\_\_\_ # \_\_\_\_\_

BHE-WRS 888

Return this form with the application

#### AUTHORIZATION FOR DISCLOSURE OF MEDICAL RECORD INFORMATION

By my (our) signature(s) below, I authorize any health care provider, including physicians, clinics, hospitals or other institutions who are named in the application for insurance or who attends or has attended myself, my spouse or any of my children, at any time, to disclose to PFL LIFE INSURANCE COMPANY or its legal representative, information from my or my family's health care record. I understand this could include, but is not limited to, my identity, medical history, diagnosis, prognosis, dates of treatment, treatment, test results, and summary reports, and this disclosure is without limitation to period of treatment, diagnostic or therapeutic information, history or type of illness including treatment, if any, for alcohol and drug abuse.

I UNDERSTAND the information obtained by use of the Authorization will be used by PFL LIFE INSURANCE COMPANY to determine eligibility for insurance, and eligibility for benefits under an existing policy. Any information obtained will not be released by PFL LIFE INSURANCE COMPANY to any person or organization EXCEPT to reinsuring companies, the Medical Information Bureau, Inc., or other persons or organizations performing business or legal services in connection with my application, claim, or as may be otherwise lawfully required or as I may further authorize.

I KNOW that I am requesting a copy of this Authorization

AGREE that a photographic copy of this Authorization shall be made as the original

AGREE this Authorization shall be valid for two years from the date shown below

ACKNOWLEDGE receipt of the original and a suitable duplicate

EXPLICIT: Do not forward this information to other agents or representatives unless you are authorized to do so with the applicant

Signature \_\_\_\_\_ Title \_\_\_\_\_

Signature \_\_\_\_\_ Title \_\_\_\_\_

Signature \_\_\_\_\_ Title \_\_\_\_\_

Signature \_\_\_\_\_ Title \_\_\_\_\_

# DESCRIPTION OF INFORMATION PRACTICES

To Our Applicants  
and Insureds:

## Collection of Information

This description of the information practices of our Company, and our agent, is being provided in accordance with the requirements of laws in your state of residence.

In order to properly underwrite and administer your insurance coverage, we must collect a certain amount of necessary and helpful information. The amount and type of information collected may vary depending on the amount and type of coverage applied for, but in general we will be seeking information about your age, occupation, physical condition, health history, mode of living, avocations, and other personal characteristics. In addition, our agent may collect information intended to aid in the updating and improvement of your insurance program.

You are our most important source of information, but we may also collect or verify information by contacting medical professionals and institutions that have provided care to you or members of your family proposed for coverage, employers and business associates, friends and neighbors, and other insurance companies you have applied to. We may collect information by exchanges of correspondence, by phone, or by personal contact.

In some cases, we may ask an insurance support organization to collect information and submit an investigative consumer report to us. That organization may retain a copy of the report and may disclose its contents to others for whom it performs such services.

## Our Disclosures

In some circumstances, we or our agent will make disclosures of personal information, without your authorization, to third parties. Following is a brief description of some of the persons or organizations to whom certain items or information might be disclosed.

- Persons or organizations performing professional, business, or insurance functions for us, such as independent claim examiners or group plan administrators
- Our agent, consumer reporting agencies hired to prepare investigative reports, and other insurance companies to which you have applied for coverage or benefits
- Your attending physician or treating medical professional
- Personnel or organizations conducting bona fide actuarial or scientific research studies, audits, or evaluations

Please be assured that the above describes some of the disclosures which may be made, not disclosures which are always, or even often, made. In any event, the information disclosed without your authorization will be only as much as is reasonably necessary to accomplish the intended purpose.

For example, we would ordinarily disclose only name and address to a marketing firm, and perhaps additional information relating to age, amounts of insurance, and claims experience to a scientific research organization. Information relating to physical condition or medical history would ordinarily be disclosed only to your attending physician or treating medical professional. In short, the types of information disclosed will vary depending upon the needs of the recipient and the sensitivity of the data.

## Access and Correction

A description of the circumstances under which information about you might be disclosed without your authorization to the types of persons and organizations will be sent to you upon request.

## Obtaining Additional Information

There are procedures by which you can obtain access to personal information about you appearing in our files, including information contained in investigative consumer reports. We have also established procedures by which you may request correction, amendment, or deletion of any information in our files which you believe to be inaccurate or irrelevant. A description of these procedures will also be sent to you upon request.

## Notice Concerning the Medical Information Bureau

We hope that you find this description of our information practices helpful. We take our responsibilities and your rights very seriously. If you have any further questions about the items just discussed, please write our Administrative Office at P.O. Box 1038, Hurst, Texas 76053. Please indicate your full name, address, telephone number, and certificate number.

Information regarding your insurability will be treated as confidential. The Company may, however, make a brief report thereon to the Medical Information Bureau, a non-profit membership organization of life insurance companies which operates an information exchange on behalf of its members. If you apply to another Bureau member company for life or health insurance coverage, or file a claim for benefits to such a company, the Bureau, upon request, will supply such company with the information in its file. Upon receipt of a request from you, the Bureau will arrange disclosure of any information it may have in your file. (Medical information will be disclosed only to your attending Physician.) If you question the accuracy of information in the Bureau's file, you may contact the Bureau and seek a correction in accordance with the procedures set forth in the Federal Fair Credit Reporting Act. The address of the Bureau's information office is P.O. Box 105, Essex Station, Boston, MA 02112, telephone (617) 426-3660. The Company may also release information in its file to other life insurance companies to which you may apply for life or health insurance, or to which a claim for benefits may be submitted.

## Pre-Notification — Public Law 91-508 — Fair Credit Reporting Act

This is to inform you that as a part of the Company's underwriting procedure for processing applications for insurance, an investigative report by a consumer reporting agency may be made concerning you and any person requesting insurance whereby information is obtained from personal interviews with neighbors, friends, associates or others acquainted with you, and those to be insured, as to character, general reputation, personal characteristics and mode of living. You have the right to make a written request within a reasonable period of time to receive additional detailed information about the nature and scope of this investigation. This written request should be directed to the Company at P.O. Box 1038, Hurst, TX 76053.

## ADDITIONAL QUESTIONS YOU MIGHT HAVE

### When Does Coverage Begin?

We require evidence of insurability before coverage is provided. Once we have approved your application, coverage for you and your Covered Dependents will begin on the Certificate Date shown in the Certificate Schedule. Your newborn children will be provided coverage after the Certificate Date from the moment of birth for 31 days. Coverage will not be subject to any evidence of insurability or acceptance by the Company. To continue coverage beyond 31 days, you must send written notice directing us to add the newborn child. This notice must be received by us within 31 days of the newborn child's birth and must be accompanied by any required additional premium.

### What About Premium Changes?

You cannot be singled out for rate increases. We can only change the table of premiums, on a class basis, becoming due under the Group Policy at any time and from time to time, provided the Company has given the Group Policyholder written notice of at least 31 days prior to the effective date of the new rates.

### What Is a Pre-Existing Condition?

Claims will not be paid for pre-existing conditions unless loss occurs after the Insured's coverage has been in force for 2 years. Pre-existing condition means a medical condition, Sickness, or Injury not excluded by name or specific description for which:

1) medical advice, consultation, or treatment was recommended by or received from a Doctor within the 1-year period before the effective date of coverage, or 2) symptoms existed which would cause an ordinarily prudent person to seek diagnosis, care, or treatment within the 1-year period before the effective date of coverage.

### When Does Coverage Terminate?

Your coverage will terminate and no benefits will be payable on or after:

1) the date the Group Policy terminates; 2) upon nonpayment of premium, subject to the grace period; 3) upon our receipt of your written notice of cancellation; 4) the date you cease to be a Member in good standing of the association covered under the Group Policy; 5) the date you qualify for Medicare, at any age, or reach age 65, except as provided by the Catastrophic Care Benefit.

Your Covered Dependent's coverage will terminate on:

1) the date your coverage terminates; 2) the date such dependent ceases to be an Eligible Dependent; 3) the date the Group Policy terminates; 4) the date we receive your written request to cancel a dependent's coverage; 5) the date a dependent qualifies, at any age, for Medicare, or reaches age 65, except as provided by the Catastrophic Care Benefit.

The attainment of the Limiting Age for a Covered Dependent will not cause coverage to terminate while that person is and continues to be both: a) incapable of self-sustaining employment by reason of mental retardation or physical handicap; and b) Chiefly Dependent on you for support and maintenance, meaning the Covered Dependent receives the majority of his/her financial support from you.

## YOUR PEACE OF MIND AND SECURITY ARE IMPORTANT TO US

You should be contacted by us within 14 days confirming our receipt of your application.

If you should have any questions about your application or your insurance coverage, or need any assistance with claims or other matters, please contact us at any time.

### Received from:

---

the amount of \$ \_\_\_\_\_

for the initial insurance premium, one-time administrative fee, and current NASE membership dues, with application for enrollment in:

### The NASE's Basic Hospital Expense Insurance Plan

Cash Deductible Amount \$ \_\_\_\_\_

You must be a member of NASE in order to apply. The representative does not have the authority on behalf of the Company to accept risks; to make, alter or amend the Group Policy; or to extend the time for making any payment due under such Group Policy. **Therefore, insurance is not effective until the coverage applied for has been approved and issued by the Company.**

---

Date \_\_\_\_\_ Authorized Representative \_\_\_\_\_ # \_\_\_\_\_

For those who apply for the Basic Plan without the Catastrophic Rider, you may, in the future, apply for coverage in another NASE-Endorsed Plan, which could carry higher benefits if you are approved.

PFL Life Insurance Company

Toll Free # 1-800-527-5504



**Congratulations; you've joined the growing number of individuals who rely on insurance plans endorsed by the NASE.**

NASE Member insurance certificates are serviced by PFL Life Insurance Company. Last year alone, NASE Members received more than \$110 million in insurance benefits.

Your NASE-Endorsed Basic Hospital Expense Insurance Plan brings with it:

- The advantages of group enrollment, in a plan specifically designed for the self-employed
- Underwriting by an A-rated insurance company
- Freedom from being singled out for cancellation or rate increases
- Worldwide coverage by your choice of doctor or hospital
- Availability of return-of-premium, 2-year rate guarantee, and other options that can increase the value of your coverage

**PFL Life Insurance Co.**  
**Home Office:**

Cedar Rapids, Iowa  
Administrative Office:  
9151 Grapevine Highway  
N. Richland Hills, TX 76180  
Toll Free 1-800-527-5504

Group  
**BASIC**  
Hospital  
Expense  
Insurance  
Plan



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PLEASE NOTE — Benefits for a loss for a period of less than one month shall be payable on the basis of 1/30th of the monthly benefit for each day of such loss. This Policy provision applies to monthly benefits payable under the Policy and each of the Optional Benefit Riders.

## BASIC POLICY BENEFITS

Prepared for \_\_\_\_\_ on Date: \_\_\_\_\_  
Age Last Birthday \_\_\_\_\_  Smoker  Non-Smoker

• **ACCIDENT AND SICKNESS TOTAL DISABILITY:**

\$ \_\_\_\_\_ per month, while disabled, beginning on the \_\_\_\_\_ day; for disability commencing:

(a) before age 62½ payments continue for \_\_\_\_\_ months;  
(benefit period)

(b) on or after age 62½ but before age 70 payments continue for 30 months or for such lesser period in (a); and

(c) on or after age 70 payments continue for 15 months

• **LOSS OF SPEECH, HEARING OR USE OF TWO MEMBERS OCCURRING PRIOR TO AGE 65:**  
(Lasting at least 90 days, monthly benefits are payable from the first day for the applicable maximum benefit period, whether caused by accident or sickness and whether or not disabled or employed.)

• **DOUBLE DISMEMBERMENT OR LOSS OF SIGHT OCCURRING PRIOR TO AGE 65:**  
(whether caused by accident or sickness and whether or not disabled or employed).

\$ \_\_\_\_\_ (Total Disability Benefit) per month from the first day of such loss for 60 months or for the applicable benefit period if longer.

\$ \_\_\_\_\_ CAPITAL SUM (15 times monthly benefit).

• **BENEFIT FOR NON-DISABLING INJURIES:** To a maximum of...

\$ \_\_\_\_\_ (one-half of one month's benefit).

**BILLING:** (Check one)

- Individual Direct Notice  
 Common Billing Invoice  
 ABC Plan (See Form ABC-6 for rules)

**PAYMENT MODE:** (Check one)

- Annual\*  
 Semi-Annual (½ Annual)  
 Quarterly (¼ Annual)  
 Monthly (1/12 Annual) multiple risk list bill or ABC only

\*ALL DOLLAR BENEFITS INCREASE 10%  
WHEN PREMIUMS ARE PAID ANNUALLY

POLICY ANNUAL PREMIUM: \$ \_\_\_\_\_

OPTIONAL RIDERS TOTAL PREMIUM: \$ \_\_\_\_\_  
(As outlined in Form OBR/ALL)

TOTAL POLICY AND RIDERS  
ANNUAL PREMIUM: \$ \_\_\_\_\_

PAYABLE \_\_\_\_\_ @ \$ \_\_\_\_\_  
(Mode)

Agent: \_\_\_\_\_



Massachusetts Casualty  
Insurance Company  
DISABILITY INCOME EXCLUSIVELY  
BOSTON, MASSACHUSETTS

Massachusetts Casualty Insurance Company



## Disability Income Insurance Protection

ALL CLASSES — AGES 18-60  
This brochure is to be used when illustrating  
15, 30 and 60 Month Benefit Plans  
for all classes, (A-1A through A-4, inclusive).

# Disability Income Insurance Protection

## SOME POLICY FEATURES:

- **The policy is non-cancellable and guaranteed renewable to age 65;** renewable thereafter for life, subject to the Company's right (1) to non-renew if the Insured ceases to be gainfully employed full-time or (2) to change premium levels by class at its choice and without specific approval of any state authority.
- **Definition of total disability:**  
The Insured (Occupational Classes A-1A, A-1, and A-2) is considered totally disabled when substantially unable to perform the material duties of his or her regular occupation, trade or profession for the benefit period provided in the Policy.  
The Insured (Occupational Classes A-3 and A-4) is considered totally disabled when substantially unable to perform the material duties of his or her regular occupation, trade or profession for the benefit period provided in the Policy to a maximum of 30 months.  
Beyond this, the Insured (Occupational Classes A-3 and A-4) is considered totally disabled during the remainder, if any, of the benefit period when substantially unable to perform the material duties of any gainful occupation for which reasonably fitted, having due regard for his or her earning ability from the Policy Date, education, training and experience.
- **Loss of Speech, Hearing or Loss of Use of Two Members** occurring prior to age 65 and lasting at least 90 days: monthly benefits are payable from the first day for the applicable maximum benefit period, whether caused by accident or sickness and whether or not disabled or employed.
- **Monthly benefits for Double Dismemberment or Loss of Sight** occurring prior to age 65 are payable from the first day of disability for 60 months or the applicable benefit period, whichever is longer, whether caused by accident or sickness and whether or not disabled or employed.
- **A Capital Sum equal to 15 months' benefit** is paid in addition to monthly benefits for Double Dismemberment or Loss of Sight, when occurring prior to age 65 and whether caused by accident or sickness.
- **Unisex rates.**
- **All dollar benefits increase** — premium is paid annually.
- **Non-Disabling Injuries** — to a maximum of one-half of one month's benefit is provided on a per occurrence basis for cost incurred for attendance of a physician, x-rays, or hospital out-patient care, if not entitled to benefits for such injury under other provisions of the Policy, and Insured not already disabled or receiving benefits under the Policy.

- **Waiver of premium:** effective after 90 consecutive days of total disability — retroactive to 1st day of disability.
- **Physicians and Dentists** are insured in their specialties.
- **Optional Policy Adjustments:** Insured may vary policy coverage to meet changing insurance needs.
- **Full aviation coverage** including private flying.
- **World-wide coverage.**
- **Discounted Non-smoker premium rates available.**
- **Rehabilitation** — if the Insured chooses to participate in an approved program of rehabilitation, mutually agreed upon by the Insured and the Company, his or her voluntary efforts to recover from disability and return to work will not result in a complete loss of disability benefits.
- **Transplant surgery** — total disability due to the transplant of part of the Insured's body to the body of another person will be treated like any other sickness under the policy.
- **No benefits are payable** for a loss which starts within 2 years after coverage becomes effective and results from a pre-existing condition not fully disclosed in the application for the policy. Disabilities from the same cause(s) as a prior disability and not separated by at least a 6-month recover period are subject to one benefit period. Concurrent disabilities are treated as a single period of disability subject to only one payment or none if policy premiums are then being waived.

A Medical Examination and or a Blood Profile may be required when applying for coverage under the Policy described herein. Please consult the "Underwriting Guide."

A specimen policy or specimen riders are available upon request.

### IMPORTANT:

The policy form described herein provides disability income insurance and such optional riders as selected. It does not provide basic hospital, basic medical or major medical insurance as defined by the New York State Insurance Department. The expected benefit ratio for this policy is 50%. This ratio is the portion of future premiums which the Company expects to return as benefits, when averaged over all people with this policy.

This brochure only summarizes some of the features of Disability Income Policy Series 3000. As such it does not constitute a contract or offer of insurance. You also should not interpret the within information as providing you with a reasonable expectation of any benefits except those specifically contained in the actual provisions of the policy and riders applied for and issued to you. This policy and riders are subject to modification in certain states.



EXAMPLE NO. 1

TRUCKER PROFILE: SINGLE MALE, 35 YEARS OLD, SMOKER

HEALTH PROTECTION: COMBINED PROTECTION PLAN  
\$200.00 DEDUCTIBLE WITH A 3,000,000 LIFETIME  
BENEFIT

DISABILITY INCOME PROTECTION: \$2,500.00 MONTHLY BENEFIT FOR 5 YEARS  
30 DAY WAITING PERIOD

TERM LIFE INSURANCE: 250,000 TAX-FREE DEATH BENEFIT

TOTAL MONTHLY COST \$367.00

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EXAMPLE NO. 2

TRUCKER PROFILE: SINGLE MALE, 40 YEARS OLD, SMOKER

HEALTH PROTECTION: COMBINED PROTECTION PLAN  
\$200.00 DEDUCTIBLE WITH A 3,000,000 LIFETIME  
BENEFIT

DISABILITY INCOME PROTECTION: \$2,500 MONTHLY BENEFIT FOR 5 YRS  
30 DAY WAITING PERIOD

TERM LIFE INSURANCE: \$250,000 TAX-FREE DEATH BENEFIT

TOTAL MONTHLY COST \$419.00

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EXAMPLE NO. 3

TRUCKER PROFILE: SINGLE MALE, 30 YEARS OLD, SMOKER

HEALTH PROTECTION: COMBINED PROTECTION PLAN  
\$200.00 DEDUCTIBLE WITH A 3,000,000 LIFETIME  
BENEFIT

DISABILITY INCOME PROTECTION: \$2,500 MONTHLY BENEFIT FOR 5 YRS  
30 DAY WAITING PERIOD

TERM LIFE INSURANCE: \$250,000 TAX-FREE DEATH BENEFIT

TOTAL MONTHLY COST \$343.00

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SUBSTANTIAL DISCOUNTS AVAILABLE FOR NONSMOKERS AND 60 DAYS WAITING PERIODS

**CS FOR SENATE BILL NO. 219 (L&C)**

**IN THE LEGISLATURE OF THE STATE OF ALASKA**

**SEVENTEENTH LEGISLATURE - FIRST SESSION**

**BY THE SENATE LABOR AND COMMERCE COMMITTEE**

**Offered:  
Referred:**

**Sponsor(s): SENATE LABOR & COMMERCE COMMITTEE BY REQUEST**

**A BILL**

**FOR AN ACT ENTITLED**

**1 "An Act relating to workers' compensation; and providing for an effective date."**

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

**3 \* Section 1. PURPOSE OF SECTION 3.** It is the purpose of sec. 3 of this Act to amend AS 23.30  
**4 to provide that an insurer is not liable for providing or failing to provide safety inspections or safety**  
**5 advisory services; this amendment would decide a public policy question concerning the liability of an**  
**6 insurer for the performance of a safety inspection or safety advisory service raised in Van Biene v. ERA**  
**7 Helicopters, Inc., 779 P.2d 315 (Alaska 1989). Liability for conduct not related to safety inspections**  
**8 or safety advisory services is not intended to be changed.**

**9 \* Sec. 2. AS 23.30 is amended by adding a new section to read:**

**10 Sec. 23.30.047. BENEFITS FOR HEALTH INSURANCE.** (a) An employer who pays  
**11 compensation to an injured employee under AS 23.30.041(k), 23.30.180, 23.30.185, 23.30.190,**  
**12 23.30.200, or 23.30.215, and who provided health insurance to the employee at the date of injury**  
**13 shall also reimburse the employee for health insurance coverage for the employee and covered**  
**14 dependents, as provided in this section.**

1 (b) Payment required under this section is equal to the employer's current contribution  
2 for health insurance or the amount paid by the employee for replacement coverage, whichever  
3 amount is less. Payment required under this section commences when the employee's health  
4 insurance provided by the employer's contribution ceases and shall continue until the employee  
5 is no longer receiving compensation described in (a) of this section, or for 18 months, whichever  
6 period is shorter.

7 (c) Payment is not required under this section until the employee provides proof of health  
8 insurance coverage. In this subsection, "health insurance" includes an individual policy of health  
9 insurance, or a notice of self-payment or continuance of coverage under a union health or welfare  
10 trust agreement.

11 (d) If benefits required under this section are not paid within 30 days after the employer  
12 receives a request for payment, the employer shall pay a penalty equal to 25 percent of the  
13 amount due.

14 \* Sec. 3. AS 23.30 is amended by adding a new section to read:

15 Sec. 23.30.232. CIVIL LIABILITY FOR WORKPLACE SAFETY INSPECTIONS. A  
16 carrier, an insurance service agent to a self-insured employer, or a trade association is not liable  
17 for civil damages as a result of an act or omission in performing or failing to perform a  
18 workplace safety inspection or a safety advisory service unless the carrier's, agent's, or  
19 association's act or failure to act constitutes intentional misconduct.

20 \* Sec. 4. This Act takes effect immediately under AS 01.10.070(c).

7-LS1004A ✓  
Ford  
3/14/91

SENATE BILL NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA  
SEVENTEENTH LEGISLATURE - FIRST SESSION

BY THE SENATE LABOR AND COMMERCE COMMITTEE BY REQUEST

Introduced:  
Referred:

A BILL

FOR AN ACT ENTITLED

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

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

3 \* Section 1. PURPOSE OF SECTIONS 11, 18, AND 19. (a) It is the purpose of sec. 11 of this Act  
4 to amend AS 23.30.055 to provide that the exclusive liability provisions extended to an employer  
5 includes the liability of an insurer for providing or failing to provide safety inspections or safety advisory  
6 services; this amendment would decide a public policy question concerning the liability of an insurer for  
7 the performance of a safety inspection or safety advisory service raised in Van Biene v. ERA  
8 Helicopters, Inc., 779 P.2d 315 (Alaska 1989).

9 (b) It is the purpose of sec. 18 of this Act to amend AS 23.30.265(15) to include prior temporary  
10 total disability payments within the definition of gross wages.

11 (c) It is the purpose of sec. 19 of this Act to amend AS 23.30.265(21) to clarify that medical  
12 stability results from a condition from which objectively measurable improvement or deterioration is not  
13 expected from further medical treatment, and that medical stability is presumed in the absence of  
14 improvement or deterioration after 45 days.

1 \* Sec. 2. AS 23.30.041(b) is amended to read:

2 (b) The administrator shall

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

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

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

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

10 (5) submit to the department, on or before July 1 [JANUARY 1] of each year,  
11 a report of reemployment benefits provided under this section for the previous calendar  
12 [FISCAL] year; the report must include a general section, sections related to each rehabilitation  
13 specialist employed under this section, and a statistical summary of all rehabilitation cases,  
14 including

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

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

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

19 (D) the cost of reemployment benefits;

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

22 (7) monitor the activities of medical managers assigned by the carrier to an  
23 injured employee, including reviewing reports or correspondence concerning the injured  
24 employee;

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

28 \* Sec. 3. AS 23.30.041(c) is amended to read:

29 (c) If an employee suffers a compensable injury that may permanently preclude an  
30 employee's return to the employee's occupation at the time of injury, the employee or employer  
31 may request an eligibility evaluation for reemployment benefits. The employee shall request an

1 eligibility evaluation within 90 days after the employee gives the employer notice of injury unless  
2 the administrator determines the employee has an unusual and extenuating circumstance that  
3 prevents the employee from making a timely request. If, after a review of the board's case file,  
4 the administrator determines the employee is unlikely to be able to return to the employee's  
5 occupation at the time of injury, the [THE] administrator shall, on a rotating and geographic  
6 basis, select a rehabilitation specialist from the list maintained under (b)(6) of this section to  
7 perform the eligibility evaluation.

8 \* Sec. 4. AS 23.30.041(e) is amended to read:

9 (e) An employee is [SHALL BE] eligible for benefits under this section upon the  
10 employee's written request and by having a licensed physician, or regarding muscular, skeletal,  
11 or neurological injuries, a licensed physician or a licensed physical or occupational  
12 therapist, predict that the employee will have permanent physical capacities that are less than  
13 the physical demands of the employee's job as described in the United States Department of  
14 Labor's "Selected Characteristics of Occupations Defined in the Dictionary of Occupational  
15 Titles" for

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

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

22 \* Sec. 5. AS 23.30.041(h) is amended to read:

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

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

27 (2) an inventory of the employee's technical skills, physical and intellectual  
28 capacities, academic achievement, emotional condition, and family support;

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

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

1 modification devices;

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

3 (6) the date the plan will commence;

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

5 (8) a detailed description and plan schedule; [AND]

6 (9) a finding by the rehabilitation specialist that the inventory under (2) of this

7 subsection indicates that the employee can be reasonably expected to satisfactorily complete the

8 plan and perform in a new occupation within the time and cost limitations of the plan; and

9 (10) a certification by the rehabilitation specialist that the plan meets all the

10 requirements of this subsection; if the administrator determines that the plan does not meet

11 one or more of the requirements of this subsection, the administrator shall require the

12 rehabilitation specialist to amend the plan to meet the requirements of this subsection; a

13 rehabilitation specialist may not charge a fee for an amendment to a reemployment plan

14 required under this paragraph.

15 \* Sec. 6. AS 23.30.041(k) is repealed and reenacted to read:

16 (k) The employer shall pay compensation to an employee eligible for reemployment  
17 benefits, as follows:

18 (1) until the employee reaches medical stability or the reemployment plan is  
19 completed or terminated, whichever comes first, temporary disability benefits shall be paid;

20 (2) if the employee reaches medical stability or has been found eligible for reem-  
21 ployment benefits, temporary disability benefits shall cease and permanent impairment benefits  
22 shall then be paid biweekly at the employee's temporary total disability rate until plan  
23 completion, termination, or exhaustion of permanent impairment benefits; permanent impairment  
24 benefits remaining unpaid upon completion or termination of the plan shall be paid to the  
25 employee in a single lump sum;

26 (3) if the employee's permanent impairment benefits are exhausted before the  
27 completion or termination of the reemployment plan, the employer shall pay, on a biweekly basis,  
28 an amount equal to 60 percent of the employee's spendable weekly wage as determined under  
29 AS 23.30.220, not to exceed \$525, until the completion or termination of the plan;

30 (4) if the employee reaches medical stability before an impairment rating is given  
31 as provided in AS 23.30.190, except for the first 30 days the employee shall be paid 60 percent

1 of the employee's spendable weekly wage until an impairment rating is given; benefits paid more  
2 than 30 days after medical stability but before an impairment rating is given shall be offset from  
3 the total sum of permanent impairment benefits due to the employee; after the employee reaches  
4 medical stability and an impairment rating is given, all benefits paid shall be included as  
5 permanent impairment benefits;

6 (5) benefits related to the reemployment plan may not extend past two years from  
7 the date of the initiation of the 60 percent payment of the employee's spendable weekly wage,  
8 plan approval, or plan acceptance, whichever date occurs first, at which time the benefits expire;

9 (6) if the employer controverts the employee's claim or appeals a ruling of the  
10 administrator or the board and the controversion or appeal delays completion of an evaluation,  
11 development, commencement or completion of a plan

12 (A) the employer shall pay the employee 60 percent of the spendable  
13 weekly wage during the period of controversion or appeal, except that temporary  
14 disability benefits shall be paid until the employee reaches medical stability;

15 (B) the two-year limitation on payment of benefits in (5) of this subsection  
16 does not begin to run or is tolled; and

17 (C) payments made at 60 percent of the employee's spendable weekly  
18 wage during controversion or appeal may not be offset from permanent impairment  
19 benefits due to the employee.

20 \* Sec. 7. AS 23.30.041(l) is amended to read:

21 (l) The cost of the reemployment plan incurred under this section is [SHALL BE] the  
22 responsibility of the employer, shall be paid on an expense incurred basis, and may not exceed  
23 \$10,000. The cost of the rehabilitation specialist shall be paid by the employer, but may not  
24 be included in determining the cost of the reemployment plan. Fees charged by and paid  
25 to a rehabilitation specialist for services must be comparable to fees for similar services in  
26 the community in which the services are performed, as determined by the board.

27 \* Sec. 8. AS 23.30.041(p) is amended to read:

28 (p) In this section,

29 (1) "administrator" means the reemployment benefits administrator under (a) of  
30 this section;

31 (2) "employability" means possessing the ability but not necessarily the

1 opportunity to engage in employment that is consistent with the employee's physical status  
2 imposed by the compensable injury;

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

5 (A) area of residence;

6 (B) area of last employment;

7 (C) the state;

8 (D) other states;

9 (4) "medical manager" means a nurse, rehabilitation specialist, or other  
10 health care provider assigned by the carrier to assist an employee in coordinating medical  
11 benefits, or to monitor the employee's medical services;

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

15 (6) [(5)] "physical demands" means the physical requirements of the job such as  
16 strength, including positions such as standing, walking, sitting, and movement of objects such as  
17 lifting, carrying, pushing, pulling, climbing, balancing, stooping, kneeling, crouching, crawling,  
18 reaching, handling, fingering, feeling, talking, hearing, or seeing;

19 (7) [(6)] "rehabilitation specialist" means a person who is a certified insurance  
20 rehabilitation specialist, a certified rehabilitation counselor, or a person who has equivalent or  
21 better qualifications as determined under regulations adopted by the department;

22 (8) [(7)] "remunerative employability" means having the skills that allow a worker  
23 to be compensated with wages or other earnings equivalent to at least 60 percent of the worker's  
24 gross hourly wages at the time of injury; if the employment is outside the state, the stated 60  
25 percent shall be adjusted to account for the difference between the applicable state average  
26 weekly wage and the Alaska average weekly wage.

27 \* Sec. 9. AS 23.30.041 is amended by adding a new subsection to read:

28 (q) After a medical manager has been assigned to an injured employee, the medical  
29 manager shall send written notice to the employee, the employer, and the employee's physician  
30 explaining in what capacity the medical manager is employed, who the medical manager  
31 represents, and the scope of the services to be provided.

1 \* Sec. 10. AS 23.30 is amended by adding a new section to read:

2 Sec. 23.30.047. BENEFITS FOR HEALTH INSURANCE. (a) An employer who pays  
3 compensation to an injured employee under AS 23.30.041(k), 23.30.180, 23.30.185, 23.30.190,  
4 23.30.200, or 23.30.215, and who provided health insurance to the employee at the date of injury  
5 shall also reimburse the employee for health insurance coverage for the employee and covered  
6 dependents, as provided in this section.

7 (b) Compensation required under this section is equal to the employer's current  
8 contribution for health insurance or the amount paid by the employee for replacement coverage,  
9 whichever amount is less. Compensation required under this section commences when the  
10 employee's health insurance provided by the employer's contribution ceases and shall continue  
11 until the employee is no longer receiving compensation described in (a) of this section, or for 18  
12 months, whichever period is shorter.

13 (c) Payment of compensation under this section is not required until the employee  
14 provides proof of health insurance coverage. In this subsection, "health insurance" includes an  
15 individual policy of health insurance, or a notice of self-payment or continuance of coverage  
16 under a union health or welfare trust agreement.

17 (d) If benefits required under this section are not paid within 30 days after the employer  
18 receives a request for payment, the employer shall pay a penalty equal to 25 percent of the  
19 amount due.

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

21 (b) If an employer fails to insure and keep insured employees subject to this chapter or  
22 fails to obtain a certificate of self-insurance from the board, upon conviction, the court shall  
23 impose a fine of \$10,000 and may impose a sentence of imprisonment for not more than one  
24 year. In addition, the board may impose a civil penalty equal to three times the manual  
25 rate that would have been charged for the employer's insurance premium during the period  
26 the employer failed to obtain insurance. If an employer is a corporation, all persons who, at  
27 the time of the injury or death, had authority to insure the corporation or apply for a certificate  
28 of self-insurance [,] and the person actively in charge of the business of the corporation shall be  
29 subject to the penalties prescribed in this subsection and shall be personally, jointly, and severally  
30 liable together with the corporation for the payment of all compensation or other benefits for  
31 which the corporation is liable under this chapter if the corporation at that time is not insured or

1 qualified as a self-insurer.

2 \* Sec. 12. AS 23.30.155(d) is amended to read:

3 (d) If the employer controverts the right to compensation, the employer shall file with  
4 the board and send to the employee a notice of controversion on or before the 21st day after the  
5 employer has knowledge of the alleged injury or death. If the employer controverts the right to  
6 compensation after payments have begun, the employer shall file with the board and send to the  
7 employee a notice of controversion within seven days after an installment of compensation  
8 payable without an award is due. When payment of temporary disability benefits is controverted  
9 solely on the grounds that another employer or another insurer of the same employer may be  
10 responsible for all or a portion of the benefits, the most recent employer or insurer who is party  
11 to the claim and who may be liable shall make the payments during the pendency of the dispute.  
12 When a final determination of liability is made, any reimbursement required, including interest  
13 at the statutory rate, and all costs and reasonable attorneys' fees incurred by the prevailing  
14 employer, shall be made within 14 days of the determination.

15 \* Sec. 13. AS 23.30.175(a) is amended to read:

16 (a) The weekly rate of compensation for disability or death may not exceed \$700 and  
17 initially may not be less than \$154 when the employee has furnished documentary proof of  
18 the employee's wages, or less than \$110 when the employee has not furnished documentary  
19 proof of the employee's wages. However, if [THE BOARD DETERMINES THAT] the  
20 employee's spendable weekly wage is [WAGES ARE] less than [\$110 A WEEK AS  
21 COMPUTED UNDER AS 23.30.220, OR LESS THAN] \$154 a week as computed under  
22 AS 23.30.220, the employee's weekly compensation rate shall [IN THE CASE OF AN  
23 EMPLOYEE WHO HAS FURNISHED DOCUMENTARY PROOF OF THE EMPLOYEE'S  
24 WAGES, IT SHALL ISSUE AN ORDER ADJUSTING THE WEEKLY RATE OF  
25 COMPENSATION TO A RATE] equal [TO] the employee's spendable weekly wage [WAGES].  
26 The employer may not pay compensation at the employee's spendable weekly wage without  
27 a board order except as provided under regulations established by the board. [IF THE  
28 EMPLOYER CAN VERIFY THAT THE EMPLOYEE'S SPENDABLE WEEKLY WAGES ARE  
29 LESS THAN \$154, THE EMPLOYER MAY ADJUST THE WEEKLY RATE OF  
30 COMPENSATION TO A RATE EQUAL TO THE EMPLOYEE'S SPENDABLE WEEKLY  
31 WAGES WITHOUT AN ORDER OF THE BOARD.] If the employee's spendable weekly wage

1 is [WAGES ARE] greater than \$154, but 80 percent of the employee's spendable weekly wage  
2 [WAGES] is less than \$154, the employee's weekly rate of compensation shall be \$154. Prior  
3 payments made in excess of the adjusted rate shall be deducted from the unpaid compensation  
4 in the manner the board determines. In any case, the employer shall pay timely compensation.

5 \* Sec. 14. AS 23.30.190(b) is amended to read:

6 (b) All determinations of the existence and degree of permanent impairment shall be  
7 made strictly and solely under the whole person determination as set out in the American Medical  
8 Association Guides to the Evaluation of Permanent Impairment, except that an impairment rating  
9 may not be rounded to the next five percent. The board shall adopt a supplementary recognized  
10 schedule for injuries that cannot be rated by use of the American Medical Association Guides.  
11 An impairment rating shall be determined by a licensed physician or, if the injury is related  
12 to muscular, skeletal, or neurological disabilities, by a licensed physician or a licensed  
13 physical or occupational therapist.

14 \* Sec. 15. AS 23.30.195 is amended to read:

15 Sec. 23.30.195. SURVIVAL OF THE RIGHT TO COMPENSATION. (a)  
16 Compensation to which a [ANY] claimant would be entitled under AS 23.30.190 [EXCEPTING  
17 (a)(20) OF THAT SECTION] shall, notwithstanding death arising from causes other than the  
18 injury, be payable to and for the benefit of the following persons [FOLLOWING]:

19 (1) if there is [BE] a widow or widower, but [AND] no child of the deceased,  
20 to the widow or widower;

21 (2) if there is [BE] a widow or widower and a surviving child or children of the  
22 deceased, one-half to the widow or widower, the other half to the surviving child or children,  
23 in equal shares;

24 (3) if there is [BE] a surviving child or children of the deceased, but no widow  
25 or widower, then to the child or children, in equal shares.

26 (b) An award for impairment [DISABILITY] may be made after the death of the injured  
27 employee.

28 \* Sec. 16. AS 23.30 is amended by adding a new section to read:

29 Sec. 23.30.232. CIVIL LIABILITY FOR WORKPLACE SAFETY INSPECTIONS. A  
30 carrier, an insurance service agent to a self-insured employer, or a trade association is not liable  
31 for civil damages as a result of an act or omission in performing a workplace safety inspection

1 or a safety advisory service unless the carrier's, agent's, or association's act or failure to act  
2 constitutes intentional misconduct.

3 \* Sec. 17. AS 23.30 is amended by adding a new section to read:

4 Sec. 23.30.238. VOLUNTEER EMERGENCY MEDICAL TECHNICIANS AS  
5 EMPLOYEES. (a) A person who is injured during the course and within the scope of providing  
6 service as a volunteer emergency medical technician is an employee of the state for purposes of  
7 this chapter if the person

8 (1) is certified by the state under AS 18.08 as an emergency medical technician;

9 (2) provides emergency medical service outside an incorporated city or borough;

10 and

11 (3) is not otherwise covered for that injury by an employer's workers'  
12 compensation insurance policy or self-insurance certificate.

13 (b) The gross weekly earnings for a person receiving benefits under this section shall be  
14 the gross weekly earnings paid a full-time emergency medical technician employed in the city  
15 or borough nearest to the place where the injury occurred, or, if the nearest city or borough has  
16 no full-time emergency medical technician, at a reasonable figure previously set by the nearest  
17 city or borough to make this determination, but in no case may the gross weekly earnings for  
18 calculating compensation be less than the minimum wage computed on the basis of 40 hours of  
19 work a week.

20 \* Sec. 18. AS 23.30.265(15) is amended to read:

21 (15) "gross earnings" means periodic payments [,] by an employer to an employee  
22 for employment before any authorized or lawfully required deduction or withholding of money  
23 by the employer, including wages [COMPENSATION THAT IS] deferred at the option of the  
24 employee and temporary disability compensation for an occupational injury or illness, and  
25 excluding irregular bonuses, reimbursement of expenses, expense allowances, and any benefit or  
26 payment to the employee that is not fully taxable to the employee during the pay period, except  
27 that the total amount of contributions made by an employer to a qualified pension or profit  
28 sharing plan during the two plan years preceding the injury, multiplied by the percentage of the  
29 employee's vested interest in the plan at the time of injury, shall be included in the determination  
30 of gross earnings; the value of room and board if taxable to the employee may be considered in  
31 determining gross earnings; however, the value of room and board that would raise an

1 employee's gross weekly earning above the state average weekly wage at the time of injury may  
2 not be considered;

3 \* **Sec. 19.** AS 23.30.265(21) is amended to read:

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

11 \* **Sec. 20.** AS 23.30.265 is amended by adding a new paragraph to read:

12 (34) "volunteer emergency medical technician" means a person who is certified  
13 by the state as an emergency medical technician under AS 18.08 and who provides emergency  
14 medical services on a voluntary basis.

15 \* **Sec. 21.** REPORT. The division of insurance shall prepare a report on the feasibility of  
16 implementing a contracting classification premium adjustment program to provide premium credits for  
17 employers who purchase workers' compensation insurance. The report must include comments and  
18 recommendations from labor and management representatives in the state. The division of insurance  
19 shall submit the report to the Second Session of the Seventeenth Alaska State Legislature by January 31,  
20 1992.

21 \* **Sec. 22.** TRANSITION. Notwithstanding AS 23.30.041(b), as amended by sec. 2 of this Act, the  
22 first report of reemployment benefits due under that section as amended is to be filed on or before  
23 July 1, 1992, and must include the period of July 1, 1990, through December 31, 1990, and calendar year  
24 1991.

25 \* **Sec. 23.** This Act takes effect immediately under AS 01.10.070(c).

HCS for CSSB 219(JUD)

- Sec 1. Partial change to accomodate new sections.
- Sec 2 From ad hoc bill.
- Sec 3. Ad hoc bill rewrite with Collins assistance.
- Sec 4. Rewrite of S L&C section.
- Sec 5. Ad hoc bill
- Sec 6. Donley amendment rewrite with Miller & Pfieffer.
- Sec 7. Donley
- Sec 8. Donley rewrite with Usera
- Sec 9. Donley
- Sec 10. Donley
- Sec 11. Sen L&C version
- Sec 12. EMT section
- Sec 13. Rewrites softball amendment excluding remote camp recreation from exemption.
- Sec 14. Ad hoc
- Sec 15. Collins
- Sec 16. EMT definition
- Sec 17. Ad hoc
- Sec 18. Ad hoc

7-LS1004A ✓  
Ford  
3/14/91

**SENATE BILL NO.**

**IN THE LEGISLATURE OF THE STATE OF ALASKA  
SEVENTEENTH LEGISLATURE - FIRST SESSION**

**BY THE SENATE LABOR AND COMMERCE COMMITTEE BY REQUEST**

**Introduced:  
Referred:**

**A BILL**

**FOR AN ACT ENTITLED**

**1 "An Act relating to workers' compensation; and providing for an effective date."**

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

**3 \* Section 1. PURPOSE OF SECTIONS 11, 18, AND 19. (a) It is the purpose of sec. 11 of this Act  
4 to amend AS 23.30.055 to provide that the exclusive liability provisions extended to an employer  
5 includes the liability of an insurer for providing or failing to provide safety inspections or safety advisory  
6 services; this amendment would decide a public policy question concerning the liability of an insurer for  
7 the performance of a safety inspection or safety advisory service raised in Van Biene v. ERA  
8 Helicopters, Inc., 779 P.2d 315 (Alaska 1989).**

**9 (b) It is the purpose of sec. 18 of this Act to amend AS 23.30.265(15) to include prior temporary  
10 total disability payments within the definition of gross wages.**

**11 (c) It is the purpose of sec. 19 of this Act to amend AS 23.30.265(21) to clarify that medical  
12 stability results from a condition from which objectively measurable improvement or deterioration is not  
13 expected from further medical treatment, and that medical stability is presumed in the absence of  
14 improvement or deterioration after 45 days.**

1 \* Sec. 2. AS 23.30.041(b) is amended to read:

2 (b) The administrator shall

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

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

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

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

10 (5) submit to the department, on or before July 1 [JANUARY 1] of each year,  
11 a report of reemployment benefits provided under this section for the previous calendar  
12 [FISCAL] year; the report must include a general section, sections related to each rehabilitation  
13 specialist employed under this section, and a statistical summary of all rehabilitation cases,  
14 including

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

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

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

19 (D) the cost of reemployment benefits;

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

22 (7) monitor the activities of medical managers assigned by the carrier to an  
23 injured employee, including reviewing reports or correspondence concerning the injured  
24 employee;

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

28 \* Sec. 3. AS 23.30.041(c) is amended to read:

29 (c) If an employee suffers a compensable injury that may permanently preclude an  
30 employee's return to the employee's occupation at the time of injury, the employee or employer  
31 may request an eligibility evaluation for reemployment benefits. The employee shall request an

1 eligibility evaluation within 90 days after the employee gives the employer notice of injury unless  
2 the administrator determines the employee has an unusual and extenuating circumstance that  
3 prevents the employee from making a timely request. If, after a review of the board's case file,  
4 the administrator determines the employee is unlikely to be able to return to the employee's  
5 occupation at the time of injury, the [THE] administrator shall, on a rotating and geographic  
6 basis, select a rehabilitation specialist from the list maintained under (b)(6) of this section to  
7 perform the eligibility evaluation.

8 \* Sec. 4. AS 23.30.041(e) is amended to read:

9 (e) An employee is [SHALL BE] eligible for benefits under this section upon the  
10 employee's written request and by having a licensed physician, or regarding muscular, skeletal,  
11 or neurological injuries, a licensed physician or a licensed physical or occupational  
12 therapist, predict that the employee will have permanent physical capacities that are less than  
13 the physical demands of the employee's job as described in the United States Department of  
14 Labor's "Selected Characteristics of Occupations Defined in the Dictionary of Occupational  
15 Titles" for

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

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

22 \* Sec. 5. AS 23.30.041(h) is amended to read:

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

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

27 (2) an inventory of the employee's technical skills, physical and intellectual  
28 capacities, academic achievement, emotional condition, and family support;

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

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

1 modification devices;

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

3 (6) the date the plan will commence;

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

5 (8) a detailed description and plan schedule; [AND]

6 (9) a finding by the rehabilitation specialist that the inventory under (2) of this  
7 subsection indicates that the employee can be reasonably expected to satisfactorily complete the  
8 plan and perform in a new occupation within the time and cost limitations of the plan; and

9 (10) a certification by the rehabilitation specialist that the plan meets all the  
10 requirements of this subsection; if the administrator determines that the plan does not meet  
11 one or more of the requirements of this subsection, the administrator shall require the  
12 rehabilitation specialist to amend the plan to meet the requirements of this subsection; a  
13 rehabilitation specialist may not charge a fee for an amendment to a reemployment plan  
14 required under this paragraph.

15 \* Sec. 6. AS 23.30.041(k) is repealed and reenacted to read:

16 (k) The employer shall pay compensation to an employee eligible for reemployment  
17 benefits, as follows:

18 (1) until the employee reaches medical stability or the reemployment plan is  
19 completed or terminated, whichever comes first, temporary disability benefits shall be paid;

20 (2) if the employee reaches medical stability or has been found eligible for reem-  
21 ployment benefits, temporary disability benefits shall cease and permanent impairment benefits  
22 shall then be paid biweekly at the employee's temporary total disability rate until plan  
23 completion, termination, or exhaustion of permanent impairment benefits; permanent impairment  
24 benefits remaining unpaid upon completion or termination of the plan shall be paid to the  
25 employee in a single lump sum;

26 (3) if the employee's permanent impairment benefits are exhausted before the  
27 completion or termination of the reemployment plan, the employer shall pay, on a biweekly basis,  
28 an amount equal to 60 percent of the employee's spendable weekly wage as determined under  
29 AS 23.30.220, not to exceed \$525, until the completion or termination of the plan;

30 (4) if the employee reaches medical stability before an impairment rating is given  
31 as provided in AS 23.30.190, except for the first 30 days the employee shall be paid 60 percent

1 of the employee's spendable weekly wage until an impairment rating is given; benefits paid more  
2 than 30 days after medical stability but before an impairment rating is given shall be offset from  
3 the total sum of permanent impairment benefits due to the employee; after the employee reaches  
4 medical stability and an impairment rating is given, all benefits paid shall be included as  
5 permanent impairment benefits;

6 (5) benefits related to the reemployment plan may not extend past two years from  
7 the date of the initiation of the 60 percent payment of the employee's spendable weekly wage,  
8 plan approval, or plan acceptance, whichever date occurs first, at which time the benefits expire:

9 (6) if the employer controverts the employee's claim or appeals a ruling of the  
10 administrator or the board and the controversion or appeal delays completion of an evaluation,  
11 development, commencement or completion of a plan

12 (A) the employer shall pay the employee 60 percent of the spendable  
13 weekly wage during the period of controversion or appeal, except that temporary  
14 disability benefits shall be paid until the employee reaches medical stability;

15 (B) the two-year limitation on payment of benefits in (5) of this subsection  
16 does not begin to run or is tolled; and

17 (C) payments made at 60 percent of the employee's spendable weekly  
18 wage during controversion or appeal may not be offset from permanent impairment  
19 benefits due to the employee.

20 \* Sec. 7. AS 23.30.041(l) is amended to read:

21 (l) The cost of the reemployment plan incurred under this section is [SHALL BE] the  
22 responsibility of the employer, shall be paid on an expense incurred basis, and may not exceed  
23 \$10,000. The cost of the rehabilitation specialist shall be paid by the employer, but may not  
24 be included in determining the cost of the reemployment plan. Fees charged by and paid  
25 to a rehabilitation specialist for services must be comparable to fees for similar services in  
26 the community in which the services are performed, as determined by the board.

27 \* Sec. 8. AS 23.30.041(p) is amended to read:

28 (p) In this section,

29 (1) "administrator" means the reemployment benefits administrator under (a) of  
30 this section;

31 (2) "employability" means possessing the ability but not necessarily the

1 opportunity to engage in employment that is consistent with the employee's physical status  
2 imposed by the compensable injury;

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

5 (A) area of residence;

6 (B) area of last employment;

7 (C) the state;

8 (D) other states;

9 (4) "medical manager" means a nurse, rehabilitation specialist, or other  
10 health care provider assigned by the carrier to assist an employee in coordinating medical  
11 benefits, or to monitor the employee's medical services;

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

15 (6) [(5)] "physical demands" means the physical requirements of the job such as  
16 strength, including positions such as standing, walking, sitting, and movement of objects such as  
17 lifting, carrying, pushing, pulling, climbing, balancing, stooping, kneeling, crouching, crawling,  
18 reaching, handling, fingering, feeling, talking, hearing, or seeing;

19 (7) [(6)] "rehabilitation specialist" means a person who is a certified insurance  
20 rehabilitation specialist, a certified rehabilitation counselor, or a person who has equivalent or  
21 better qualifications as determined under regulations adopted by the department;

22 (8) [(7)] "remunerative employability" means having the skills that allow a worker  
23 to be compensated with wages or other earnings equivalent to at least 60 percent of the worker's  
24 gross hourly wages at the time of injury; if the employment is outside the state, the stated 60  
25 percent shall be adjusted to account for the difference between the applicable state average  
26 weekly wage and the Alaska average weekly wage.

27 \* Sec. 9. AS 23.30.041 is amended by adding a new subsection to read:

28 (q) After a medical manager has been assigned to an injured employee, the medical  
29 manager shall send written notice to the employee, the employer, and the employee's physician  
30 explaining in what capacity the medical manager is employed, who the medical manager  
31 represents, and the scope of the services to be provided.

1 \* Sec. 10. AS 23.30 is amended by adding a new section to read:

2           Sec. 23.30.047. BENEFITS FOR HEALTH INSURANCE. (a) An employer who pays  
3 compensation to an injured employee under AS 23.30.041(k), 23.30.180, 23.30.185, 23.30.190,  
4 23.30.200, or 23.30.215, and who provided health insurance to the employee at the date of injury  
5 shall also reimburse the employee for health insurance coverage for the employee and covered  
6 dependents, as provided in this section.

7           (b) Compensation required under this section is equal to the employer's current  
8 contribution for health insurance or the amount paid by the employee for replacement coverage,  
9 whichever amount is less. Compensation required under this section commences when the  
10 employee's health insurance provided by the employer's contribution ceases and shall continue  
11 until the employee is no longer receiving compensation described in (a) of this section, or for 18  
12 months, whichever period is shorter.

13           (c) Payment of compensation under this section is not required until the employee  
14 provides proof of health insurance coverage. In this subsection, "health insurance" includes an  
15 individual policy of health insurance, or a notice of self-payment or continuance of coverage  
16 under a union health or welfare trust agreement.

17           (d) If benefits required under this section are not paid within 30 days after the employer  
18 receives a request for payment, the employer shall pay a penalty equal to 25 percent of the  
19 amount due.

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

21           (b) If an employer fails to insure and keep insured employees subject to this chapter or  
22 fails to obtain a certificate of self-insurance from the board, upon conviction, the court shall  
23 impose a fine of \$10,000 and may impose a sentence of imprisonment for not more than one  
24 year. In addition, the board may impose a civil penalty equal to three times the manual  
25 rate that would have been charged for the employer's insurance premium during the period  
26 the employer failed to obtain insurance. If an employer is a corporation, all persons who, at  
27 the time of the injury or death, had authority to insure the corporation or apply for a certificate  
28 of self-insurance [,] and the person actively in charge of the business of the corporation shall be  
29 subject to the penalties prescribed in this subsection and shall be personally, jointly, and severally  
30 liable together with the corporation for the payment of all compensation or other benefits for  
31 which the corporation is liable under this chapter if the corporation at that time is not insured or

1 qualified as a self-insurer.

2 \* Sec. 12. AS 23.30.155(d) is amended to read:

3 (d) If the employer controverts the right to compensation, the employer shall file with  
4 the board and send to the employee a notice of controversion on or before the 21st day after the  
5 employer has knowledge of the alleged injury or death. If the employer controverts the right to  
6 compensation after payments have begun, the employer shall file with the board and send to the  
7 employee a notice of controversion within seven days after an installment of compensation  
8 payable without an award is due. When payment of temporary disability benefits is controverted  
9 solely on the grounds that another employer or another insurer of the same employer may be  
10 responsible for all or a portion of the benefits, the most recent employer or insurer who is party  
11 to the claim and who may be liable shall make the payments during the pendency of the dispute.  
12 When a final determination of liability is made, any reimbursement required, including interest  
13 at the statutory rate, and all costs and reasonable attorneys' fees incurred by the prevailing  
14 employer, shall be made within 14 days of the determination.

15 \* Sec. 13. AS 23.30.175(a) is amended to read:

16 (a) The weekly rate of compensation for disability or death may not exceed \$700 and  
17 initially may not be less than \$154 when the employee has furnished documentary proof of  
18 the employee's wages, or less than \$110 when the employee has not furnished documentary  
19 proof of the employee's wages. However, if [THE BOARD DETERMINES THAT] the  
20 employee's spendable weekly wage is [WAGES ARE] less than [ \$110 A WEEK AS  
21 COMPUTED UNDER AS 23.30.220, OR LESS THAN] \$154 a week as computed under  
22 AS 23.30.220, the employee's weekly compensation rate shall [IN THE CASE OF AN  
23 EMPLOYEE WHO HAS FURNISHED DOCUMENTARY PROOF OF THE EMPLOYEE'S  
24 WAGES, IT SHALL ISSUE AN ORDER ADJUSTING THE WEEKLY RATE OF  
25 COMPENSATION TO A RATE] equal [TO] the employee's spendable weekly wage [WAGES].  
26 The employer may not pay compensation at the employee's spendable weekly wage without  
27 a board order except as provided under regulations established by the board. [IF THE  
28 EMPLOYER CAN VERIFY THAT THE EMPLOYEE'S SPENDABLE WEEKLY WAGES ARE  
29 LESS THAN \$154, THE EMPLOYER MAY ADJUST THE WEEKLY RATE OF  
30 COMPENSATION TO A RATE EQUAL TO THE EMPLOYEE'S SPENDABLE WEEKLY  
31 WAGES WITHOUT AN ORDER OF THE BOARD.] If the employee's spendable weekly wage

1 is [WAGES ARE] greater than \$154, but 80 percent of the employee's spendable weekly wage  
2 [WAGES] is less than \$154, the employee's weekly rate of compensation shall be \$154. Prior  
3 payments made in excess of the adjusted rate shall be deducted from the unpaid compensation  
4 in the manner the board determines. In any case, the employer shall pay timely compensation.

5 \* Sec. 14. AS 23.30.190(b) is amended to read:

6 (b) All determinations of the existence and degree of permanent impairment shall be  
7 made strictly and solely under the whole person determination as set out in the American Medical  
8 Association Guides to the Evaluation of Permanent Impairment, except that an impairment rating  
9 may not be rounded to the next five percent. The board shall adopt a supplementary recognized  
10 schedule for injuries that cannot be rated by use of the American Medical Association Guides.  
11 An impairment rating shall be determined by a licensed physician or, if the injury is related  
12 to muscular, skeletal, or neurological disabilities, by a licensed physician or a licensed  
13 physical or occupational therapist.

14 \* Sec. 15. AS 23.30.195 is amended to read:

15 Sec. 23.30.195. SURVIVAL OF THE RIGHT TO COMPENSATION. (a)  
16 Compensation to which a [ANY] claimant would be entitled under AS 23.30.190 [EXCEPTING  
17 (a)(20) OF THAT SECTION] shall, notwithstanding death arising from causes other than the  
18 injury, be payable to and for the benefit of the following persons [FOLLOWING]:

19 (1) if there is [BE] a widow or widower, but [AND] no child of the deceased,  
20 to the widow or widower;

21 (2) if there is [BE] a widow or widower and a surviving child or children of the  
22 deceased, one-half to the widow or widower, the other half to the surviving child or children,  
23 in equal shares;

24 (3) if there is [BE] a surviving child or children of the deceased, but no widow  
25 or widower, then to the child or children, in equal shares.

26 (b) An award for impairment [DISABILITY] may be made after the death of the injured  
27 employee.

28 \* Sec. 16. AS 23.30 is amended by adding a new section to read:

29 Sec. 23.30.232. CIVIL LIABILITY FOR WORKPLACE SAFETY INSPECTIONS. A  
30 carrier, an insurance service agent to a self-insured employer, or a trade association is not liable  
31 for civil damages as a result of an act or omission in performing a workplace safety inspection

1 or a safety advisory service unless the carrier's, agent's, or association's act or failure to act  
2 constitutes intentional misconduct.

3 \* Sec. 17. AS 23.30 is amended by adding a new section to read:

4 Sec. 23.30.238. VOLUNTEER EMERGENCY MEDICAL TECHNICIANS AS  
5 EMPLOYEES. (a) A person who is injured during the course and within the scope of providing  
6 service as a volunteer emergency medical technician is an employee of the state for purposes of  
7 this chapter if the person

8 (1) is certified by the state under AS 18.08 as an emergency medical technician;

9 (2) provides emergency medical service outside an incorporated city or borough;

10 and

11 (3) is not otherwise covered for that injury by an employer's workers'  
12 compensation insurance policy or self-insurance certificate.

13 (b) The gross weekly earnings for a person receiving benefits under this section shall be  
14 the gross weekly earnings paid a full-time emergency medical technician employed in the city  
15 or borough nearest to the place where the injury occurred, or, if the nearest city or borough has  
16 no full-time emergency medical technician, at a reasonable figure previously set by the nearest  
17 city or borough to make this determination, but in no case may the gross weekly earnings for  
18 calculating compensation be less than the minimum wage computed on the basis of 40 hours of  
19 work a week.

20 \* Sec. 18. AS 23.30.265(15) is amended to read:

21 (15) "gross earnings" means periodic payments [,] by an employer to an employee  
22 for employment before any authorized or lawfully required deduction or withholding of money  
23 by the employer, including wages [COMPENSATION THAT IS] deferred at the option of the  
24 employee and temporary disability compensation for an occupational injury or illness, and  
25 excluding irregular bonuses, reimbursement of expenses, expense allowances, and any benefit or  
26 payment to the employee that is not fully taxable to the employee during the pay period, except  
27 that the total amount of contributions made by an employer to a qualified pension or profit  
28 sharing plan during the two plan years preceding the injury, multiplied by the percentage of the  
29 employee's vested interest in the plan at the time of injury, shall be included in the determination  
30 of gross earnings; the value of room and board if taxable to the employee may be considered in  
31 determining gross earnings; however, the value of room and board that would raise an

1 employee's gross weekly earning above the state average weekly wage at the time of injury may  
2 not be considered;

3 \* Sec. 19. AS 23.30.265(21) is amended to read:

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

11 \* Sec. 20. AS 23.30.265 is amended by adding a new paragraph to read:

12 (34) "volunteer emergency medical technician" means a person who is certified  
13 by the state as an emergency medical technician under AS 18.08 and who provides emergency  
14 medical services on a voluntary basis.

15 \* Sec. 21. REPORT. The division of insurance shall prepare a report on the feasibility of  
16 implementing a contracting classification premium adjustment program to provide premium credits for  
17 employers who purchase workers' compensation insurance. The report must include comments and  
18 recommendations from labor and management representatives in the state. The division of insurance  
19 shall submit the report to the Second Session of the Seventeenth Alaska State Legislature by January 31,  
20 1992.

21 \* Sec. 22. TRANSITION. Notwithstanding AS 23.30.041(b), as amended by sec. 2 of this Act, the  
22 first report of reemployment benefits due under that section as amended is to be filed on or before  
23 July 1, 1992, and must include the period of July 1, 1990, through December 31, 1990, and calendar year  
24 1991.

25 \* Sec. 23. This Act takes effect immediately under AS 01.10.070(c).

**FISCAL NOTE**

**STATE OF ALASKA**  
**1991 LEGISLATIVE SESSION**

**BILL NO. CSSB 219 (L&C)**

Revision Date: 4/29/91 Department Affected: Commerce & Economic Dev.  
 Title: An Act relating to Workers' Compensation BRU: Insurance  
 Component: Operations

Sponsor: \_\_\_\_\_  
 Requestor: Senate Labor & Commerce COMPONENT SERIAL NO. 

0	3	5	4
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**Expenditures/Revenues: (Thousands of Dollars)**

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	0	0	0	0	0	0

<b>CAPITAL</b>	0	0	0	0	0	0
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<b>REVENUE</b>	0	0	0	0	0	0
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**FUNDING: (Thousands of Dollars)**

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>	0	0	0	0	0	0

**POSITIONS:**

FULL-TIME	0	0	0	0	0	0
PART-TIME						
TEMPORARY						

Estimate of current year impact: \_\_\_\_\_

**ANALYSIS: (Attach a separate page if necessary.)**

Prepared By: Don Koch, Chief of Market Surveillance Phone: 465-2515  
 Division: Insurance Date: 4/29/91  
 Approved by Commissioner: Glenn A. Olds  
 Agency: Department of Commerce & Economic Development Date: 4/29/91

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

**FISCAL NOTE**

**STATE OF ALASKA**  
**1991 LEGISLATIVE SESSION**

**BILL NO :** CSSB 219(L&C)

Revision Date: \_\_\_\_\_  
 Title: " An Act relating to workers' compensation ..."  
 Sponsor: Senate Labor & Commerce  
 Requestor: Senate Labor & Commerce

Department Affected: Labor  
 BRU: Workers' Compensation  
 Component: Workers' Compensation  
 COMPONENT SERIAL NO. 344

**EXPENDITURES/REVENUES: (Thousands of Dollars)**

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND&STRUCTURES						
GRANTS,CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL</b>						
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<b>REVENUE</b>						
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**FUNDING: (Thousands of Dollars)**

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

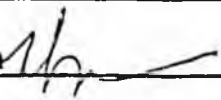
**POSITIONS:**

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: None

**ANALYSIS:** (Attach a separate page if necessary)

Prepared by: Linda Rexwinkel, Director Phone: 465-2790  
 Division: Workers' Compensation Date: 4/22/91

Approved by Commissioner: Nancy Bear Usura   
 Agency: Department of Labor Date: 4/22/91

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

**FISCAL NOTE**

**STATE OF ALASKA**  
**1991 LEGISLATIVE SESSION**

**BILL NO. CSSB 219 (L&C)**

Revision Date: 4/29/91 Department Affected: Commerce & Economic Dev.  
 Title: An Act relating to Workers' Compensation BRU: Insurance  
 Component: Operations

Sponsor: \_\_\_\_\_  
 Requestor: Senate Labor & Commerce COMPONENT SERIAL NO. 

0	3	5	4
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**Expenditures/Revenues: (Thousands of Dollars)**

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
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REVENUE	0	0	0	0	0	0
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**FUNDING: (Thousands of Dollars)**

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>	0	0	0	0	0	0

**POSITIONS:**

FULL-TIME	0	0	0	0	0	0
PART-TIME						
TEMPORARY						

Estimate of current year impact: \_\_\_\_\_

ANALYSIS: (Attach a separate page if necessary.)

Prepared By: Don Koch, Chief of Market Surveillance Phone: 465-2515  
 Division: Insurance Date: 4/29/91  
 Approved by Commissioner: Glenn A. Olds  
 Agency: Department of Commerce & Economic Development Date: 4/29/91

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

A M E N D M E N T #1

OFFERED IN THE SENATE BY THE SENATE LABOR AND COMMERCE COMMITTEE  
TO: CSSB 219(L&C)

Page 2, after line 20:

Insert a new bill section to read:

"\* Sec. 4. AS 23.30.265(2) is amended to read:

(2) "arising out of and in the course of employment" includes employer-required or supplied travel to and from a remote job site; activities performed at the direction or under the control of the employer; and employer-sanctioned activities at employer-provided facilities; but excludes recreational activities sponsored by the employer, unless participation is required as a condition of employment, and activities of a personal nature away from employer-provided facilities;"

Renumber the following bill section accordingly.

A M E N D M E N T #2

OFFERED IN THE SENATE  
TO: CSSB 219 (L&C)

BY THE SENATE LABOR AND COMMERCE COMMITTEE

Page 1, line 4:

Delete "SECTION 3"

Insert "SECTION 4"

Delete "sec. 3"

Insert "sec. 4"

Page 2, after line 13:

Insert a new bill section to read:

\*\* Sec. 3. AS 23.30.075(b) is amended to read:

(b) If an employer fails to insure and keep insured employees subject to this chapter or fails to obtain a certificate of self-insurance from the board, upon conviction, the court shall impose a fine of \$10,000 and may impose a sentence of imprisonment for not more than one year. In addition, the board may impose a civil penalty equal to three times the manual rate that would have been charged for the employer's insurance premium during the period the employer failed to obtain insurance. If an employer is a corporation, all persons who, at the time of the injury or death, had authority to insure the corporation or apply for a certificate of self-insurance [,] and the person actively in charge of the business of the corporation shall be subject to the penalties prescribed in this subsection and shall be personally, jointly, and severally liable together with the corporation for the payment of all compensation or other benefits for which the corporation is liable under this chapter if the corporation at that time is not insured or qualified as a self-insurer."

Renumber the following bill sections accordingly.

**CS FOR SENATE BILL NO. 219 (L&C)  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
SEVENTEENTH LEGISLATURE - FIRST SESSION**

**BY THE SENATE LABOR AND COMMERCE COMMITTEE**

**Offered:**

**Referred:**

**Sponsor(s): SENATE LABOR AND COMMERCE COMMITTEE BY REQUEST**

**A BILL**

**FOR AN ACT ENTITLED**

**1 "An Act relating to workers' compensation and civil liability for workplace safety  
2 inspections; and providing for an effective date."**

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

**4 \* Section 1. PURPOSE OF SECTION 3. It is the purpose of sec. 3 of this Act to amend AS 23.30  
5 to provide that an insurer is not liable for providing or failing to provide safety inspections or safety  
6 advisory services; this amendment would decide a public policy question concerning the liability of an  
7 insurer for the performance of a safety inspection or safety advisory service raised in Van Biene v. ERA  
8 Helicopters, Inc., 779 P.2d 315 (Alaska 1989).**

**9 \* Sec. 2. AS 23.30 is amended by adding a new section to read:**

**10 Sec. 23.30.047. BENEFITS FOR HEALTH INSURANCE. (a) An employer who pays  
11 compensation to an injured employee under AS 23.30.041(k), 23.30.180, 23.30.185, 23.30.190,  
12 23.30.200, or 23.30.215, and who provided health insurance to the employee at the date of injury  
13 shall also reimburse the employee for health insurance coverage for the employee and covered  
14 dependents, as provided in this section.**

1           (b) Payment required under this section is equal to the employer's current contribution  
2           for health insurance or the amount paid by the employee for replacement coverage, whichever  
3           amount is less. Payment required under this section commences when the employee's health  
4           insurance provided by the employer's contribution ceases and shall continue until the employee  
5           is no longer receiving compensation described in (a) of this section, or for 18 months, whichever  
6           period is shorter.

7           (c) Payment is not required under this section until the employee provides proof of health  
8           insurance coverage. In this subsection, "health insurance" includes an individual policy of health  
9           insurance, or a notice of self-payment or continuance of coverage under a union health or welfare  
10          trust agreement.

11          (d) If benefits required under this section are not paid within 30 days after the employer  
12          receives a request for payment, the employer shall pay a penalty equal to 25 percent of the  
13          amount due.

14 \* Sec. 3. AS 23.30 is amended by adding a new section to read:

15           Sec. 23.30.232. CIVIL LIABILITY FOR WORKPLACE SAFETY INSPECTIONS. A  
16          carrier, an insurance service agent to a self-insured employer, or a trade association is not liable  
17          for civil damages as a result of an act or omission in performing or failing to perform a  
18          workplace safety inspection or a safety advisory service unless the carrier's, agent's, or  
19          association's act or failure to act constitutes intentional misconduct.

20 \* Sec. 4. This Act takes effect immediately under AS 01.10.070(c).

A M E N D M E N T

OFFERED IN THE SENATE            BY THE SENATE LABOR AND COMMERCE COMMITTEE  
TO: SB 219

Page 1, line 7, after "(Alaska 1989).":

Insert "Liability for conduct not related to safety inspections or safety advisory services is not intended to be changed."

A M E N D M E N T

OFFERED IN THE SENATE

BY THE SENATE LABOR AND COMMERCE COMMITTEE

TO: SB 219

Page 1, line 8, before "include":

Insert "reaffirm the original intent of changes made to this definition in sec. 24, ch. 93, SLA 1982, to"

A M E N D M E N T

OFFERED IN THE SENATE

BY THE SENATE LABOR AND COMMERCE COMMITTEE

TO: SB 219

Page 7, lines 6 - 8:

Delete "Payment required under this section is equal to the employer's current contribution for health insurance or the amount paid by the employee for replacement coverage, whichever amount is less. Payment"

Insert "Compensation"

A M E N D M E N T

OFFERED IN THE SENATE

TO: SB 219

Page 1, line 3:

Delete "SECTIONS 16, 18, AND 19"

Insert "SECTIONS 17, 19, AND 20"

Delete "sec. 16"

Insert "sec. 17"

Page 1, line 8:

Delete "sec. 18"

Insert "sec. 19"

Page 1, line 10:

Delete "sec. 19"

Insert "sec. 20"

Page 7, after line 31:

Insert a new bill section to read:

\*\* Sec. 12. AS 23.30.110 is amended by adding a new subsection to read:

(h) If the board determines that the employee's injury resulted from the employer's wilful, serious, and repeated violation of state or federal occupational safety or health guidelines, the compensation awarded to the employee by order of the board shall be doubled."

Re-number the following bill sections accordingly.

Page 11, following line 19:

Insert a new bill section to read:

"\* Sec. 23. REPORT. The division of workers' compensation shall report to the Alaska State Legislature by January 1, 1992, with the following:

- (1) recommendations for changes to AS 23.30 that will promote workplace safety;
- (2) recommendations for increasing workplace safety;
- (3) a discussion of the effect, if any, of the enactment of ch. 79, SLA 1988, on workers' compensation;
- (4) a determination of the effectiveness of AS 23.30.145 in ensuring that employees who file claims are receiving adequate legal representation;
- (5) a survey of claims filed in 1989 and 1990 to determine
  - (A) how many employees were not represented by an attorney in making the claim; and
  - (B) how many employees who were not represented by an attorney tried but failed to find legal representation;
- (6) a determination of whether the procedures used by the board in granting a "blanket" release of medical information are adequate to avoid the release of nonmedical information that is not relevant to the claim;
- (7) a determination of whether employers or carriers are routinely requesting a "blanket" release of medical information in an effort to discourage injured employees from filing a claim, and if this is occurring, recommendations for legislation to halt this practice; and
- (8) recommendations for reducing fees charged by attorneys who represent employees and carriers."

Renumber the following bill sections accordingly.

AMENDMENT

OFFERED IN THE SENATE

TO: SB 219

Page 10, line 1, after "constitutes":

Insert "gross negligence or reckless or"

*Expands on language  
We want out 10/91*

AMENDMENT

OFFERED IN THE SENATE

TO: SB 219

Page 1, line 3:

Delete "SECTIONS 16, 18, AND 19"

Insert "SECTIONS 17, 19, AND 20"

Delete "sec. 16"

Insert "sec. 17"

Page 1, line 8:

Delete "sec. 18"

Insert "sec. 19"

Page 1, line 10:

Delete "sec. 19"

Insert "sec. 20"

Page 7, after line 31:

Insert a new bill section to read:

\*\* Sec. 12. AS 23.30.107 is amended to read:

Sec. 23.30.107. RELEASE OF INFORMATION; CONFIDENTIALITY. Upon request, an employee shall provide written authority to the employer, carrier, rehabilitation provider, or rehabilitation administrator to obtain medical and rehabilitation information relative to the employee's injury. Except for medical records released to the employer, carrier, rehabilitation provider, rehabilitation administrator, or other person selected by the employee, the employee's medical records in the possession of the division of workers' compensation are confidential and are not subject to the public records inspection requirements of AS 09.25.110 - 09.25.121.

*What is purpose of this*

Renumber the following bill sections accordingly.

A M E N D M E N T

OFFERED IN THE SENATE

TO: SB 219

Page 1, line 3:

Delete "SECTIONS 16, 18, AND 19"

Insert "SECTIONS 17, 19, AND 20"

Delete "sec. 16"

Insert "sec. 17"

Page 1, line 8:

Delete "sec. 18"

Insert "sec. 19"

Page 1, line 10:

Delete "sec. 19"

Insert "sec. 20"

Page 7, following line 31:

Insert a new bill section to read:

"\* Sec. 12. 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 jurisdiction in which the physician resides, furnished and paid for by the employer. If the examination requires the employee to travel outside the state, the employer shall pay all costs resulting from the employee's travel and examination, including costs incurred if the employee takes the deposition of the physician at a later date. The employer may not make more than one change in the employer's choice of a physician or surgeon without the

written consent of the employee. Referral to a specialist by the employer's physician is not considered a change in physicians. An examination requested by the employer not less than 14 days after injury, and every 60 days thereafter, shall be presumed to be reasonable, and the employee shall submit to the examination without further request or order by the board. Unless medically appropriate, the physician shall use existing diagnostic data to complete the examination. 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 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."

Renumber the following bill sections accordingly.

A M E N D M E N T

OFFERED IN THE SENATE

TO: SB 219

Page 1, line 3:

Delete "SECTIONS 16, 18, AND 19"

Insert "SECTIONS 17, 19, AND 20"

Delete "sec. 16"

Insert "sec. 17"

Page 1, line 8:

Delete "sec. 18"

Insert "sec. 19"

Page 1, line 10:

Delete "sec. 19"

Insert "sec. 20"

Page 8, following line 13:

Insert a new bill section to read:

"\* Sec. 13. AS 23.30.155(o) is amended to read:

(o) The division of workers' compensation [BOARD] shall promptly notify the division of insurance if the division of workers' compensation [BOARD] determines that the employer's insurer, including an adjuster for a self-insured employer, has filed a notice of controversion for a frivolous or unfair reason. Notice of frivolous or unfair controversion is required even if a hearing is not held or compensation is not awarded by the board [FRIVOLOUSLY OR UNFAIRLY CONTROVERTED COMPENSATION DUE UNDER THIS CHAPTER]. After receiving notice from the division of workers' compensation [BOARD], the division of insurance shall determine if the insurer or adjuster has committed an unfair claim settlement

practice under AS 21.36.125. If the division of workers' compensation determines that an adjuster for a self-insured employer has filed a notice of controversion for a frivolous or unfair reason, the board shall consider the self-insured employer's claims adjusting practices and may cancel or fail to renew the employer's self-insurance certificate."

Renumber the following bill sections accordingly.

A M E N D M E N T

OFFERED IN THE SENATE

TO: SB 219

Page 1, line 3:

Delete "SECTIONS 16, 18, AND 19"

Insert "SECTIONS 17, 19, AND 20"

Delete "sec. 16"

Insert "sec. 17"

Page 1, line 8:

Delete "sec. 18"

Insert "sec. 19"

Page 1, line 10:

Delete "sec. 19"

Insert "sec. 20"

Page 8, following line 13:

Insert a new bill section to read:

"\* Sec. 13. AS 23.30.155 is amended by adding a new subsection to read:

(p) Compensation due an employee under this chapter shall be paid by negotiable bank check that can be cashed not more than three days after being issued."

Renumber the following bill sections accordingly.

1 [WAGES] is less than \$154, the employee's weekly rate of compensation shall be \$154. Prior  
2 payments made in excess of the adjusted rate shall be deducted from the unpaid compensation  
3 in the manner the board determines. In any case, the employer shall pay timely compensation.

4 \* Sec. 14. AS 23.30.190(b) is amended to read:

5 (b) All determinations of the existence and degree of permanent impairment shall be  
6 made strictly and solely under the whole person determination as set out in the American Medical  
7 Association Guides to the Evaluation of Permanent Impairment, except that an impairment rating  
8 may not be rounded to the next five percent. The board shall adopt a supplementary recognized  
9 schedule for injuries that cannot be rated by use of the American Medical Association Guides.  
10 An impairment rating shall be determined by a licensed physician or, if the injury is related  
11 to muscular, skeletal, or neurological disabilities, by a licensed physician or a licensed  
12 physical or occupational therapist.

13 \* Sec. 15. AS 23.30.195 is amended to read:

14 Sec. 23.30.195. SURVIVAL OF THE RIGHT TO COMPENSATION. (a)  
15 Compensation to which a [ANY] claimant would be entitled under AS 23.30.190 [EXCEPTING  
16 (a)(20) OF THAT SECTION] shall, notwithstanding death arising from causes other than the  
17 injury, be payable to and for the benefit of the following persons [FOLLOWING]:

18 (1) if there is [BE] a widow or widower, but [AND] no child of the deceased,  
19 to the widow or widower;

20 (2) if there is [BE] a widow or widower and a surviving child or children of the  
21 deceased, one-half to the widow or widower, the other half to the surviving child or children,  
22 in equal shares;

23 (3) if there is [BE] a surviving child or children of the deceased, but no widow  
24 or widower, then to the child or children. in equal shares.

25 (b) An award for impairment [DISABILITY] may be made after the death of the injured  
26 employee.

27 \* Sec. 16. AS 23.30 is amended by adding a new section to read:

28 Sec. 23.30.232. CIVIL LIABILITY FOR WORKPLACE SAFETY INSPECTIONS. A  
29 carrier, an insurance service agent to a self-insured employer, or a trade association is not liable  
30 for civil damages as a result of an act or omission in performing or failing to perform a  
31 workplace safety inspection or a safety advisory service unless the carrier's, agent's, or

1 association's act or failure to act constitutes intentional misconduct.

2 \* Sec. 17. AS 23.30 is amended by adding a new section to read:

3 *21/* Sec. 23.30.238. VOLUNTEER EMERGENCY MEDICAL TECHNICIANS AS  
4 EMPLOYEES. (a) A person who is injured during the course and within the scope of providing  
5 service as a volunteer emergency medical technician is an employee of the state for purposes of  
6 this chapter if the person

7 (1) is certified by the state under AS 18.08 as an emergency medical technician;

8 (2) provides emergency medical service outside an incorporated city or borough;

9 and

10 (3) is not otherwise covered for that injury by an employer's workers'  
11 compensation insurance policy or self-insurance certificate.

12 (b) The gross weekly earnings for a person receiving benefits under this section shall be  
13 the gross weekly earnings paid a full-time emergency medical technician employed in the city  
14 or borough nearest to the place where the injury occurred, or, if the nearest city or borough has  
15 no full-time emergency medical technician, at a reasonable figure previously set by the nearest  
16 city or borough to make this determination, but in no case may the gross weekly earnings for  
17 calculating compensation be less than the minimum wage computed on the basis of 40 hours of  
18 work a week.

19 \* Sec. 18. AS 23.30.265(15) is amended to read:

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

**HOUSE CS FOR CS FOR SENATE BILL NO. 219 (JUDICIARY)**

**IN THE LEGISLATURE OF THE STATE OF ALASKA**

**SEVENTEENTH LEGISLATURE - FIRST SESSION**

**BY THE HOUSE JUDICIARY COMMITTEE**

**Offered:  
Referred:**

**Sponsor(s): SENATE LABOR AND COMMERCE COMMITTEE BY REQUEST**

**A BILL**

**FOR AN ACT ENTITLED**

**1 "An Act relating to workers' compensation and civil liability for workplace safety  
2 inspections; and providing for an effective date."**

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

**4 \* Section 1. PURPOSE OF SECTIONS 12, 15, AND 16. (a) It is the purpose of sec. 12 of this Act  
5 to amend AS 23.30 to provide that an insurer is not liable for providing or failing to provide safety  
6 inspections or safety advisory services; this amendment would decide a public policy question concerning  
7 the liability of an insurer for the performance of a safety inspection or safety advisory service raised in  
8 Van Biene v. ERA Helicopters, Inc., 779 P.2d 315 (Alaska 1989).**

**9 (b) It is the purpose of sec. 15 of this Act to amend AS 23.30.265(15) to reaffirm the original  
10 intent of changes made to this definition in sec. 24, ch. 93, SLA 1980, to include prior temporary total  
11 disability payments within the definition of gross wages.**

**12 (c) It is the purpose of sec. 16 of this Act to amend AS 23.30.265(21) to clarify that medical  
13 stability results from a condition from which objectively measurable improvement or deterioration is not  
14 expected from further medical treatment, and that medical stability is presumed in the absence of**

who wants?  
why?

etc.

is WCCA ok w/  
them? Dante  
26 & 242

I think we can  
work w/ Tony.

DRUE - 5/9

DISCUSSION VERSION

I GOT FROM

SMUTZ TONIGHT.

ROD  
what are the  
additions???

1 improvement or deterioration after 45 days.

2 \* Sec. 2. AS 23.30.041(k) is repealed and reenacted to read:

3 (k) The employer shall pay compensation to an employee eligible for reemployment  
4 benefits, as follows:

5 (1) until the employee reaches medical stability or the reemployment plan is  
6 completed or terminated, whichever comes first, temporary disability benefits shall be paid;

7 (2) if the employee reaches medical stability or has been found eligible for reem-  
8 ployment benefits, temporary disability benefits shall cease and permanent impairment benefits  
9 shall then be paid biweekly at the employee's temporary total disability rate until plan  
10 completion, termination, or exhaustion of permanent impairment benefits; permanent impairment  
11 benefits remaining unpaid upon completion or termination of the plan shall be paid to the  
12 employee in a single lump sum;

13 (3) if the employee's permanent impairment benefits are exhausted before the  
14 completion or termination of the reemployment plan, the employer shall pay, on a biweekly basis,  
15 an amount equal to 60 percent of the employee's spendable weekly wage as determined under  
16 AS 23.30.220, not to exceed \$525, until the completion or termination of the plan;

17 (4) if the employee reaches medical stability before an impairment rating is given  
18 as provided in AS 23.30.190, except for the first 30 days the employee shall be paid 60 percent  
19 of the employee's spendable weekly wage until an impairment rating is given; benefits paid more  
20 than 30 days after medical stability but before an impairment rating is given shall be offset from  
21 the total sum of permanent impairment benefits due to the employee; after the employee reaches  
22 medical stability and an impairment rating is given, all benefits paid shall be included as  
23 permanent impairment benefits;

24 (5) benefits related to the reemployment plan may not extend past two years from  
25 the date of the initiation of the 60 percent payment of the employee's spendable weekly wage,  
26 plan approval, or plan acceptance, whichever date occurs first, at which time the benefits expire;

27 (6) if the employer controverts the employee's claim or appeals a ruling of the  
28 administrator or the board and the controversion or appeal delays completion of an evaluation,  
29 development, commencement or completion of a plan

30 (A) the employer shall pay the employee 60 percent of the spendable  
31 weekly wage during the period of controversion or appeal, except that temporary

1 disability benefits shall be paid until the employee reaches medical stability;

2 (B) the two-year limitation on payment of benefits in (5) of this subsection  
3 does not begin to run or is tolled; and

4 (C) payments made at 60 percent of the employee's spendable weekly  
5 wage during controversion or appeal may not be offset from permanent impairment  
6 benefits due to the employee.

7 \* Sec. 3. AS 23.30.041(p) is amended to read:

8 (p) In this section,

9 (1) "administrator" means the reemployment benefits administrator under (a) of  
10 this section;

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

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

16 (A) area of residence;

17 (B) area of last employment;

18 (C) the state;

19 (D) other states;

20 (4) "medical manager" means a nurse, rehabilitation specialist, or other  
21 health care provider assigned by the carrier to assist an employee in coordinating medical  
22 benefits, or to monitor the employee's medical services;

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

26 (6) [(5)] "physical demands" means the physical requirements of the job such as  
27 strength, including positions such as standing, walking, sitting, and movement of objects such as  
28 lifting, carrying, pushing, pulling, climbing, balancing, stooping, kneeling, crouching, crawling,  
29 reaching, handling, fingering, feeling, talking, hearing, or seeing;

30 (7) [(6)] "rehabilitation specialist" means a person who is a certified insurance  
31 rehabilitation specialist, a certified rehabilitation counselor, or a person who has equivalent or

1 better qualifications as determined under regulations adopted by the department;

2 (8) [(7)] "remunerative employability" means having the skills that allow a worker  
3 to be compensated with wages or other earnings equivalent to at least 60 percent of the worker's  
4 gross hourly wages at the time of injury; if the employment is outside the state, the stated 60  
5 percent shall be adjusted to account for the difference between the applicable state average  
6 weekly wage and the Alaska average weekly wage.

7 \* Sec. 4. AS 23.30.041 is amended by adding a new subsection to read:

8 (q) After a medical manager has been assigned to an injured employee, the medical  
9 manager shall send written notice to the employee, the employer, and the employee's physician  
10 explaining in what capacity the medical manager is employed, whom the medical manager  
11 represents, and the scope of the services to be provided.

12 \* Sec. 5. AS 23.30 is amended by adding a new section to read:

13 Sec. 23.30.047. BENEFITS FOR HEALTH INSURANCE. (a) An employer who pays  
14 compensation to an injured employee under AS 23.30.041(k), 23.30.180, 23.30.185, 23.30.190,  
15 23.30.200, or 23.30.215, and who provided health insurance to the employee at the date of injury  
16 shall also reimburse the employee for health insurance coverage for the employee and covered  
17 dependents, as provided in this section.

18 (b) Payment required under this section is equal to the employer's current contribution  
19 for health insurance or the amount paid by the employee for replacement coverage, whichever  
20 amount is less. Payment required under this section commences when the employee's health  
21 insurance provided by the employer's contribution ceases and shall continue until the employee  
22 is no longer receiving compensation described in (a) of this section, or for 18 months, whichever  
23 period is shorter.

24 (c) Payment is not required under this section until the employee provides proof of health  
25 insurance coverage. In this subsection, "health insurance" includes

26 (1) an individual policy of health insurance; or

27 (2) a notice of self-payment for continuance of coverage required under 29 U.S.C.  
28 1161 (Consolidated Omnibus Budget Reconciliation Act of 1985) or under a union health or  
29 welfare trust agreement.

30 (d) If benefits required under this section are not paid within 30 days after the employer  
31 receives a request for payment, the employer shall pay a penalty equal to 25 percent of the

1 amount due.

2 \* Sec. 6. AS 23.30.075(b) is amended to read:

3 (b) If an employer fails to insure and keep insured employees subject to this chapter or  
4 fails to obtain a certificate of self-insurance from the board, upon conviction, the court may  
5 [SHALL] impose a fine of up to \$10,000 and may impose a sentence of imprisonment for not  
6 more than one year. In addition, the board may impose a civil penalty of up to three times  
7 the manual rate that would have been charged for the employer's insurance premium  
8 during the period the employer failed to obtain insurance. If an employer is a corporation,  
9 all persons who, at the time of the injury or death, had authority to insure the corporation or  
10 apply for a certificate of self-insurance [,] and the person actively in charge of the business of  
11 the corporation shall be subject to the penalties prescribed in this subsection and shall be  
12 personally, jointly, and severally liable together with the corporation for the payment of all  
13 compensation or other benefits for which the corporation is liable under this chapter if the  
14 corporation at that time is not insured or qualified as a self-insurer.

15 \* Sec. 7. AS 23.30.095 is amended by adding a new subsection to read:

16 (l) The employer shall provide to the employee one round trip coach fare airline ticket  
17 to the place at which an examination described under (e) of this section is performed and per  
18 diem at the rate and in the amount paid to state employees for equivalent travel outside the state  
19 if the examination requires the employee to travel outside the state. If the employee takes ~~the~~  
20 deposition of ~~the~~ physician and the deposition is taken outside the state, or if the employer takes  
21 ~~the~~ deposition of ~~the~~ physician who performs ~~the~~ examination and the deposition is taken outside  
22 the state, the employer shall provide one round trip coach fair airline ticket to the location of the  
23 deposition and per diem at the rate and in the amount paid to state employees for equivalent  
24 travel outside the state.

25 \* Sec. 8. AS 23.30.107 is amended to read:

26 Sec. 23.30.107. RELEASE OF INFORMATION; CONFIDENTIALITY. Upon request,  
27 an employee shall provide written authority to the employer, carrier, rehabilitation provider, or  
28 rehabilitation administrator to obtain medical and rehabilitation information relative to the  
29 employee's injury and any prior injury. Except for medical records released to the  
30 employer, carrier, rehabilitation provider, rehabilitation administrator, or other person  
31 selected by the employee, the employee's medical records in the possession of the division

1 of workers' compensation are confidential and are not subject to the public records  
2 inspection requirements of AS 09.25.110 - 09.25.121.

3 \* Sec. 9. AS 23.30.110 is amended by adding a new subsection to read:

4 (h) If the board determines that the employee's injury resulted from the employer's  
5 wilful, serious, and repeated violation of state or federal occupational safety or health guidelines,  
6 the board shall report the violation to the Occupational Safety and Health Review Board  
7 established under AS 18.60.057.

8 \* Sec. 10. AS 23.30.155(o) is amended to read:

9 (o) The division of workers' compensation [BOARD] shall promptly notify the division  
10 of insurance if the division of workers' compensation [BOARD] determines that the employer's  
11 insurer, including an adjuster for a self-insured employer, has filed a notice of controversion  
12 for a frivolous or unfair reason. Notice of frivolous or unfair controversion is required even  
13 if a hearing is not held or compensation is not awarded by the board [FRIVOLOUSLY OR  
14 UNFAIRLY CONTROVERTED COMPENSATION DUE UNDER THIS CHAPTER]. After  
15 receiving notice from the division of workers' compensation [BOARD], the division of  
16 insurance shall determine if the insurer or adjuster has committed an unfair claim settlement  
17 practice under AS 21.36.125. If the division of workers' compensation determines that an  
18 adjuster for a self-insured employer has filed a notice of controversion for a frivolous or  
19 unfair reason, the board shall consider the self-insured employer's claims adjusting  
20 practices and may cancel or fail to renew the employer's self-insurance certificate.

21 \* Sec. 11. AS 23.30.155 is amended by adding a new subsection to read:

22 (p) Compensation due an employee under this chapter shall be paid by negotiable bank  
23 check that can be cashed not more than three business days after being issued.

24 \* Sec. 12. AS 23.30 is amended by adding a new section to read:

25 Sec. 23.30.232. CIVIL LIABILITY FOR WORKPLACE SAFETY INSPECTIONS. A  
26 carrier, an insurance service agent to a self-insured employer, or a trade association is not liable  
27 for civil damages as a result of an act or omission in performing or failing to perform a  
28 workplace safety inspection or a safety advisory service unless the carrier's, agent's, or  
29 association's act or failure to act constitutes reckless or intentional misconduct.

30 \* Sec. 13. AS 23.30 is amended by adding a new section to read:

31 Sec. 23.30.238. VOLUNTEER EMERGENCY MEDICAL TECHNICIANS AS

1 EMPLOYEES. (a) A person who is injured during the course and within the scope of providing  
2 service as a volunteer emergency medical technician is an employee of the state for purposes of  
3 this chapter if the person

4 (1) is certified by the state under AS 18.08 as an emergency medical technician;

5 (2) provides emergency medical service outside an incorporated city or borough;

6 and

7 (3) is not otherwise covered for that injury by an employer's workers'  
8 compensation insurance policy or self-insurance certificate.

9 (b) The gross weekly earnings for a person receiving benefits under this section shall be  
10 the gross weekly earnings paid a full-time emergency medical technician employed in the city  
11 or borough nearest to the place where the injury occurred, or, if the nearest city or borough has  
12 no full-time emergency medical technician, at a reasonable figure previously set by the nearest  
13 city or borough to make this determination, but in no case may the gross weekly earnings for  
14 calculating compensation be less than the minimum wage computed on the basis of 40 hours of  
15 work a week.

16 \* Sec. 14. AS 23.30.265(2) is amended to read:

17 (2) "arising out of and in the course of employment" includes employer-required  
18 or supplied travel to and from a remote job site; activities performed at the direction or under the  
19 control of the employer; and employer-sanctioned activities at employer-provided facilities; but  
20 excludes recreational activities sponsored by the employer that are performed at facilities  
21 not owned or leased by the employer, unless participation is required as a condition of  
22 employment, and activities of a personal nature away from employer-provided facilities;

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

24 (15) "gross earnings" means periodic payments [,] by an employer to an employee  
25 for employment before any authorized or lawfully required deduction or withholding of money  
26 by the employer, including wages [COMPENSATION THAT IS] deferred at the option of the  
27 employee and temporary disability compensation for an occupational injury or illness, and  
28 excluding irregular bonuses, reimbursement of expenses, expense allowances, and any benefit or  
29 payment to the employee that is not fully taxable to the employee during the pay period, except  
30 that the total amount of contributions made by an employer to a qualified pension or profit  
31 sharing plan during the two plan years preceding the injury, multiplied by the percentage of the

1 employee's vested interest in the plan at the time of injury, shall be included in the determination  
2 of gross earnings; the value of room and board if taxable to the employee may be considered in  
3 determining gross earnings; however, the value of room and board that would raise an  
4 employee's gross weekly earning above the state average weekly wage at the time of injury may  
5 not be considered;

6 \* Sec. 16. AS 23.30.265(21) is amended to read:

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

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

15 (34) "volunteer emergency medical technician" means a person who is certified  
16 by the state as an emergency medical technician under AS 18.08 and who provides emergency  
17 medical services on a voluntary basis.

18 \* Sec. 18. DIVISION OF INSURANCE REPORT. The division of insurance shall prepare a report  
19 on the feasibility of implementing a contracting classification premium adjustment program to provide  
20 premium credits for employers who purchase workers' compensation insurance. The report must include  
21 comments and recommendations from labor and management representatives in the state. The division  
22 of insurance shall submit the report to the Second Session of the Seventeenth Alaska State Legislature  
23 by January 31, 1992.

24 \* Sec. 19. DIVISION OF WORKERS' COMPENSATION REPORT. The division of workers'  
25 compensation shall report to the Alaska State Legislature by January 1, 1992, with the following:

- 26 (1) recommendations for changes to AS 23.30 that will promote workplace safety;  
27 (2) recommendations for increasing workplace safety;  
28 (3) a discussion of the effect, if any, of the enactment of ch. 79, SLA 1988, on workers'  
29 compensation;  
30 (4) a determination of the effectiveness of AS 23.30.145 in ensuring that employees who  
31 file claims are receiving adequate legal representation;

- 1           (5) a survey of claims filed in 1989 and 1990 to determine  
2                   (A) how many employees were not represented by an attorney in making the  
3           claim; and  
4                   (B) how many employees who were not represented by an attorney tried but  
5           failed to find legal representation;  
6           (6) a determination of whether the procedures used by the board in granting a "blanket"  
7           release of medical information are adequate to avoid the release of nonmedical information that is not  
8           relevant to the claim;  
9           (7) a determination of whether employers or carriers are routinely requesting a "blanket"  
10           release of medical information in an effort to discourage injured employees from filing a claim, and if  
11           this is occurring, recommendations for legislation to halt this practice; and  
12           (8) recommendations for reducing fees charged by attorneys who represent employees  
13           and carriers.  
14    \* Sec. 20. This Act takes effect immediately under AS 01.10.070(c).

## HOUSE CS FOR CS FOR SENATE BILL NO. 219 (JUDICIARY)

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered:

Referred:

Sponsor(s): SENATE LABOR AND COMMERCE COMMITTEE BY REQUEST

## A BILL

## FOR AN ACT ENTITLED

1 "An Act relating to workers' compensation and civil liability for workplace safety  
2 inspections; and providing for an effective date."

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

4 \* Section 1. PURPOSE OF SECTIONS 10 AND 13. (a) It is the purpose of sec. 10 of this Act to  
5 amend AS 23.30 to provide that an insurer is not liable for providing or failing to provide safety  
6 inspections or safety advisory services; this amendment would decide a public policy question concerning  
7 the liability of an insurer for the performance of a safety inspection or safety advisory service raised in  
8 Van Biene v. ERA Helicopters, Inc., 779 P.2d 315 (Alaska 1989).

9 (b) It is the purpose of sec. 13 of this Act to amend AS 23.30.265(15) to reaffirm the original  
10 intent of changes made to this definition in sec. 24, ch. 93, SLA 1980, to include prior temporary total  
11 disability payments within the definition of gross wages.

12 \* Sec. 2. AS 23.30.041(k) is repealed and reenacted to read:

13 (k) The employer shall pay compensation to an employee eligible for reemployment  
14 benefits, as follows:

1 (1) until the employee reaches medical stability or the reemployment plan is  
2 completed or terminated, whichever comes first, temporary disability benefits shall be paid;

3 (2) if the employee reaches medical stability or has been found eligible for reem-  
4 ployment benefits, temporary disability benefits shall cease and permanent impairment benefits  
5 shall then be paid biweekly at the employee's temporary total disability rate until plan  
6 completion, termination, or exhaustion of permanent impairment benefits; permanent impairment  
7 benefits remaining unpaid upon completion or termination of the plan shall be paid to the  
8 employee in a single lump sum;

9 (3) if the employee's permanent impairment benefits are exhausted before the  
10 completion or termination of the reemployment plan, the employer shall pay, on a biweekly basis,  
11 an amount equal to 60 percent of the employee's spendable weekly wage as determined under  
12 AS 23.30.220, not to exceed \$525, until the completion or termination of the plan;

13 (4) if the employee reaches medical stability before an impairment rating is given  
14 as provided in AS 23.30.190, except for the first 30 days the employee shall be paid 60 percent  
15 of the employee's spendable weekly wage until an impairment rating is given; benefits paid more  
16 than 30 days after medical stability but before an impairment rating is given shall be offset from  
17 the total sum of permanent impairment benefits due to the employee; after the employee reaches  
18 medical stability and an impairment rating is given, all benefits paid shall be included as  
19 permanent impairment benefits;

20 (5) benefits related to the reemployment plan may not extend past two years from  
21 the date of the initiation of the 60 percent payment of the employee's spendable weekly wage,  
22 plan approval, or plan acceptance, whichever date occurs first, at which time the benefits expire;

23 (6) if the employer controverts the employee's claim or appeals a ruling of the  
24 administrator or the board and the controversion or appeal delays completion of an evaluation,  
25 development, commencement or completion of a plan

26 (A) the employer shall pay the employee 60 percent of the spendable  
27 weekly wage during the period of controversion or appeal, except that temporary  
28 disability benefits shall be paid until the employee reaches medical stability;

29 (B) the two-year limitation on payment of benefits in (5) of this subsection  
30 does not begin to run or is tolled; and

31 (C) payments made at percent of the employee's spendable weekly

1 wage during controversion or appeal may not be offset from permanent impairment  
2 benefits due to the employee.

3 \* Sec. 3. AS 23.30 is amended by adding a new section to read:

4 Sec. 23.30.047. BENEFITS FOR HEALTH INSURANCE. (a) An employer who pays  
5 compensation to an injured employee under AS 23.30.041(k), 23.30.180, 23.30.185, 23.30.190,  
6 23.30.200, or 23.30.215, and who provided health insurance to the employee at the date of injury  
7 shall also reimburse the employee for health insurance coverage for the employee and covered  
8 dependents, as provided in this section.

9 (b) Payment required under this section is equal to the employer's current contribution  
10 for health insurance or the amount paid by the employee for replacement coverage, whichever  
11 amount is less. Payment required under this section commences when the employee's health  
12 insurance provided by the employer's contribution ceases and shall continue until the employee  
13 is no longer receiving compensation described in (a) of this section, or for 18 months, whichever  
14 period is shorter.

15 (c) Payment is not required under this section until the employee provides proof of health  
16 insurance coverage. In this subsection, "health insurance" includes

17 (1) an individual policy of health insurance; or

18 (2) a notice of self-payment for continuance of coverage required under 29 U.S.C.  
19 1161 (Consolidated Omnibus Budget Reconciliation Act of 1985) or under a union health or  
20 welfare trust agreement.

21 (d) If benefits required under this section are not paid within 30 days after the employer  
22 receives a request for payment, the employer shall pay a penalty equal to 25 percent of the  
23 amount due.

24 \* Sec. 4. AS 23.30.075(b) is amended to read:

25 (b) If an employer fails to insure and keep insured employees subject to this chapter or  
26 fails to obtain a certificate of self-insurance from the board, upon conviction, the court may  
27 [SHALL] impose a fine of up to \$10,000 and may impose a sentence of imprisonment for not  
28 more than one year. In addition, the board may impose a civil penalty of up to three times  
29 the manual rate that would have been charged for the employer's insurance premium  
30 during the period the employer failed to obtain insurance. If an employer is a corporation,  
31 all persons who, at the time of the injury or death, had authority to insure the corporation or

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

6 \* Sec. 5. AS 23.30.095 is amended by adding a new subsection to read:

7 (l) The employer shall provide to the employee one round trip coach fare airline ticket  
8 to the place at which an examination described under (e) of this section is performed and two  
9 days per diem at the rate paid to state employees who travel outside the state if the examination  
10 requires the employee to travel outside the state. If the employee objects to the physician's  
11 report of the examination, takes the deposition of the physician and the deposition is taken  
12 outside the state, or if the employer takes the deposition of the physician who performs the  
13 examination and the deposition is taken outside the state, the employer shall provide one round  
14 trip coach fair airline ticket to the location of the deposition and two days per diem at the rate  
15 paid to state employees who travel outside the state.

16 \* Sec. 6. AS 23.30.107 is amended to read:

17 Sec. 23.30.107. RELEASE OF INFORMATION; CONFIDENTIALITY. Upon request,  
18 an employee shall provide written authority to the employer, carrier, rehabilitation provider, or  
19 rehabilitation administrator to obtain medical and rehabilitation information relative to the  
20 employee's injury and any prior injury. Except for medical records released to the  
21 employer, carrier, rehabilitation provider, rehabilitation administrator, or other person  
22 selected by the employee, the employee's medical records in the possession of the division  
23 of workers' compensation are confidential and are not subject to the public records  
24 inspection requirements of AS 09.25.110 - 09.25.121.

25 \* Sec. 7. AS 23.30.110 is amended by adding a new subsection to read:

26 (h) If the board determines that the employee's injury resulted from the employer's  
27 wilful, serious, and repeated violation of state or federal occupational safety or health guidelines,  
28 the board shall report the violation to the Occupational Safety and Health Review Board  
29 (AS 18.60.057).

30 \* Sec. 8. AS 23.30.155(o) is amended to read:

31 (o) The division of workers' compensation [BOARD] shall promptly notify the division

1 of insurance if the division of workers' compensation [BOARD] determines that the employer's  
 2 insurer, including an adjuster for a self-insured employer, has filed a notice of controversy  
 3 for a frivolous or unfair reason. Notice of frivolous or unfair controversy is required even  
 4 if a hearing is not held or compensation is not awarded by the board [FRIVOLOUSLY OR  
 5 UNFAIRLY CONTROVERTED COMPENSATION DUE UNDER THIS CHAPTER]. After  
 6 receiving notice from the division of workers' compensation [BOARD], the division of  
 7 insurance shall determine if the insurer or adjuster has committed an unfair claim settlement  
 8 practice under AS 21.36.125. If the division of workers' compensation determines that an  
 9 adjuster for a self-insured employer has filed a notice of controversy for a frivolous or  
 10 unfair reason, the board shall consider the self-insured employer's claims adjusting  
 11 practices and may cancel or fail to renew the employer's self-insurance certificate.

12 \* Sec. 9. AS 23.30.155 is amended by adding a new subsection to read:

13 (p) Compensation due an employee under this chapter shall be paid by negotiable bank  
 14 check that can be cashed not more than three business days after being issued.

15 \* Sec. 10. AS 23.30 is amended by adding a new section to read:

16 Sec. 23.30.232. CIVIL LIABILITY FOR WORKPLACE SAFETY INSPECTIONS. A  
 17 carrier, an insurance service agent to a self-insured employer, or a trade association is not liable  
 18 for civil damages as a result of an act or omission in performing or failing to perform a  
 19 workplace safety inspection or a safety advisory service unless the carrier's, agent's, or  
 20 association's act or failure to act constitutes reckless or intentional misconduct.

21 \* Sec. 11. AS 23.30 is amended by adding a new section to read:

22 Sec. 23.30.238. VOLUNTEER EMERGENCY MEDICAL TECHNICIANS AS  
 23 EMPLOYEES. (a) A person who is injured during the course and within the scope of providing  
 24 service as a volunteer emergency medical technician is an employee of the state for purposes of  
 25 this chapter if the person

26 (1) is certified by the state under AS 18.08 as an emergency medical technician;

27 (2) provides emergency medical service outside an incorporated city or borough;

28 and

29 (3) is not otherwise covered for that injury by an employer's workers'  
 30 compensation insurance policy or self-insurance certificate.

31 (b) The gross weekly earnings for a person receiving benefits under this section shall be

1 the gross weekly earnings paid a full-time emergency medical technician employed in the city  
2 or borough nearest to the place where the injury occurred, or, if the nearest city or borough has  
3 no full-time emergency medical technician, at a reasonable figure previously set by the nearest  
4 city or borough to make this determination, but in no case may the gross weekly earnings for  
5 calculating compensation be less than the minimum wage computed on the basis of 40 hours of  
6 work a week.

7 \* Sec. 12. AS 23.30.265(2) is amended to read:

8 (2) "arising out of and in the course of employment" includes employer-required  
9 or supplied travel to and from a remote job site; activities performed at the direction or under the  
10 control of the employer; and employer-sanctioned activities at employer-provided facilities; but  
11 excludes recreational activities sponsored by the employer that are performed at facilities  
12 not provided by the employer, unless participation is required as a condition of  
13 employment, and activities of a personal nature away from employer-provided facilities;

14 \* Sec. 13. AS 23.30.265(15) is amended to read:

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

28 \* Sec. 14. AS 23.30.265 is amended by adding a new paragraph to read:

29 (34) "volunteer emergency medical technician" means a person who is certified  
30 by the state as an emergency medical technician under AS 18.08 and who provides emergency  
31 medical services on a voluntary basis.

1 \* **Sec. 15. DIVISION OF INSURANCE REPORT.** The division of insurance shall prepare a report  
2 on the feasibility of implementing a contracting classification premium adjustment program to provide  
3 premium credits for employers who purchase workers' compensation insurance. The report must include  
4 comments and recommendations from labor and management representatives in the state. The division  
5 of insurance shall submit the report to the Second Session of the Seventeenth Alaska State Legislature  
6 by January 31, 1992.

7 \* **Sec. 16. DIVISION OF WORKERS' COMPENSATION REPORT.** The division of workers'  
8 compensation shall report to the Alaska State Legislature by January 1, 1992, with the following:

- 9 (1) recommendations for changes to AS 23.30 that will promote workplace safety;
- 10 (2) recommendations for increasing workplace safety;
- 11 (3) a discussion of the effect, if any, of the enactment of ch. 79, SLA 1988, on workers'  
12 compensation;
- 13 (4) a determination of the effectiveness of AS 23.30.145 in ensuring that employees who  
14 file claims are receiving adequate legal representation;
- 15 (5) a survey of claims filed in 1989 and 1990 to determine
- 16 (A) how many employees were not represented by an attorney in making the  
17 claim; and
- 18 (B) how many employees who were not represented by an attorney tried but  
19 failed to find legal representation;
- 20 (6) a determination of whether the procedures used by the board in granting a "blanket"  
21 release of medical information are adequate to avoid the release of nonmedical information that is not  
22 relevant to the claim;
- 23 (7) a determination of whether employers or carriers are routinely requesting a "blanket"  
24 release of medical information in an effort to discourage injured employees from filing a claim, and if  
25 this is occurring, recommendations for legislation to halt this practice; and
- 26 (8) recommendations for reducing fees charged by attorneys who represent employees  
27 and carriers.

28 \* **Sec. 17.** This Act takes effect immediately under AS 01.10.070(c).

7-LS1004G.  
Ford  
5/9/91

**HOUSE CS FOR CS FOR SENATE BILL NO. 219 (JUDICIARY)**

**IN THE LEGISLATURE OF THE STATE OF ALASKA**

**SEVENTEENTH LEGISLATURE - FIRST SESSION**

**BY THE HOUSE JUDICIARY COMMITTEE**

**Offered:**

**Referred:**

**Sponsor(s): SENATE LABOR AND COMMERCE COMMITTEE BY REQUEST**

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act relating to workers' compensation and civil liability for workplace safety  
2 inspections; and providing for an effective date."

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

4 \* **Section 1. PURPOSE OF SECTIONS 12 AND 15.** (a) It is the purpose of sec. 12 of this Act to  
5 amend AS 23.30 to provide that an insurer is not liable for only providing or failing to provide safety  
6 inspections or safety advisory services; this amendment would decide a public policy question concerning  
7 the liability of an insurer for the performance of a safety inspection or safety advisory service raised in  
8 *Van Biene v. ERA Helicopters, Inc., 779 P.2d 315 (Alaska 1989).*

9 (b) It is the purpose of sec. 15 of this Act to amend AS 23.30.265(15) to reaffirm the original  
10 intent of changes made to this definition in sec. 24, ch. 93, SLA 1980, to include prior temporary total  
11 disability payments within the definition of gross wages.

12 \* **Sec. 2.** AS 23.30.041(k) is repealed and reenacted to read:

13 (k) The employer shall pay compensation to an employee eligible for reemployment  
14 benefits, as follows:

1 (1) until the employee reaches medical stability or the reemployment plan is  
2 completed or terminated, whichever comes first, temporary disability benefits shall be paid;

3 (2) if the employee reaches medical stability or has been found eligible for reem-  
4 ployment benefits, temporary disability benefits shall cease and permanent impairment benefits  
5 shall then be paid biweekly at the employee's temporary total disability rate until plan  
6 completion, termination, or exhaustion of permanent impairment benefits; permanent impairment  
7 benefits remaining unpaid upon completion or termination of the plan shall be paid to the  
8 employee in a single lump sum;

9 (3) if the employee's permanent impairment benefits are exhausted before the  
10 completion or termination of the reemployment plan, the employer shall pay, on a biweekly basis,  
11 an amount equal to 60 percent of the employee's spendable weekly wage as determined under  
12 AS 23.30.220, not to exceed \$525, until the completion or termination of the plan;

13 (4) if the employee reaches medical stability before an impairment rating is given  
14 as provided in AS 23.30.190, except for the first 30 days the employee shall be paid 60 percent  
15 of the employee's spendable weekly wage until an impairment rating is given; benefits paid more  
16 than 30 days after medical stability but before an impairment rating is given shall be offset from  
17 the total sum of permanent impairment benefits due to the employee; after the employee reaches  
18 medical stability and an impairment rating is given, all benefits paid shall be included as  
19 permanent impairment benefits;

20 (5) benefits related to the reemployment plan may not extend past two years from  
21 the date of the initiation of the 60 percent payment of the employee's spendable weekly wage,  
22 plan approval, or plan acceptance, whichever date occurs first, at which time the benefits expire;

23 (6) if the employer controverts the employee's claim or appeals a ruling of the  
24 administrator or the board and the controversion or appeal delays completion of an evaluation,  
25 development, commencement or completion of a plan

26 (A) the employer shall pay the employee 60 percent of the spendable  
27 weekly wage during the period of controversion or appeal, except that temporary  
28 disability benefits shall be paid until the employee reaches medical stability;

29 (B) the two-year limitation on payment of benefits in (5) of this subsection  
30 does not begin to run or is tolled; and

31 (C) payments made at 60 percent of the employee's spendable weekly

1 wage during controversion or appeal may not be offset from permanent impairment  
2 benefits due to the employee.

3 \* Sec. 3. AS 23.30.041(p) is amended to read:

4 (p) In this section,

5 (1) "administrator" means the reemployment benefits administrator under (a) of  
6 this section;

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

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

12 (A) area of residence;

13 (B) area of last employment;

14 (C) the state;

15 (D) other states;

16 (4) "medical manager" means a nurse, rehabilitation specialist, or other  
17 health care provider assigned by the carrier to assist an employee in coordinating medical  
18 benefits, or to monitor the employee's medical services;

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

22 (6) [(5)] "physical demands" means the physical requirements of the job such as  
23 strength, including positions such as standing, walking, sitting, and movement of objects such as  
24 lifting, carrying, pushing, pulling, climbing, balancing, stooping, kneeling, crouching, crawling,  
25 reaching, handling, fingering, feeling, talking, hearing, or seeing;

26 (7) [(6)] "rehabilitation specialist" means a person who is a certified insurance  
27 rehabilitation specialist, a certified rehabilitation counselor, or a person who has equivalent or  
28 better qualifications as determined under regulations adopted by the department;

29 (8) [(7)] "remunerative employability" means having the skills that allow a worker  
30 to be compensated with wages or other earnings equivalent to at least 60 percent of the worker's  
31 gross hourly wages at the time of injury; if the employment is outside the state, the stated 60

1       percent shall be adjusted to account for the difference between the applicable state average  
2       weekly wage and the Alaska average weekly wage.

3   \* Sec. 4. AS 23.30.041 is amended by adding a new subsection to read:

4           (q) After a medical manager has been assigned to an injured employee, the medical  
5       manager shall send written notice to the employee, the employer, and the employee's physician  
6       explaining in what capacity the medical manager is employed, whom the medical manager  
7       represents, and the scope of the services to be provided.

8   \* Sec. 5. AS 23.30 is amended by adding a new section to read:

9           Sec. 23.30.047. BENEFITS FOR HEALTH INSURANCE. (a) An employer who pays  
10      compensation to an injured employee under AS 23.30.041(k), 23.30.180, 23.30.185, 23.30.190,  
11      23.30.200, or 23.30.215, and who provided health insurance to the employee at the date of injury  
12      shall also reimburse the employee for health insurance coverage for the employee and covered  
13      dependents, as provided in this section.

14           (b) Payment required under this section is equal to the employer's current contribution  
15      for health insurance or the amount paid by the employee for replacement coverage, whichever  
16      amount is less. Payment required under this section commences when the employee's health  
17      insurance provided by the employer's contribution ceases and shall continue until the employee  
18      is no longer receiving compensation described in (a) of this section, or for 18 months, whichever  
19      period is shorter.

20           (c) Payment is not required under this section until the employee provides proof of health  
21      insurance coverage. In this subsection, "health insurance" includes an individual policy of health  
22      insurance, or a notice of self-payment or continuance of coverage under a union health or welfare  
23      trust agreement.

24           (d) If benefits required under this section are not paid within 30 days after the employer  
25      receives a request for payment, the employer shall pay a penalty equal to 25 percent of the  
26      amount due.

27   \* Sec. 6. AS 23.30.075(b) is amended to read:

28           (b) If an employer fails to insure and keep insured employees subject to this chapter or  
29      fails to obtain a certificate of self-insurance from the board, upon conviction, the court may  
30      [SHALL] impose a fine of up to \$10,000 and may impose a sentence of imprisonment for not  
31      more than one year. In addition, the board may impose a civil penalty of up to three times

1 the manual rate that would have been charged for the employer's insurance premium  
2 during the period the employer failed to obtain insurance. If an employer is a corporation,  
3 all persons who, at the time of the injury or death, had authority to insure the corporation or  
4 apply for a certificate of self-insurance [,] and the person actively in charge of the business of  
5 the corporation shall be subject to the penalties prescribed in this subsection and shall be  
6 personally, jointly, and severally liable together with the corporation for the paym . of all  
7 compensation or other benefits for which the corporation is liable under this chapter if the  
8 corporation at that time is not insured or qualified as a self-insurer.

9 \* Sec. 7. AS 23.30.095(e) is amended to read:

10 (e) The employee shall, after an injury, at reasonable times during the continuance of the  
11 disability, if requested by the employer or when ordered by the board, submit to an examination  
12 by a physician or surgeon of the employer's choice authorized to practice medicine under the  
13 laws of the jurisdiction in which the physician resides, furnished and paid for by the employer.  
14 If the examination requires the employee to travel outside the state, the employer shall pay  
15 all costs resulting from the employee's travel and examination, including costs incurred if  
16 the employee takes the deposition of the physician at a later date. The employer may not  
17 make more than one change in the employer's choice of a physician or surgeon without the  
18 written consent of the employee. Referral to a specialist by the employer's physician is not  
19 considered a change in physicians. An examination requested by the employer not less than 14  
20 days after injury, and every 60 days thereafter, shall be presumed to be reasonable, and the  
21 employee shall submit to the examination without further request or order by the board. Unless  
22 medically appropriate, the physician shall use existing diagnostic data to complete the  
23 examination. Facts relative to the injury or claim communicated to or otherwise learned by a  
24 physician or surgeon who may have attended or examined the employee, or who may have been  
25 present at an examination are not privileged, either in the hearings provided for in this chapter  
26 or an action to recover damages against an employer who is subject to the compensation  
27 provisions of this chapter. If an employee refuses to submit to an examination provided for in  
28 this section, the employee's rights to compensation shall be suspended until the obstruction or  
29 refusal ceases, and the employee's compensation during the period of suspension may, in the  
30 discretion of the board or the court determining an action brought for the recovery of damages  
31 under this chapter, be forfeited. The board in any case of death may require an autopsy at the

1 expense of the party requesting the autopsy. An autopsy may not be held without notice first  
2 being given to the widow or widower or next of kin if they reside in the state or their  
3 whereabouts can be reasonably ascertained, of the time and place of the autopsy and reasonable  
4 time and opportunity given the widow or widower or next of kin to have a representative present  
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8 Sec. 23.30.107. RELEASE OF INFORMATION; CONFIDENTIALITY. Upon request,  
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16 \* Sec. 9. AS 23.30.110 is amended by adding a new subsection to read:

17 (h) If the board determines that the employee's injury resulted from the employer's  
18 wilful, serious, and repeated violation of state or federal occupational safety or health guidelines,  
19 the compensation awarded to the employee by order of the board shall be doubled.

20 \* Sec. 10. AS 23.30.155(o) is amended to read:

21 (o) The division of workers' compensation [BOARD] shall promptly notify the division  
22 of insurance if the division of workers' compensation [BOARD] determines that the employer's  
23 insurer, including an adjuster for a self-insured employer, has filed a notice of controversion  
24 for a frivolous or unfair reason. Notice of frivolous or unfair controversion is required even  
25 if a hearing is not held or compensation is not awarded by the board [FRIVOLOUSLY OR  
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28 insurance shall determine if the insurer or adjuster has committed an unfair claim settlement  
29 practice under AS 21.36.125. If the division of workers' compensation determines that an  
30 adjuster for a self-insured employer has filed a notice of controversion for a frivolous or  
31 unfair reason, the board shall consider the self-insured employer's claims adjusting

1 practices and may cancel or fail to renew the employer's self-insurance certificate.

2 \* Sec. 11. AS 23.30.155 is amended by adding a new subsection to read:

3 (p) Compensation due an employee under this chapter shall be paid by negotiable bank  
4 check that can be cashed not more than three days after being issued.

5 \* Sec. 12. AS 23.30 is amended by adding a new section to read:

6 Sec. 23.30.232. CIVIL LIABILITY FOR WORKPLACE SAFETY INSPECTIONS. A  
7 carrier, an insurance service agent to a self-insured employer, or a trade association is not liable  
8 for civil damages as a result of an act or omission in performing or failing to perform a  
9 workplace safety inspection or a safety advisory service unless the carrier's, agent's, or  
10 association's act or failure to act constitutes gross negligence or reckless or intentional  
11 misconduct.

12 \* Sec. 13. AS 23.30 is amended by adding a new section to read:

13 Sec. 23.30.238. VOLUNTEER EMERGENCY MEDICAL TECHNICIANS AS  
14 EMPLOYEES. (a) A person who is injured during the course and within the scope of providing  
15 service as a volunteer emergency medical technician is an employee of the state for purposes of  
16 this chapter if the person

17 (1) is certified by the state under AS 18.08 as an emergency medical technician;

18 (2) provides emergency medical service outside an incorporated city or borough;

19 and

20 (3) is not otherwise covered for that injury by an employer's workers'  
21 compensation insurance policy or self-insurance certificate.

22 (b) The gross weekly earnings for a person receiving benefits under this section shall be  
23 the gross weekly earnings paid a full-time emergency medical technician employed in the city  
24 or borough nearest to the place where the injury occurred, or, if the nearest city or borough has  
25 no full-time emergency medical technician, at a reasonable figure previously set by the nearest  
26 city or borough to make this determination, but in no case may the gross weekly earnings for  
27 calculating compensation be less than the minimum wage computed on the basis of 40 hours of  
28 work a week.

29 \* Sec. 14. AS 23.30.265(2) is amended to read:

30 (2) "arising out of and in the course of employment" includes employer-required  
31 or supplied travel to and from a remote job site; activities performed at the direction or under the

1 control of the employer; and employer-sanctioned activities at employer-provided facilities; but  
2 excludes recreational activities sponsored by the employer that are performed at facilities  
3 not provided by the employer, unless participation is required as a condition of  
4 employment, and activities of a personal nature away from employer-provided facilities;

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

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

19 \* Sec. 16. AS 23.30.265 is amended by adding a new paragraph to read:

20 (34) "volunteer emergency medical technician" means a person who is certified  
21 by the state as an emergency medical technician under AS 18.08 and who provides emergency  
22 medical services on a voluntary basis.

23 \* Sec. 17. DIVISION OF INSURANCE REPORT. The division of insurance shall prepare a report  
24 on the feasibility of implementing a contracting classification premium adjustment program to provide  
25 premium credits for employers who purchase workers' compensation insurance. The report must include  
26 comments and recommendations from labor and management representatives in the state. The division  
27 of insurance shall submit the report to the Second Session of the Seventeenth Alaska State Legislature  
28 by January 31, 1992.

29 \* Sec. 18. DIVISION OF WORKERS' COMPENSATION REPORT. The division of workers'  
30 compensation shall report to the Alaska State Legislature by January 1, 1992, with the following:

31 (1) recommendations for changes to AS 23.30 that will promote workplace safety;

- 1 (2) recommendations for increasing workplace safety;
- 2 (3) a discussion of the effect, if any, of the enactment of ch. 79, SLA 1988, on workers'
- 3 compensation;
- 4 (4) a determination of the effectiveness of AS 23.30.145 in ensuring that employees who
- 5 file claims are receiving adequate legal representation;
- 6 (5) a survey of claims filed in 1989 and 1990 to determine
- 7 (A) how many employees were not represented by an attorney in making the
- 8 claim; and
- 9 (B) how many employees who were not represented by an attorney tried but
- 10 failed to find legal representation;
- 11 (6) a determination of whether the procedures used by the board in granting a "blanket"
- 12 release of medical information are adequate to avoid the release of nonmedical information that is not
- 13 relevant to the claim;
- 14 (7) a determination of whether employers or carriers are routinely requesting a "blanket"
- 15 release of medical information in an effort to discourage injured employees from filing a claim, and if
- 16 this is occurring, recommendations for legislation to halt this practice; and
- 17 (8) recommendations for reducing fees charged by attorneys who represent employees
- 18 and carriers.
- 19 \* **Sec. 19.** This Act takes effect immediately under AS 01.10.070(c).

**HOUSE CS FOR CS FOR SENATE BILL NO. 219 (JUDICIARY)**

**IN THE LEGISLATURE OF THE STATE OF ALASKA**

**SEVENTEENTH LEGISLATURE - FIRST SESSION**

**BY THE HOUSE JUDICIARY COMMITTEE**

**Offered:**

**Referred:**

**Sponsor(s): SENATE LABOR AND COMMERCE COMMITTEE BY REQUEST**

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act relating to workers' compensation and civil liability for workplace safety  
2 inspections; and providing for an effective date."

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

4 \* Section 1. PURPOSE OF SECTIONS 12 AND 15. (a) It is the purpose of sec. 12 of this Act to  
5 amend AS 23.30 to provide that an insurer is not liable for only providing or failing to provide safety  
6 inspections or safety advisory services; this amendment would decide a public policy question concerning  
7 the liability of an insurer for the performance of a safety inspection or safety advisory service raised in  
8 Van Biene v. ERA Helicopters, Inc., 779 P.2d 315 (Alaska 1989).

9 (b) It is the purpose of sec. 15 of this Act to amend AS 23.30.265(15) to reaffirm the original  
10 intent of changes made to this definition in sec. 24, ch. 93, SLA 1980, to include prior temporary total  
11 disability payments within the definition of gross wages.

12 \* Sec. 2. AS 23.30.041(k) is repealed and reenacted to read:

13 (k) The employer shall pay compensation to an employee eligible for reemployment  
14 benefits, as follows:

1 (1) until the employee reaches medical stability or the reemployment plan is  
2 completed or terminated, whichever comes first, temporary disability benefits shall be paid;

3 (2) if the employee reaches medical stability or has been found eligible for reem-  
4 ployment benefits, temporary disability benefits shall cease and permanent impairment benefits  
5 shall then be paid biweekly at the employee's temporary total disability rate until plan  
6 completion, termination, or exhaustion of permanent impairment benefits; permanent impairment  
7 benefits remaining unpaid upon completion or termination of the plan shall be paid to the  
8 employee in a single lump sum;

9 (3) if the employee's permanent impairment benefits are exhausted before the  
10 completion or termination of the reemployment plan, the employer shall pay, on a biweekly basis,  
11 an amount equal to 60 percent of the employee's spendable weekly wage as determined under  
12 AS 23.30.220, not to exceed \$525, until the completion or termination of the plan;

13 (4) if the employee reaches medical stability before an impairment rating is given  
14 as provided in AS 23.30.190, except for the first 30 days the employee shall be paid 60 percent  
15 of the employee's spendable weekly wage until an impairment rating is given; benefits paid more  
16 than 30 days after medical stability but before an impairment rating is given shall be offset from  
17 the total sum of permanent impairment benefits due to the employee; after the employee reaches  
18 medical stability and an impairment rating is given, all benefits paid shall be included as  
19 permanent impairment benefits;

20 (5) benefits related to the reemployment plan may not extend past two years from  
21 the date of the initiation of the 60 percent payment of the employee's spendable weekly wage,  
22 plan approval, or plan acceptance, whichever date occurs first, at which time the benefits expire;

23 (6) if the employer controverts the employee's claim or appeals a ruling of the  
24 administrator or the board and the controversion or appeal delays completion of an evaluation,  
25 development, commencement or completion of a plan

26 (A) the employer shall pay the employee 60 percent of the spendable  
27 weekly wage during the period of controversion or appeal, except that temporary  
28 disability benefits shall be paid until the employee reaches medical stability;

29 (B) the two-year limitation on payment of benefits in (5) of this subsection  
30 does not begin to run or is tolled; and

31 (C) payments made at 60 percent of the employee's spendable weekly

1 wage during controversion or appeal may not be offset from permanent impairment  
2 benefits due to the employee.

3 \* Sec. 3. AS 23.30.041(p) is amended to read:

4 (p) In this section,

5 (1) "administrator" means the reemployment benefits administrator under (a) of  
6 this section;

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

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

12 (A) area of residence;

13 (B) area of last employment;

14 (C) the state;

15 (D) other states;

16 (4) "medical manager" means a nurse, rehabilitation specialist, or other  
17 health care provider assigned by the carrier to assist an employee in coordinating medical  
18 benefits, or to monitor the employee's medical services;

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

22 (6) [(5)] "physical demands" means the physical requirements of the job such as  
23 strength, including positions such as standing, walking, sitting, and movement of objects such as  
24 lifting, carrying, pushing, pulling, climbing, balancing, stooping, kneeling, crouching, crawling,  
25 reaching, handling, fingering, feeling, talking, hearing, or seeing;

26 (7) [(6)] "rehabilitation specialist" means a person who is a certified insurance  
27 rehabilitation specialist, a certified rehabilitation counselor, or a person who has equivalent or  
28 better qualifications as determined under regulations adopted by the department;

29 (8) [(7)] "remunerative employability" means having the skills that allow a worker  
30 to be compensated with wages or other earnings equivalent to at least 60 percent of the worker's  
31 gross hourly wages at the time of injury; if the employment is outside the state, the stated 60

1 percent shall be adjusted to account for the difference between the applicable state average  
2 weekly wage and the Alaska average weekly wage.

3 \* Sec. 4. AS 23.30.041 is amended by adding a new subsection to read:

4 (q) After a medical manager has been assigned to an injured employee, the medical  
5 manager shall send written notice to the employee, the employer, and the employee's physician  
6 explaining in what capacity the medical manager is employed, whom the medical manager  
7 represents, and the scope of the services to be provided.

8 \* Sec. 5. AS 23.30 is amended by adding a new section to read:

9 Sec. 23.30.047. BENEFITS FOR HEALTH INSURANCE. (a) An employer who pays  
10 compensation to an injured employee under AS 23.30.041(k), 23.30.180, 23.30.185, 23.30.190,  
11 23.30.200, or 23.30.215, and who provided health insurance to the employee at the date of injury  
12 shall also reimburse the employee for health insurance coverage for the employee and covered  
13 dependents, as provided in this section.

14 (b) Payment required under this section is equal to the employer's current contribution  
15 for health insurance or the amount paid by the employee for replacement coverage, whichever  
16 amount is less. Payment required under this section commences when the employee's health  
17 insurance provided by the employer's contribution ceases and shall continue until the employee  
18 is no longer receiving compensation described in (a) of this section, or for 18 months, whichever  
19 period is shorter.

20 (c) Payment is not required under this section until the employee provides proof of health  
21 insurance coverage. In this subsection, "health insurance" includes an individual policy of health  
22 insurance, or a notice of self-payment<sup>CB/LH</sup> for continuance of coverage under a union health or welfare  
23 trust agreement.

24 (d) If benefits required under this section are not paid within 30 days after the employer  
25 receives a request for payment, the employer shall pay a penalty equal to 25 percent of the  
26 amount due.

27 \* Sec. 6. AS 23.30.075(b) is amended to read:

28 (b) If an employer fails to insure and keep insured employees subject to this chapter or  
29 fails to obtain a certificate of self-insurance from the board, upon conviction, the court may  
30 [SHALL] impose a fine of up to \$10,000 and may impose a sentence of imprisonment for not  
31 more than one year. In addition, the board may impose a civil penalty of up to three times

1 the manual rate that would have been charged for the employer's insurance premium  
2 during the period the employer failed to obtain insurance. If an employer is a corporation,  
3 all persons who, at the time of the injury or death, had authority to insure the corporation or  
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Sponsor(s): SENATE LABOR AND COMMERCE COMMITTEE BY REQUEST

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1 "An Act relating to workers' compensation and civil liability for workplace safety  
2 inspections; and providing for an effective date."

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

4 \* Section 1. PURPOSE OF SECTIONS 10 AND 13. (a) It is the purpose of sec. 10 of this Act to  
5 amend AS 23.30 to provide that an insurer is not liable for providing or failing to provide safety  
6 inspections or safety advisory services; this amendment would decide a public policy question concerning  
7 the liability of an insurer for the performance of a safety inspection or safety advisory service raised in  
8 Van Biene v. ERA Helicopters, Inc., 779 P.2d 315 (Alaska 1989).

9 (b) It is the purpose of sec. 13 of this Act to amend AS 23.30.265(15) to reaffirm the original  
10 intent of changes made to this definition in sec. 24, ch. 93, SLA 1980, to include prior temporary total  
11 disability payments within the definition of gross wages.

12 \* Sec. 2. AS 23.30.041(k) is repealed and reenacted to read:

13 (k) The employer shall pay compensation to an employee eligible for reemployment  
14 benefits, as follows:

NEW

version

Warren?

Sec 5 what?

ambiguities

both sides

1 (1) until the employee reaches medical stability or the reemployment plan is  
2 completed or terminated, whichever comes first, temporary disability benefits shall be paid;

3 (2) if the employee reaches medical stability or has been found eligible for reem-  
4 ployment benefits, temporary disability benefits shall cease and permanent impairment benefits  
5 shall then be paid biweekly at the employee's temporary total disability rate until plan  
6 completion, termination, or exhaustion of permanent impairment benefits; permanent impairment  
7 benefits remaining unpaid upon completion or termination of the plan shall be paid to the  
8 employee in a single lump sum;

9 (3) if the employee's permanent impairment benefits are exhausted before the  
10 completion or termination of the reemployment plan, the employer shall pay, on a biweekly basis,  
11 an amount equal to 60 percent of the employee's spendable weekly wage as determined under  
12 AS 23.30.220, not to exceed \$525, until the completion or termination of the plan;

13 (4) if the employee reaches medical stability before an impairment rating is given  
14 as provided in AS 23.30.190, except for the first 30 days the employee shall be paid 60 percent  
15 of the employee's spendable weekly wage until an impairment rating is given; benefits paid more  
16 than 30 days after medical stability but before an impairment rating is given shall be offset from  
17 the total sum of permanent impairment benefits due to the employee; after the employee reaches  
18 medical stability and an impairment rating is given, all benefits paid shall be included as  
19 permanent impairment benefits;

20 (5) benefits related to the reemployment plan may not extend past two years from  
21 the date of the initiation of the 60 percent payment of the employee's spendable weekly wage,  
22 plan approval, or plan acceptance, whichever date occurs first, at which time the benefits expire;

23 (6) if the employer controverts the employee's claim or appeals a ruling of the  
24 administrator or the board and the controversion or appeal delays completion of an evaluation,  
25 development, commencement or completion of a plan

26 (A) the employer shall pay the employee 60 percent of the spendable  
27 weekly wage during the period of controversion or appeal, except that temporary  
28 disability benefits shall be paid until the employee reaches medical stability;

29 (B) the two-year limitation on payment of benefits in (5) of this subsection  
30 does not begin to run or is tolled; and

31 (C) payments made at 60 percent of the employee's spendable weekly

1 wage during controversion or appeal may not be offset from permanent impairment  
2 benefits due to the employee.

3 \* Sec. 3. AS 23.30 is amended by adding a new section to read:

4 Sec. 23.30.047. BENEFITS FOR HEALTH INSURANCE. (a) An employer who pays  
5 compensation to an injured employee under AS 23.30.041(k), 23.30.180, 23.30.185, 23.30.190,  
6 23.30.200, or 23.30.215, and who provided health insurance to the employee at the date of injury  
7 shall also reimburse the employee for health insurance coverage for the employee and covered  
8 dependents, as provided in this section.

9 (b) Payment required under this section is equal to the employer's current contribution  
10 for health insurance or the amount paid by the employee for replacement coverage, whichever  
11 amount is less. Payment required under this section commences when the employee's health  
12 insurance provided by the employer's contribution ceases and shall continue until the employee  
13 is no longer receiving compensation described in (a) of this section, or for 18 months, whichever  
14 period is shorter.

15 (c) Payment is not required under this section until the employee provides proof of health  
16 insurance coverage. In this subsection, "health insurance" includes

17 (1) an individual policy of health insurance; or

18 (2) a notice of self-payment for continuance of coverage required under 29 U.S.C.  
19 1161 (Consolidated Omnibus Budget Reconciliation Act of 1985) or under a union health or  
20 welfare trust agreement.

21 (d) If benefits required under this section are not paid within 30 days after the employer  
22 receives a request for payment, the employer shall pay a penalty equal to 25 percent of the  
23 amount due.

24 \* Sec. 4. AS 23.30.075(b) is amended to read:

25 (b) If an employer fails to insure and keep insured employees subject to this chapter or  
26 fails to obtain a certificate of self-insurance from the board, upon conviction, the court may  
27 [SHALL] impose a fine of up to \$10,000 and may impose a sentence of imprisonment for not  
28 more than one year. In addition, the board may impose a civil penalty of up to three times  
29 the manual rate that would have been charged for the employer's insurance premium  
30 during the period the employer failed to obtain insurance. If an employer is a corporation,  
31 all persons who, at the time of the injury or death, had authority to insure the corporation or

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

6 \* Sec. 5. AS 23.30.095 is amended by adding a new subsection to read:

7 (l) The employer shall provide to the employee one round trip coach fare airline ticket  
8 to the place at which an examination described under (e) of this section is performed and two  
9 days per diem at the rate paid to state employees who travel outside the state if the examination  
10 requires the employee to travel outside the state. If the employec objects to the physician's  
11 report of the examination, takes the deposition of the physician and the deposition is taken  
12 outside the state, or if the employer takes the deposition of the physician who performs the  
13 examination and the deposition is taken outside the state, the employer shall provide one round  
14 trip coach fair airline ticket to the location of the deposition and two days per diem at the rate  
15 paid to state employees who travel outside the state.

16 \* Sec. 6. AS 23.30.107 is amended to read:

17 Sec. 23.30.107. RELEASE OF INFORMATION; CONFIDENTIALITY. Upon request,  
18 an employee shall provide written authority to the employer, carrier, rehabilitation provider, or  
19 rehabilitation administrator to obtain medical and rehabilitation information relative to the  
20 employee's injury and any prior injury. Except for medical records released to the  
21 employer, carrier, rehabilitation provider, rehabilitation administrator, or other person  
22 selected by the employee, the employee's medical records in the possession of the division  
23 of workers' compensation are confidential and are not subject to the public records  
24 inspection requirements of AS 09.25.110 - 09.25.121.

25 \* Sec. 7. AS 23.30.110 is amended by adding a new subsection to read:

26 (h) If the board determines that the employee's injury resulted from the employer's  
27 wilful, serious, and repeated violation of state or federal occupational safety or health guidelines,  
28 the board shall report the violation to the Occupational Safety and Health Review Board  
29 (AS 18.60.057).

30 \* Sec. 8. AS 23.30.155(o) is amended to read:

31 (o) The division of workers' compensation [BOARD] shall promptly notify the division

1 of insurance if the division of workers' compensation [BOARD] determines that the employer's  
 2 insurer, including an adjuster for a self-insured employer, has filed a notice of controversion  
 3 for a frivolous or unfair reason. Notice of frivolous or unfair controversion is required even  
 4 if a hearing is not held or compensation is not awarded by the board [FRIVOLOUSLY OR  
 5 UNFAIRLY CONTROVERTED COMPENSATION DUE UNDER THIS CHAPTER]. After  
 6 receiving notice from the division of workers' compensation [BOARD], the division of  
 7 insurance shall determine if the insurer or adjuster has committed an unfair claim settlement  
 8 practice under AS 21.36.125. If the division of workers' compensation determines that an  
 9 adjuster for a self-insured employer has filed a notice of controversion for a frivolous or  
 10 unfair reason, the board shall consider the self-insured employer's claims adjusting  
 11 practices and may cancel or fail to renew the employer's self-insurance certificate.

12 \* Sec. 9. AS 23.30.155 is amended by adding a new subsection to read:

13 <sup>2.</sup> (p) Compensation due an employee under this chapter shall be paid by negotiable bank  
 14 <sup>check</sup> check that can be cashed not more than three business days after being issued.

15 \* Sec. 10. AS 23.30 is amended by adding a new section to read:

16 Sec. 23.30.232. CIVIL LIABILITY FOR WORKPLACE SAFETY INSPECTIONS. A  
 17 carrier, an insurance service agent to a self-insured employer, or a trade association is not liable  
 18 for civil damages as a result of an act or omission in performing or failing to perform a  
 19 <sup>workplace</sup> workplace safety inspection or a safety advisory service, <sup>(unless the carrier's, agent's, or</sup>  
 20 <sup>association's act or failure to act constitutes reckless or intentional misconduct.)</sup>

21 \* Sec. 11. AS 23.30 is amended by adding a new section to read:

22 Sec. 23.30.238. VOLUNTEER EMERGENCY MEDICAL TECHNICIANS AS  
 23 EMPLOYEES. (a) A person who is injured during the course and within the scope of providing  
 24 service as a volunteer emergency medical technician is an employee of the state for purposes of  
 25 this chapter if the person

26 (1) is certified by the state under AS 18.08 as an emergency medical technician;

27 (2) provides emergency medical service outside an incorporated city or borough;

28 and

29 (3) is not otherwise covered for that injury by an employer's workers'  
 30 compensation insurance policy or self-insurance certificate.

31 (b) The gross weekly earnings for a person receiving benefits under this section shall be

1 the gross weekly earnings paid a full-time emergency medical technician employed in the city  
 2 or borough nearest to the place where the injury occurred, or, if the nearest city or borough has  
 3 no full-time emergency medical technician, at a reasonable figure previously set by the nearest  
 4 city or borough to make this determination, but in no case may the gross weekly earnings for  
 5 calculating compensation be less than the minimum wage computed on the basis of 40 hours of  
 6 work a week.

7 \* Sec. 12. AS 23.30.265(2) is amended to read:

8 (2) "arising out of and in the course of employment" includes employer-required  
 9 or supplied travel to and from a remote job site; activities performed at the direction or under the  
 10 control of the employer; and employer-sanctioned activities at employer-provided facilities; but  
 11 *Camps*  
 12 *still*  
 13 *covered.* excludes recreational activities sponsored by the employer that are performed at facilities  
 14 not provided by the employer, unless participation is required as a condition of  
 15 employment, and activities of a personal nature away from employer-provided facilities;

14 \* Sec. 13. AS 23.30.265(15) is amended to read:

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

28 \* Sec. 14. AS 23.30.265 is amended by adding a new paragraph to read:

29 (34) "volunteer emergency medical technician" means a person who is certified  
 30 by the state as an emergency medical technician under AS 18.08 and who provides emergency  
 31 medical services on a voluntary basis.

1 \* **Sec. 15. DIVISION OF INSURANCE REPORT.** The division of insurance shall prepare a report  
2 on the feasibility of implementing a contracting classification premium adjustment program to provide  
3 premium credits for employers who purchase workers' compensation insurance. The report must include  
4 comments and recommendations from labor and management representatives in the state. The division  
5 of insurance shall submit the report to the Second Session of the Seventeenth Alaska State Legislature  
6 by January 31, 1992.

7 \* **Sec. 16. DIVISION OF WORKERS' COMPENSATION REPORT.** The division of workers'  
8 compensation shall report to the Alaska State Legislature by January 1, 1992, with the following:

9 (1) recommendations for changes to AS 23.30 that will promote workplace safety;

10 (2) recommendations for increasing workplace safety;

11 (3) a discussion of the effect, if any, of the enactment of ch. 79, SLA 1988, on workers'  
12 compensation;

13 (4) a determination of the effectiveness of AS 23.30.145 in ensuring that employees who  
14 file claims are receiving adequate legal representation;

15 (5) a survey of claims filed in 1989 and 1990 to determine

16 (A) how many employees were not represented by an attorney in making the  
17 claim; and

18 (B) how many employees who were not represented by an attorney tried but  
19 failed to find legal representation;

20 (6) a determination of whether the procedures used by the board in granting a "blanket"  
21 release of medical information are adequate to avoid the release of nonmedical information that is not  
22 relevant to the claim;

23 (7) a determination of whether employers or carriers are routinely requesting a "blanket"  
24 release of medical information in an effort to discourage injured employees from filing a claim, and if  
25 this is occurring, recommendations for legislation to halt this practice; and

26 (8) recommendations for reducing fees charged by attorneys who represent employees  
27 and carriers.

28 \* **Sec. 17.** This Act takes effect immediately under AS 01.10.070(c).

1 IN THE SENATE

2 CS FOR SENATE BILL NO. 508 (L&C) (EFD AM)  
3 IN THE LEGISLATURE OF THE STATE OF ALASKA  
4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 FOR AN ACT ENTITLED: "AN ACT RELATING TO WORKERS' COMPENSATION, AND PRO-  
7 VIDING FOR AN EFFECTIVE DATE,"

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

9 \* SECTION 1. AS 23.30.041(B) IS AMENDED TO READ:

10 (B) THE ADMINISTRATOR SHALL (PERFORM THE FOLLOWING FUNCTIONS:)

11 (1) ENFORCE REGULATIONS ADOPTED BY THE BOARD TO IMPLEMENT  
12 THIS SECTION;

13 (2) RECOMMEND REGULATIONS FOR ADOPTION BY THE BOARD THAT  
14 ESTABLISH PERFORMANCE AND REPORTING CRITERIA FOR REHABILITATION SPE-  
15 CIALISTS;

16 (3) ENFORCE THE QUALITY AND EFFECTIVENESS OF REEMPLOYMENT  
17 BENEFITS PROVIDED FOR UNDER THIS SECTION; ..

19 TATION SPECIALISTS TO DETERMINE CONTINUED ELIGIBILITY FOR DELIVERY OF  
20 REHABILITATION SERVICES;

21 (5) SUBMIT TO THE DEPARTMENT, ON OR BEFORE JULY 1 (JANU-  
22 ARY 1) OF EACH YEAR, A REPORT OF REEMPLOYMENT BENEFITS PROVIDED UNDER  
23 THIS SECTION FOR THE PREVIOUS CALENDAR (FISCAL) YEAR, THE REPORT MUST  
24 INCLUDE A GENERAL SECTION, SECTIONS RELATED TO EACH REHABILITATION  
25 SPECIALIST EMPLOYED UNDER THIS SECTION, AND A STATISTICAL SUMMARY OF  
26 ALL REHABILITATION CASES, INCLUDING

27 (A) THE ESTIMATED AND ACTUAL COST OF EACH ACTIVE  
28 REHABILITATION PLAN;

29 (B) THE ESTIMATED AND ACTUAL TIME OF EACH  
1 REHABILITATION PLAN;

2 (C) A STATUS REPORT ON ALL INDIVIDUALS COMPLETING OR  
3 TERMINATING A REEMPLOYMENT BENEFITS PROGRAM INCLUDING A RETURN TO  
4 WORK DATE;

5 (D) THE COST OF REEMPLOYMENT BENEFITS;

6 (6) MAINTAIN A LIST OF REHABILITATION SPECIALISTS WHO MEET  
7 THE QUALIFICATIONS ESTABLISHED UNDER THIS SECTION;

8 (7) MONITOR THE ACTIVITIES OF MEDICAL MANAGERS ASSIGNED BY  
9 THE CARRIER TO AN INJURED EMPLOYEE, INCLUDING REVIEWING REPORTS OR  
10 CORRESPONDENCE CONCERNING THE INJURED EMPLOYEE;...

11 ...(8)... PROMOTE AWARENESS AMONG PHYSICIANS, ADJUSTERS, INJURED  
12 WORKERS, EMPLOYERS, EMPLOYEES, ATTORNEYS, TRAINING PROVIDERS, AND  
13 REHABILITATION SPECIALISTS OF THE REEMPLOYMENT PROGRAM ESTABLISHED IN  
14 THIS SUBSECTION.

15 \* SEC. 2. AS 23.30.041(E) IS AMENDED TO READ:

16 (E) AN EMPLOYEE IS (SHALL BE) ELIGIBLE FOR BENEFITS UNDER THIS  
17 SECTION UPON THE EMPLOYEE'S WRITTEN REQUEST AND BY HAVING A LICENSED  
18 PHYSICIAN, OR REGARDING MUSCULAR, SKELETAL, OR NEUROLOGICAL INJURIES,  
19 A LICENSED PHYSICIAN OR A LICENSED PHYSICAL OR OCCUPATIONAL THERAPIST, ...  
20 PREDICT THAT THE EMPLOYEE WILL HAVE PERMANENT PHYSICAL CAPACITIES THAT  
21 ARE LESS THAN THE PHYSICAL DEMANDS OF THE EMPLOYEE'S JOB AS DESCRIBED

23 OF OCCUPATIONS DEFINED IN THE DICTIONARY OF OCCUPATIONAL TITLES" FOR  
24 (1) THE EMPLOYEE'S JOB AT THE TIME OF INJURY; OR  
25 (2) OTHER JOBS THAT EXIST IN THE LABOR MARKET THAT THE  
26 EMPLOYEE HAS HELD OR RECEIVED TRAINING FOR WITHIN 10 YEARS BEFORE THE  
27 INJURY OR THAT THE EMPLOYEE HAS HELD FOLLOWING THE INJURY FOR A PERIOD  
28 LONG ENOUGH TO OBTAIN THE SKILLS TO COMPETE IN THE LABOR MARKET,  
29 ACCORDING TO SPECIFIC VOCATIONAL PREPARATION CODES AS DESCRIBED IN THE  
1 UNITED STATES DEPARTMENT OF LABOR'S "SELECTED CHARACTERISTICS OF  
2 OCCUPATIONS DEFINED IN THE DICTIONARY OF OCCUPATIONAL TITLES."

3 \* SEC. 3. AS 23.30.041(K) IS REPEALED AND REENACTED TO READ:

4 (K) THE EMPLOYER SHALL PAY COMPENSATION TO AN EMPLOYEE ELIGIBLE  
5 FOR REEMPLOYMENT BENEFITS, AS FOLLOWS:

6 (1) UNTIL THE EMPLOYEE REACHES MEDICAL STABILITY OR THE  
7 REEMPLOYMENT PLAN IS COMPLETED OR TERMINATED, WHICHEVER COMES FIRST,  
8 TEMPORARY DISABILITY BENEFITS SHALL BE PAID;

9 (2) IF THE EMPLOYEE REACHES MEDICAL STABILITY AND HAS  
10 REQUESTED REEMPLOYMENT BENEFITS OR HAS BEEN FOUND ELIGIBLE FOR REEM-  
11 PLOYMENT BENEFITS, TEMPORARY DISABILITY BENEFITS SHALL CEASE AND  
12 PERMANENT IMPAIRMENT BENEFITS SHALL THEN BE PAID BIWEEKLY AT THE  
13 EMPLOYEE'S TEMPORARY TOTAL DISABILITY RATE UNTIL PLAN COMPLETION,  
14 TERMINATION, OR EXHAUSTION OF PERMANENT IMPAIRMENT BENEFITS; PERMANENT  
15 IMPAIRMENT BENEFITS REMAINING UNPAID UPON COMPLETION OR TERMINATION OF  
16 THE PLAN SHALL BE PAID TO THE EMPLOYEE IN A SINGLE LUMP SUM;

17 (3) IF THE EMPLOYEE'S PERMANENT IMPAIRMENT BENEFITS ARE  
18 EXHAUSTED BEFORE THE COMPLETION OR TERMINATION OF THE REEMPLOYMENT  
19 PLAN, THE EMPLOYER SHALL PAY, ON A BIWEEKLY BASIS, AN AMOUNT EQUAL TO  
20 60 PERCENT OF THE EMPLOYEE'S SPENDABLE WEEKLY WAGE AS DETERMINED UNDER  
21 AS 23.30.220, NOT TO EXCEED \$525, UNTIL THE COMPLETION OR TERMINATION  
22 OF THE PLAN;

23 (4) IF THE EMPLOYEE REACHES MEDICAL STABILITY BEFORE AN  
24 IMPAIRMENT RATING IS GIVEN AS PROVIDED IN AS 23.30.190, EXCEPT FOR THE  
25 FIRST 30 DAYS THE EMPLOYEE SHALL BE PAID 60 PERCENT OF THE EMPLOYEE'S

27 PAID MORE THAN 30 DAYS AFTER MEDICAL STABILITY BUT BEFORE AN IMPAIR-  
28 MENT RATING IS GIVEN SHALL BE OFFSET FROM THE TOTAL SUM OF PERMANENT  
29 IMPAIRMENT BENEFITS DUE TO THE EMPLOYEE; AFTER THE EMPLOYEE REACHES  
1 MEDICAL STABILITY AND AN IMPAIRMENT RATING IS GIVEN, ALL BENEFITS PAID  
2 SHALL BE INCLUDED AS PERMANENT IMPAIRMENT BENEFITS;

3 (5) BENEFITS RELATED TO THE REEMPLOYMENT PLAN MAY NOT  
4 EXTEND PAST TWO YEARS FROM THE DATE OF THE INITIATION OF THE 60 PER-  
5 CENT PAYMENT OF THE EMPLOYEE'S SPENDABLE WEEKLY WAGE, PLAN APPROVAL,  
6 OR PLAN ACCEPTANCE, WHICHEVER DATE OCCURS FIRST, AT WHICH TIME THE  
7 BENEFITS EXPIRE;

8 (6) IF THE EMPLOYER CONTROVERTS THE EMPLOYEE'S CLAIM OR  
9 APPEALS A RULING OF THE ADMINISTRATOR OR THE BOARD THAT IS FAVORABLE  
10 TO THE EMPLOYEE, THE CONTROVERSION OR APPEAL DELAYS COMPLETION OF AN  
11 EVALUATION, DEVELOPMENT, COMMENCEMENT OR COMPLETION OF A PLAN, AND THE  
12 EMPLOYEE IS SUCCESSFUL IN THE CLAIM OR APPEAL, THE EMPLOYER SHALL PAY  
13 THE EMPLOYEE 60 PERCENT OF THE SPENDABLE WEEKLY WAGE DURING THE PERIOD  
14 OF CONTROVERSION OR APPEAL, EXCEPT THAT TEMPORARY DISABILITY BENEFITS  
15 SHALL BE PAID UNTIL THE EMPLOYEE REACHES MEDICAL STABILITY; FOR PUR-  
16 POSES OF THIS PARAGRAPH THE TWO-YEAR LIMITATION ON PAYMENT OF BENEFITS  
17 IN (5) OF THIS SUBSECTION DOES NOT BEGIN TO RUN OR IS TOLLED, AND  
18 PAYMENTS MADE AT 60 PERCENT OF THE EMPLOYEE'S SPENDABLE WEEKLY WAGE  
19 DURING CONTROVERSION OR APPEAL MAY NOT BE OFFSET FROM PERMANENT IN-  
20 PAIRMENT BENEFITS DUE TO THE EMPLOYEE.

21 \* SEC. 4. AS 23.30.041(L) IS AMENDED TO READ:

22 (L) THE COST OF THE REEMPLOYMENT PLAN INCURRED UNDER THIS SEC-  
23 TION \_IS\_ (SHALL BE) THE RESPONSIBILITY OF THE EMPLOYER, SHALL BE PAID  
24 ON AN EXPENSE INCURRED BASIS, AND MAY NOT EXCEED \$10,000. THE COST OF  
25 THE REHABILITATION SPECIALIST SHALL BE PAID BY THE EMPLOYER, BUT MAY  
26 NOT BE INCLUDED IN DETERMINING THE COST OF THE REEMPLOYMENT PLAN.  
27 FEES CHARGED BY AND PAID TO A REHABILITATION SPECIALIST FOR SERVICES  
28 MUST BE COMPARABLE TO FEES FOR SIMILAR SERVICES IN THE COMMUNITY IN  
29 WHICH THE SERVICES ARE PERFORMED, AS DETERMINED BY THE BOARD.

(F) IN THIS SECTION

(1) "ADMINISTRATOR" MEANS THE REEMPLOYMENT BENEFITS ADMINISTRATOR UNDER (A) OF THIS SECTION;

(2) "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;

(3) "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;

(4) "MEDICAL MANAGER" MEANS A NURSE, REHABILITATION SPECIALIST, OR OTHER HEALTH CARE PROVIDER ASSIGNED BY THE CARRIER TO ASSIST AN EMPLOYEE IN COORDINATING MEDICAL BENEFITS, OR TO MONITOR THE EMPLOYEE'S MEDICAL SERVICES;

(5) "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;

(6) "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;

(7) "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;

(8) "RENUMERATIVE EMPLOYABILITY" MEANS HAVING THE

5 SKILLS THAT ALLOW A WORKER TO BE COMPENSATED WITH WAGES OR OTHER  
6 EARNINGS EQUIVALENT TO AT LEAST 60 PERCENT OF THE WORKER'S GROSS  
7 HOURLY WAGES AT THE TIME OF INJURY; IF THE EMPLOYMENT IS OUTSIDE THE  
8 STATE, THE STATED 60 PERCENT SHALL BE ADJUSTED TO ACCOUNT FOR THE  
9 DIFFERENCE BETWEEN THE APPLICABLE STATE AVERAGE WEEKLY WAGE AND THE  
10 ALASKA AVERAGE WEEKLY WAGE.

11 \* SEC. 6. AS 23.30.041 IS AMENDED BY ADDING A NEW SUBSECTION TO READ:

12 (Q) AFTER A MEDICAL MANAGER HAS BEEN ASSIGNED TO AN INJURED  
13 EMPLOYEE, THE MEDICAL MANAGER SHALL SEND WRITTEN NOTICE TO THE EMPLOY-  
14 EE, THE EMPLOYER, AND THE EMPLOYEE'S PHYSICIAN EXPLAINING IN WHAT  
15 CAPACITY THE MEDICAL MANAGER IS EMPLOYED, WHO THE MEDICAL MANAGER  
16 REPRESENTS, AND THE SCOPE OF THE SERVICES TO BE PROVIDED.

17 \* SEC. 7. AS 23.30 IS AMENDED BY ADDING A NEW SECTION TO READ:

18 SEC. 23.30.047. COMPENSATION FOR HEALTH INSURANCE. (A) AN  
19 EMPLOYER WHO PAYS COMPENSATION TO AN INJURED EMPLOYEE UNDER THIS  
20 CHAPTER AND WHO PROVIDED HEALTH INSURANCE TO THE EMPLOYEE AT THE DATE  
21 OF INJURY SHALL ALSO PAY TO THE EMPLOYEE AN AMOUNT EQUAL TO THE AMOUNT  
22 CONTRIBUTED BY THE EMPLOYER TO PROVIDE HEALTH INSURANCE COVERAGE FOR  
23 THE EMPLOYEE AND COVERED DEPENDENTS, OR THE AMOUNT PAID BY THE EMPLOY-  
24 EE FOR REPLACEMENT HEALTH INSURANCE COVERAGE, WHICHEVER AMOUNT IS  
25 LESS. COMPENSATION REQUIRED UNDER THIS SECTION COMMENCES WHEN THE  
26 EMPLOYEE'S HEALTH INSURANCE PROVIDED BY THE EMPLOYER'S CONTRIBUTION  
27 CEASES AND SHALL CONTINUE UNTIL THE EMPLOYEE IS NO LONGER RECEIVING  
28 COMPENSATION UNDER THIS CHAPTER, OR FOR 18 MONTHS, WHICHEVER PERIOD IS  
29 SHORTER.

1 (B) PAYMENT OF COMPENSATION UNDER THIS SECTION IS NOT REQUIRED  
2 IF THE EMPLOYEE FAILS TO PROVIDE ONGOING PROOF OF HEALTH INSURANCE  
3 COVERAGE.

4 (C) COMPENSATION PAID UNDER THIS SECTION IS SUBJECT TO THE  
5 PROVISIONS OF AS 23.30.155.

6 \* SEC. 8. AS 23.30.055 IS AMENDED TO READ:

7 SEC. 23.30.055. EXCLUSIVENESS OF LIABILITY. THE LIABILITY OF AN  
8 EMPLOYER PRESCRIBED IN AS 23.30.045 IS EXCLUSIVE AND IN PLACE OF ALL

9 OTHER LIABILITY OF THE EMPLOYER AND ANY FELLOW EMPLOYEE TO THE EMP-  
10 PLOYEE, THE EMPLOYEE'S LEGAL REPRESENTATIVE, HUSBAND OR WIFE, PARENTS,  
11 DEPENDENTS, NEXT OF KIN, AND ANYONE OTHERWISE ENTITLED TO RECOVER  
12 DAMAGES FROM THE EMPLOYER OR FELLOW EMPLOYEE AT LAW OR IN ADMIRALTY ON  
13 ACCOUNT OF THE INJURY OR DEATH. THE LIABILITY OF THE EMPLOYER IS  
14 EXCLUSIVE EVEN IF THE EMPLOYEE'S CLAIM IS BARRED UNDER AS 23.30.022.  
15 HOWEVER, IF AN EMPLOYER FAILS TO SECURE PAYMENT OF COMPENSATION AS  
16 REQUIRED BY THIS CHAPTER, AN INJURED EMPLOYEE OR THE EMPLOYEE'S LEGAL  
17 REPRESENTATIVE IN CASE DEATH RESULTS FROM THE INJURY MAY ELECT TO  
18 CLAIM COMPENSATION UNDER THIS CHAPTER 1,1 OR TO MAINTAIN AN ACTION  
19 AGAINST THE EMPLOYER AT LAW OR IN ADMIRALTY FOR DAMAGES ON ACCOUNT OF  
20 THE INJURY OR DEATH. IN THAT ACTION, THE DEFENDANT MAY NOT PLEAD AS  
A  
21 DEFENSE THAT THE INJURY WAS CAUSED BY THE NEGLIGENCE OF A FELLOW  
22 SERVANT, OR THAT THE EMPLOYEE ASSUMED THE RISK OF THE EMPLOYMENT, OR  
23 THAT THE INJURY WAS DUE TO THE CONTRIBUTORY NEGLIGENCE OF THE EMPLOY-  
24 EE. IN THIS SECTION, "EMPLOYER" INCLUDES THE EMPLOYER'S CARRIER, AN  
25 INSURANCE SERVICE AGENT TO A SELF-INSURED EMPLOYER, OR A TRADE ASSO-  
26 CIATION, IF THE CARRIER, INSURANCE SERVICE AGENT, OR TRADE ASSOCIATION  
27 PROVIDES OR FAILS TO PROVIDE SAFETY INSPECTIONS OR SAFETY ADVISORY  
28 SERVICES...

29 \* SEC. 9. AS 23.30.190(B) IS AMENDED TO READ:

1 (B) ALL DETERMINATIONS OF THE EXISTENCE AND DEGREE OF PERMANENT  
2 IMPAIRMENT SHALL BE MADE STRICTLY AND SOLELY UNDER THE WHOLE PERSON  
3 DETERMINATION AS SET OUT IN THE AMERICAN MEDICAL ASSOCIATION GUIDES TO  
4 THE EVALUATION OF PERMANENT IMPAIRMENT, EXCEPT THAT AN IMPAIRMENT  
5 RATING MAY NOT BE ROUNDED TO THE NEXT FIVE PERCENT. THE BOARD SHALL  
6 ADOPT A SUPPLEMENTARY RECOGNIZED SCHEDULE FOR INJURIES THAT CANNOT BE  
7 RATED BY USE OF THE AMERICAN MEDICAL ASSOCIATION GUIDES. AN IMPAIR-  
8 MENT RATING SHALL BE DETERMINED BY A LICENSED PHYSICIAN OR IF THE  
9 INJURY IS RELATED TO MUSCULAR, SKELETAL, OR NEUROLOGICAL DISABILITIES,  
10 BY A LICENSED PHYSICIAN OR A LICENSED PHYSICAL OR OCCUPATIONAL THERA-  
11 PIST...

13 . SEC. 23.30.195. SURVIVAL OF THE RIGHT TO COMPENSATION. (A)  
14 COMPENSATION TO WHICH [A] LARY] CLAIMANT WOULD BE ENTITLED UNDER AS  
23.- 30.190 (EXCEPTING (A)(20) OF THAT SECTION) SHALL, NOTWITHSTANDING,  
15 DEATH ARISING FROM CAUSES OTHER THAN THE INJURY, BE PAYABLE TO AND FOR  
16 THE BENEFIT OF THE FOLLOWING PERSONS (FOLLOWING):

18 (1) IF THERE [IS] [BE] A WIDOW OR WIDOWER, BUT [THERE] NO  
CHILD  
19 OF THE DECEASED, TO THE WIDOW OR WIDOWER;

20 (2) IF THERE [IS] [BE] A WIDOW OR WIDOWER AND A SURVIVING  
21 CHILD [OR] CHILDREN OF THE DECEASED, ONE-HALF TO THE WIDOW OR WIDOWER,  
22 THE OTHER HALF TO THE SURVIVING CHILD [OR] CHILDREN, IN EQUAL SHARES;

23 (3) IF THERE [IS] [BE] A SURVIVING CHILD [OR] CHILDREN OF  
THE  
24 DECEASED, BUT NO WIDOW OR WIDOWER, THEN TO THE CHILD [OR] CHILDREN, IN  
25 EQUAL SHARES.

26 (B) AN AWARD FOR [IMPAIRMENT] [DISABILITY] MAY BE MADE AFTER THE  
27 DEATH OF THE INJURED EMPLOYEE.

28 \* SEC. 41. AS 23.30 IS AMENDED BY ADDING A NEW SECTION TO READ:

29 SEC. 23.30.238. VOLUNTEER EMERGENCY MEDICAL TECHNICIANS AS  
1 EMPLOYEES. (A) A PERSON WHO IS INJURED DURING THE COURSE AND WITHIN  
2 THE SCOPE OF PROVIDING SERVICE AS A VOLUNTEER EMERGENCY MEDICAL TECH-  
3 NICIAN IS AN EMPLOYEE OF THE STATE FOR PURPOSES OF THIS CHAPTER IF THE  
4 PERSON

5 (1) IS CERTIFIED BY THE STATE UNDER AS 18.08 AS AN EMER-  
6 GENY MEDICAL TECHNICIAN;

7 (2) PROVIDES EMERGENCY MEDICAL SERVICE OUTSIDE AN INCOR-  
8 PORATED CITY OR BOROUGH; AND

9 (3) IS NOT OTHERWISE COVERED FOR THAT INJURY BY AN EMPLOY-  
10 ER'S WORKERS' COMPENSATION INSURANCE POLICY OR SELF-INSURANCE CERTIFI-  
11 CATE.

12 (B) THE GROSS WEEKLY EARNINGS FOR A PERSON RECEIVING BENEFITS  
13 UNDER THIS SECTION SHALL BE THE GROSS WEEKLY EARNINGS PAID A FULL-TIME  
14 EMERGENCY MEDICAL TECHNICIAN EMPLOYED IN THE CITY OR BOROUGH NEAREST

16 BOROUGH HAS NO FULL-TIME EMERGENCY MEDICAL TECHNICIAN, AT A REASONABLE  
17 FIGURE PREVIOUSLY SET BY THE NEAREST CITY OR BOROUGH TO MAKE THIS  
18 DETERMINATION, BUT IN NO CASE MAY THE GROSS WEEKLY EARNINGS FOR CAL-  
19 CULATING COMPENSATION BE LESS THAN THE MINIMUM WAGE COMPUTED ON THE  
20 BASIS OF 40 HOURS OF WORK A WEEK.

21 \* SEC. 12. AS 23.39.265 IS AMENDED BY ADDING A NEW PARAGRAPH TO READ:

22 (34) "VOLUNTEER EMERGENCY MEDICAL TECHNICIAN" MEANS A PERSON  
23 WHO IS CERTIFIED BY THE STATE AS AN EMERGENCY MEDICAL TECHNICIAN UNDER  
24 AS 18.08 AND WHO PROVIDES EMERGENCY MEDICAL SERVICES ON A VOLUNTARY  
25 BASIS.

26 \* SEC. 13. THIS ACT TAKES EFFECT IMMEDIATELY UNDER AS 91:30-107(d).

FISCAL NOTE

STATE OF ALASKA  
1991 LEGISLATIVE SESSION

BILL NO : SB 219

Revision Date: \_\_\_\_\_  
Title: " An Act relating to workers' compensation ..."  
Sponsor: Senate Labor & Commerce  
Requestor: Senate Labor & Commerce

Department Affected: Labor  
BRU: Workers' Compensation  
Component: Workers' Compensation  
COMPONENT SERIAL NO. 344

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES	31.9	31.9	31.9	31.9	31.9	31.9
TRAVEL	0.0	0.0	0.0	0.0	0.0	0.0
CONTRACTUAL	13.0	8.0	8.0	8.0	8.0	8.0
SUPPLIES	0.8	0.8	0.8	0.8	0.8	0.8
EQUIPMENT	4.6	0.0	0.0	0.0	0.0	0.0
LAND&STRUCTURES						
GRANTS,CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	50.3	40.7	40.7	40.7	40.7	40.7
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	50.3	40.7	40.7	40.7	40.7	40.7
FEDERAL FUNDS						
OTHER						
TOTAL	50.3	40.7	40.7	40.7	40.7	40.7

POSITIONS:

FULL-TIME	1.0	1.0	1.0	1.0	1.0	1.0
PART-TIME						
TEMPORARY						

Estimate of current year impact: None

ANALYSIS: (Attach a separate page if necessary)

(see attached)

Prepared by: Linda Rexwinkel, Director *ll* Phone : 465-2790  
Division: Workers' Compensation Date : 4/4/91  
Approved by Commissioner: Nancy Bear Usera  
Agency: Department of Labor *ll* Date: 4/4/91

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

Fiscal Note Analysis for:

"An Act relating to workers' compensation..."

This bill would require the division to monitor the activities of medical managers regarding injured employees including reviewing reports and correspondence concerning the employees. One Clerk Typist III, located in Anchorage, would provide the support necessary to implement the provisions of this bill. The position would receive medical manager disclosure statements, review them for compliance with the law, enter information from them into the claims tracking system, and maintain a file of the statements. This position would also type any correspondence with the medical managers, insurance companies, or injured workers concerning the provisions of this bill.

In addition to the costs associated with this new position, we would require \$5.0 for computer programming to change our automated claims handling system to capture the information concerning the medical managers. This would be a one time cost.

We are assuming an effective date of July 1, 1991.

Position Title <b>Clerk Typist III</b>		No. of Positions <b>1</b>	Range/Step <b>8a</b>	Barg. Unit <b>GGU</b>	
Time Status <b>Full Time</b>	Staff Months <b>12</b>	Location <b>Anchorage</b>		Election District <b>99</b>	
Type of Expenditure		Justification			
Amount		<p>This position would provide the clerical support necessary to implement the provisions of SB 219. The position would receive medical manager disclosure statements, review them for compliance with the law, enter information from them into the claims tracking system, and maintain a file of the statements.</p> <p>Associated non-personal services would include contractual services (8.0) for postage, phone, space rent, printing, computer charges, etc.; commodities (.8); and one-time equipment expenditures (4.6) for desk, chair, filing cabinet, and a personal computer.</p>			
1	2				3
Salary	\$21,232				
Benefits	10,713				
Premium Pay					
Other					
Total Personal Services					\$31,945
Travel					0
Contractual					8,000
Commodities					800
Equipment					4,600
Other					
Total Cost		\$45,345			
Funding Source for Total Cost					
Federal Receipts	1002				
G. F. Match	1003				
General Fund	1004	\$45,345			
GF Program Receipts	1005				
Other					

**Request For  
New Position**

Agency Labor  
 BRU Workers' Compensation  
 Component Workers' Compensation

Page 3 of 3  
 Revised Date

**FY 91**

**CS FOR SENATE BILL NO. 219 (L&C)**  
**IN THE LEGISLATURE OF THE STATE OF ALASKA**  
**SEVENTEENTH LEGISLATURE - FIRST SESSION**

BY THE SENATE LABOR AND COMMERCE COMMITTEE

Offered:

Referred:

Sponsor(s): SENATE LABOR & COMMERCE COMMITTEE BY REQUEST

**A BILL**

**FOR AN ACT ENTITLED**

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

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

3 \* Section 1. PURPOSE OF SECTION 3. It is the purpose of sec. 3 of this Act to amend AS 23.30  
4 to provide that an insurer is not liable for providing or failing to provide safety inspections or safety  
5 advisory services; this amendment would decide a public policy question concerning the liability of an  
6 insurer for the performance of a safety inspection or safety advisory service raised in Van Biene v. ERA  
7 Helicopters, Inc., 779 P.2d 315 (Alaska 1989). Liability for conduct not related to safety inspections  
8 or safety advisory services is not intended to be changed.

9 \* Sec. 2. AS 23.30 is amended by adding a new section to read:

10 Sec. 23.30.047. BENEFITS FOR HEALTH INSURANCE. (a) An employer who pays  
11 compensation to an injured employee under AS 23.30.041(k), 23.30.180, 23.30.185, 23.30.190,  
12 23.30.200, or 23.30.215, and who provided health insurance to the employee at the date of injury  
13 shall also reimburse the employee for health insurance coverage for the employee and covered  
14 dependents, as provided in this section.

1 (b) Payment required under this section is equal to the employer's current contribution  
2 for health insurance or the amount paid by the employee for replacement coverage, whichever  
3 amount is less. Payment required under this section commences when the employee's health  
4 insurance provided by the employer's contribution ceases and shall continue until the employee  
5 is no longer receiving compensation described in (a) of this section, or for 18 months, whichever  
6 period is shorter.

7 (c) Payment is not required under this section until the employee provides proof of health  
8 insurance coverage. In this subsection, "health insurance" includes an individual policy of health  
9 insurance, or a notice of self-payment or continuance of coverage under a union health or welfare  
10 trust agreement.

11 (d) If benefits required under this section are not paid within 30 days after the employer  
12 receives a request for payment, the employer shall pay a penalty equal to 25 percent of the  
13 amount due.

14 \* Sec. 3. AS 23.30 is amended by adding a new section to read:

15 Sec. 23.30.232. CIVIL LIABILITY FOR WORKPLACE SAFETY INSPECTIONS. A  
16 carrier, an insurance service agent to a self-insured employer, or a trade association is not liable  
17 for civil damages as a result of an act or omission in performing or failing to perform a  
18 workplace safety inspection or a safety advisory service unless the carrier's, agent's, or  
19 association's act or failure to act constitutes intentional misconduct.

20 \* Sec. 4. This Act takes effect immediately under AS 01.10.070(c).

## SENATE BILL NO. 219

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - FIRST SESSION

BY THE SENATE LABOR AND COMMERCE COMMITTEE BY REQUEST

Introduced: 3/20/91  
 Referred: Labor and Commerce

## A BILL

## FOR AN ACT ENTITLED

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

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

3 \* Section 1. PURPOSE OF SECTIONS 16, 18, AND 19. (a) It is the purpose of sec. 16 of this Act  
 4 to amend AS 23.30 to provide that an insurer is not liable for providing or failing to provide safety  
 5 inspections or safety advisory services; this amendment would decide a public policy question concerning  
 6 the liability of an insurer for the performance of a safety inspection or safety advisory service raised in  
 7 Van Biene v. ERA Helicopters, Inc., 779 P.2d 315 (Alaska 1989).

8 (b) It is the purpose of sec. 18 of this Act to amend AS 23.30.265(15) to include prior temporary  
 9 total disability payments within the definition of gross wages.

10 (c) It is the purpose of sec. 19 of this Act to amend AS 23.30.265(21) to clarify that medical  
 11 stability results from a condition from which objectively measurable improvement or deterioration is not  
 12 expected from further medical treatment, and that medical stability is presumed in the absence of  
 13 improvement or deterioration after 45 days.

14 \* Sec. 2. AS 23.30.041(b) is amended to read:

SB0219a

*(c) See AS 23.30.265(21) It is the purpose of sec 19 of  
 this Act that the 1. presumption of AS 23.30.265(21) - SB 219  
 New Text Underlined (DELETED TEXT BRACKETED)  
 bility in AS 23.30.120(a)(1) continue to be applied only to the  
 question of whether an injury is related to employment.*

- 1 (5) the estimated length of time that the plan will take;
- 2 (6) the date the plan will commence;
- 3 (7) the estimated time of medical stability as predicted by the physician;
- 4 (8) a detailed description and plan schedule; [AND]
- 5 (9) a finding by the rehabilitation specialist that the inventory under (2) of this
- 6 subsection indicates that the employee can be reasonably expected to satisfactorily complete the
- 7 plan and perform in a new occupation within the time and cost limitations of the plan; and
- 8 (10) a certification by the rehabilitation specialist that the plan meets all the
- 9 requirements of this subsection; if the administrator determines that the plan does not meet
- 10 one or more of the requirements of this subsection, the administrator shall require the
- 11 rehabilitation specialist to amend the plan to meet the requirements of this subsection; a
- 12 rehabilitation specialist may not charge a fee for an amendment to a reemployment plan
- 13 required under this paragraph.

14 \* Sec. 6. AS 23.30.041(k) is repealed and reenacted to read:

15 (k) The employer shall pay compensation to an employee eligible for reemployment  
16 benefits, as follows:

17 (1) until the employee reaches medical stability or the reemployment plan is  
18 completed or terminated, whichever comes first, temporary disability benefits shall be paid;

19 (2) if the employee reaches medical stability, and has requested a rehabilitation plan or has been found eligible for reem-  
20 ployment benefits, temporary disability benefits shall cease and permanent impairment benefits  
21 shall then be paid biweekly at the employee's temporary total disability rate until plan  
22 completion, termination, or exhaustion of permanent impairment benefits; permanent impairment  
23 benefits remaining unpaid upon completion or termination of the plan shall be paid to the  
24 employee in a single lump sum;

25 (3) if the employee's permanent impairment benefits are exhausted before the  
26 completion or termination of the reemployment plan, the employer shall pay, on a biweekly basis,  
27 an amount equal to 60 percent of the employee's spendable weekly wage as determined under  
28 AS 23.30.220, not to exceed \$525, until the completion or termination of the plan;

29 (4) if the employee reaches medical stability before an impairment rating is given  
30 as provided in AS 23.30.190, ~~except for the first 30 days~~ the employee shall be paid 60 percent  
31 of the employee's spendable weekly wage until an impairment rating is given; benefits paid more

1 than 30 days after medical stability but before an impairment rating is given shall be offset from  
2 the total sum of permanent impairment benefits due to the employee; after the employee reaches  
3 medical stability and an impairment rating is given, all benefits paid shall be included as  
4 permanent impairment benefits;

5 (5) benefits related to the reemployment plan may not extend past two years from  
6 the date of the initiation of the 60 percent payment of the employee's spendable weekly wage,  
7 plan approval, or plan acceptance, whichever date occurs first, at which time the benefits expire;

8 (6) if the employer controverts the employee's claim or appeals a ruling of the  
9 administrator or the board and the controversion or appeal delays completion of an evaluation,  
10 development, commencement or completion of a plan *and the employee is successful*

11 (A) the employer shall pay the employee 60 percent of the spendable  
12 weekly wage during the period of controversion or appeal, except that temporary  
13 disability benefits shall be paid until the employee reaches medical stability;

14 (B) the two-year limitation on payment of benefits in (5) of this subsection  
15 does not begin to run or is tolled; and

16 (C) payments made at 60 percent of the employee's spendable weekly  
17 wage during controversion or appeal may not be offset from permanent impairment  
18 benefits due to the employee.

19 \* Sec. 7. AS 23.30.041(l) is amended to read:

20 (l) The cost of the reemployment plan incurred under this section is [SHALL BE] the  
21 responsibility of the employer, shall be paid on an expense incurred basis, and may not exceed  
22 \$10,000. The cost of the rehabilitation specialist shall be paid by the employer, but may not  
23 be included in determining the cost of the reemployment plan. Fees charged by and paid  
24 to a rehabilitation specialist for services must be <sup>reasonable as compared</sup> comparable to fees for similar services in  
25 the community in which the services are performed, as determined by the board.

26 \* Sec. 8. AS 23.30.041(p) is amended to read:

27 (p) In this section,

28 (1) "administrator" means the reemployment benefits administrator under (a) of  
29 this section;

30 (2) "employability" means possessing the ability but not necessarily the  
31 opportunity to engage in employment that is consistent with the employee's physical status

1 \* Sec. 12. AS 23.30.155(d) is amended to read:

2 (d) If the employer controverts the right to compensation, the employer shall file with  
3 the board and send to the employee a notice of controversion on or before the 21st day after the  
4 employer has knowledge of the alleged injury or death. If the employer controverts the right to  
5 compensation after payments have begun, the employer shall file with the board and send to the  
6 employee a notice of controversion within seven days after an installment of compensation  
7 payable without an award is due. When payment of temporary disability benefits is controverted  
8 solely on the grounds that another employer or another insurer of the same employer may be  
9 responsible for all or a portion of the benefits, the most recent employer or insurer who is party  
10 to the claim and who may be liable shall make the payments during the pendency of the dispute.  
11 When a final determination of liability is made, any reimbursement required, including interest  
12 at the statutory rate, and all <sup>reasonable</sup> costs and <sup>reasonable</sup> attorneys' fees incurred by the prevailing  
13 employer, shall be made within 14 days of the determination.

14 \* Sec. 13. AS 23.30.175(a) is amended to read:

15 (a) The weekly rate of compensation for disability or death may not exceed \$700 and  
16 initially may not be less than \$154 when the employee has furnished documentary proof of  
17 the employee's wages, or less than \$110 when the employee has not furnished documentary  
18 proof of the employee's wages. However, if [THE BOARD DETERMINES THAT] the  
19 employee's spendable weekly wage is [WAGES ARE] less than [ \$110 A WEEK AS  
20 COMPUTED UNDER AS 23.30.220, OR LESS THAN] \$154 a week as computed under  
21 AS 23.30.220, the employee's weekly compensation rate shall [IN THE CASE OF AN  
22 EMPLOYEE WHO HAS FURNISHED DOCUMENTARY PROOF OF THE EMPLOYEE'S  
23 WAGES, IT SHALL ISSUE AN ORDER ADJUSTING THE WEEKLY RATE OF  
24 COMPENSATION TO A RATE] equal [TO] the employee's spendable weekly wage [WAGES].  
25 The employer may not pay compensation at the employee's spendable weekly wage without  
26 a board order except as provided under regulations established by the board. [IF THE  
27 EMPLOYER CAN VERIFY THAT THE EMPLOYEE'S SPENDABLE WEEKLY WAGES ARE  
28 LESS THAN \$154, THE EMPLOYER MAY ADJUST THE WEEKLY RATE OF  
29 COMPENSATION TO A RATE EQUAL TO THE EMPLOYEE'S SPENDABLE WEEKLY  
30 WAGES WITHOUT AN ORDER OF THE BOARD.] If the employee's spendable weekly wage  
31 is [WAGES ARE] greater than \$154, but 80 percent of the employee's spendable weekly wage

1           Sec. 23.30.047. BENEFITS FOR HEALTH INSURANCE. (a) An employer who pays  
2 compensation to an injured employee under AS 23.30.041(k), 23.30.180, 23.30.185, 23.30.190,  
3 23.30.200, or 23.30.215, and who provided health insurance to the employee at the date of injury  
4 shall also reimburse the employee for health insurance coverage for the employee and covered  
5 dependents, as provided in this section.

6           (b) Payment required under this section is equal to the employer's current contribution  
7 for health insurance or the amount paid by the employee for replacement coverage, whichever  
8 amount is less. Payment required under this section commences when the employee's health  
9 insurance provided by the employer's contribution ceases and shall continue until the employee  
10 is no longer receiving compensation described in (a) of this section, or for 18 months, whichever  
11 period is shorter.

12           (c) Payment is not required under this section until the employee provides <sup>an ongoing document</sup> proof of health  
13 insurance coverage. In this subsection, "health insurance" includes an individual policy of health  
14 insurance, <sup>an individual conversion policy, COBRA,</sup> or a notice of self-payment or continuance of coverage under a union health or welfare  
15 trust agreement. <sup>to</sup>

16           (d) If benefits required under this section are not paid within 30 days after the employer  
17 receives a request for payment, the employer shall pay a penalty equal to 25 percent of the  
18 amount due.

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

20           (b) If an employer fails to insure and keep insured employees subject to this chapter or  
21 fails to obtain a certificate of self-insurance from the board, upon conviction, the court shall  
22 impose a fine of \$10,000 and may impose a sentence of imprisonment for not more than one  
23 year. In addition, the board may impose a civil penalty equal to three times the manual  
24 rate that would have been charged for the employer's insurance premium during the period  
25 the employer failed to obtain insurance. If an employer is a corporation, all persons who, at  
26 the time of the injury or death, had authority to insure the corporation or apply for a certificate  
27 of self-insurance [,] and the person actively in charge of the business of the corporation shall be  
28 subject to the penalties prescribed in this subsection and shall be personally, jointly, and severally  
29 liable together with the corporation for the payment of all compensation or other benefits for  
30 which the corporation is liable under this chapter if the corporation at that time is not insured or  
31 qualified as a self-insurer.

# SOFTBALL: Supreme Court ruling could scare off team sponsors

Continued from Page D-1

nized Insurance League, the Supreme Court's ruling is expected to affect almost all recreational sports leagues.

Lillian, Esch and others hope to amend the law before the effect is widespread.

"There's less than a month left in the (legislative) session, so it's not possible at this date to introduce a new bill," Esch said. "So the question would be, is there an existing vehicle that could be amended? The next question is, what is the likelihood of it passing?"

Esch thinks the answer to both questions is yes. He said there is a bill pending in the Senate Labor and Commerce committee that could be amended to prevent sponsors of recreational sports teams from being

held liable for workman's comp claims. Esch thinks getting an amendment introduced and passed this session "is within the realm of possibility."

If it isn't, sponsors who might be affected by the supreme court decision have a handful of options. One is to not let any of their employees play on their team. Another is to pay higher insurance rates, although companies whose insurance is paid through this summer shouldn't have to worry about rates increasing for the current softball season, which begins next weekend. With any luck, said Esch, the issue will have been resolved by next summer.

Another option is to pull out of the league, although Anchorage Sports Association director Rod Hill said



chances are slim those who do will get their entry fee refunded. "We tell people all the time if somebody wants to take your (team's) place, we'll gladly refund your money," he said. "Otherwise it's out of the question. We'd be tearing schedules apart all season."

Just how many sponsors will back out of their commitment to sponsor teams is critical to the future of recreational sports in Alaska.

"It wouldn't change my attitude about having a team," said Rick Nerland of Nerland/Mystrom Associates, which sponsors a coed team that includes several of

his employees. "I would probably have to check and see what the stipulations of our workman's comp policy would be. (But) the bottom line is, I believe it's a worthwhile enough activity that we will ... resolve the issue and play ball."

Dr. Jay Caldwell, who sponsors a coed team that involves several of his employees at the Alaska Sports Medicine Clinic, said much the same thing.

"It wouldn't stop me from sponsoring a team, but I can see that more prudent employers than I would," he said.

Jerry Grilly, publisher of the Anchorage Daily News, counts himself as one of the prudent ones. The News sponsors a team that is almost entirely made up of employees of the newspaper.

"My reaction is I'm probably going to talk to my lawyer and (the personnel office) and reconsider," Grilly said. "We're just trying to do something recreationally for our employees, and all of a sudden it gets complicated and complex."

"It's not like (playing softball) is a job. It's recreational. They're doing it in their own time. It's real unfortunate. You're just trying to be a good employer and support employees. We're really reaping nothing in this endeavor."

Croft disagrees. "I think a lot of times companies sponsor teams because they get a lot of benefit from it — increased morale, advertising, increased efficiency, more stability in the work force," he said.

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# SPORTS

SUNDAY

SECTION **D** April 28, 1991

## Ruling rattles Alaska softball

### Supreme Court rules some injured players eligible for workman's comp

By **BETH BRAGG**

Daily News assistant sports editor

The Alaska Supreme Court threw a curve at softball when it ruled this month that players are entitled to workman's compensation if they are injured while playing for a team sponsored by their employer.

The ruling could mean increased insurance rates for a majority of the companies that sponsor Alaska's nearly 1,000 softball teams, which in turn could mean fewer sponsors.

"This could be kind of scary,"

said state softball commissioner Pat Lillian. "Sponsors are the life-line of the whole amateur sports organization."

Of the estimated 15,000 people who play softball in Alaska, only those who are employed by the same company that sponsors their team would be eligible for workman's comp. Lillian estimated that at least 50 percent of the teams in Alaska feature at least one player who is employed by the sponsor.

"Nobody has a crystal ball, but I think it has a substantial potential to discourage team sponsors,"

said Ben Esch, who is the attorney for the Anchorage Sports Association, the organizing body for more than 400 Anchorage softball teams. "(And) if the sponsors back out, if there's no sponsor's fee, you can only increase players' fees."

The Alaska Supreme Court ruled earlier this month in favor of Judi LeSuer-Johnson, who was injured in a 1986 softball game in Anchorage while playing for Rollins-Burdick Hunter, her employer and the sponsor of an Insurance League softball team.

LeSuer-Johnson filed a claim for

workman's comp, and the Workers' Compensation Board ruled in her favor. After appeals, the state Supreme Court upheld the original ruling, which was based on a 1982 statute that says work-related injuries include those occurring at "employer-sanctioned activities at the employer-provided facilities."

Although Anchorage Sports Association teams play on municipal fields, they are maintained by the association, which collects entry fees to help pay for their maintenance. "My belief is that simply paying a league fee would be ade-

quate (evidence that an employee is providing facilities)," Esch said.

Chancy Croft, the attorney who represented LeSuer-Johnson, said Saturday that by paying a team entry fee, Rollins-Burdick Hunter helped make a softball field available to its team. Without entry fees, "they wouldn't have had a regular field at the time they had it," he said. "They wouldn't have been able to play the schedule."

Though the ruling was the result of an accident in the loosely orga-

Please see Page D-4, **SOFTBALL**

## COMMENT

DICK BRADLEY

*Ballplayers, owners and sports agents are captured one night on videotape.*



## Rocket may find 'peace' in Bush

In a few years, get ready for a new television mini-series: "Failed Blast-Off: Rocket Ismail's Life In a Bush League." Starring Denzel Washington as the Rocket, Don Knotts as Lou Holtz and John Candy as himself.

Will it be a blockbuster or a bomb? In a few years, will anybody await the Rocket's re-entry? Will anybody remember his name?

Sure, Canada's a great place to live. It's got national health insurance, it's close to Greenland, and you'll never run out of plaid shirts.

But what about cuisine? Have you ever heard anybody say, "Hey, let's go out for Canadian food." Or, "Honey, I've got a great idea. Instead of taking that Caribbean cruise, let's go have some laughs in Canada."

Canada has given the world hockey players, Alan Thicke and a currency that



**ALAN GREENBERG**

McNall is a bi-country kind of guy who engineered the trade that brought Wayne Gretzky to La-la land, leaving all of Canada in tears. McNall is a chubby, extroverted, forty-something guy who is buddy-buddy with his superstars, flies them around in his private plane. The Rocket said what he

August 18, 1995

Joe Thomas  
Ad Hoc Committee on Workers' Compensation  
1818 W. Northern Lights Blvd  
Anchorage, AK 99517

Dear Mr. Thomas:

The Senate Labor and Commerce Committee has Senate Bill 219 under consideration. It reflects the Management/Labor Workers' Compensation Ad Hoc Committee's proposals for legislation this session.

The Committee is familiar with the background of the Ad Hoc Committee. We agree that the group can play an important role by doing preliminary work to identify areas of concern and by suggesting alternatives to address deficiencies in the worker's compensation system. We appreciate the need for continued improvement of the system so that it better serves the needs of injured workers at an affordable cost.

However, we cannot agree with the stated belief of the Ad Hoc Committee that the resolution of worker's compensation issues should be removed from the legislative process. The draft legislation submitted to our Committee was developed with little or no public input. There were no public notices of the meetings, to our knowledge. The Ad Hoc group presented us with a bill they considered to be balanced and members have asserted that we should not change any provisions lest we lose the support of the group even though there has been no public input. Quite frankly, we do not plan to perform in that manner.

There is some real concern on the part of the Committee about this bill. First, while no person's integrity has been questioned, two Ad Hoc committee members who represented management have resigned from their positions with the Worker's Compensation Committee of Alaska but not from the Ad Hoc committee. We understand from the WCCA that the resignations were caused by concerns about the proposed legislation. This raises questions about the process and the makeup of the Ad Hoc group.

We are also concerned that there are elements of the bill that no group claims to have initiated. Further, during the public hearing on April 5th no testimony was offered to justify most of the elements contained in the bill or to adequately justify those requested late by the Ad Hoc

Committee.

We also believe that the Department of Labor's Division Director and the Legislature should be involved in the process of the working group at some point before draft legislation is presented for introduction.

Bearing in mind that this legislature has a desire to improve the worker's compensation system just as you do, and that it is our responsibility to set public policy through a time honored process, we would urge the Ad Hoc Committee to continue to meet in a more open manner to suggest alternatives to the present laws. We want to work with you to reach a balanced compromise through public participation.

We have chosen to take elements of the bill which were included in last year's ill-fated SB508 in a CS that we will be passing from Committee. The two items, the Van Biene decision remedy and the issue of offsetting medical benefits, have had significant public review and seem appropriate. We would hope that you will continue to support these elements, as you have in the past.

We would also hope that you will be willing to work with us during the interim to refine further changes in the statutes that you have identified as needing attention.

Thank you.

Sincerely,

Drue Pearce

DP:rm

cc: Honorable Nancy Bear-Usera, Commissioner  
Department of Labor

Bruce Kendall, Legislative Liaison  
Office of the Governor

Pat Smutz, Representative  
State AFL/CIO

Warren L. Dvorak, President  
Workers's Compensation Committee of Alaska

Committee Members  
Senate Labor & Commerce Committee