

**HB**

**237**

# HOUSE AMENDMENT #3 ✓

TO: CSHB 237 (Jud)

BY: Finkelstein

Page 6 Line 21

after "AS 23.30.130"

Insert "or was a seasonal worker,"

covered  
act 6  
~~almost guaranteed~~  
and impact D. of labor

**Submit original amendment to the Chief Clerk.  
It will then be numbered and duplicated.**

Withdraw  
AMENDMENT #4 ✓

OFFERED IN THE HOUSE  
TO: CSHB 237(JUD)

BY REPRESENTATIVE BROWN

- 1 Page 1, lines 6 - 7:
- 2 Delete "to immunity for employer workplace safety inspections related to workers'
- 3 compensation insurance;"
  
- 4 Page 7, line 26, through page 8, line 6:
- 5 Delete all material.
  
- 6 Renumber the following bill sections accordingly.

*failed*  
AMENDMENT #5 ✓

OFFERED IN THE HOUSE

BY REPRESENTATIVE BROWN

TO: CSHB 237(JUD)

1 Page 1, lines 2 - 4:

2 Delete "to immunity for third-party design professionals from civil actions by  
3 recipients of workers' compensation benefits;"

4 Page 1, line 9:

5 Delete "SECTION 7"

6 Insert "SECTION 6"

7 Page 2, line 13:

8 Delete "sec. 7"

9 Insert "sec. 6"

10 Page 3, lines 3 - 24:

11 Delete all material.

12 Renumber the following bill sections accordingly.

**DIVISION OF LEGAL SERVICES  
LEGISLATIVE AFFAIRS AGENCY  
STATE OF ALASKA**

(907) 465-3867 or (907) 465-2450  
FAX (907) 465-2029  
Mail Stop 3101

130 Seward Street, Suite 409  
Juneau, Alaska 99801-2105

**MEMORANDUM**

March 10, 1995

**SUBJECT:** Sectional Summary of HB 237. (Work Order No. 9-LS0778\C)

**TO:** Representative Eldon Mulder  
Attn: Tim

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

You have requested a sectional summary of the above-described bill.

As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents. If you would like an interpretation of the bill as it may apply to a particular set of circumstances, please advise.

**Section 1** Findings and purpose for section 7.

**Section 2** Prohibits an increased insurance rate filing for workers' compensation insurance, if the rate is based on a risk in the construction industry and the risk only consists of a higher wage rate. Requires the director of the division of insurance to accept certain workers' compensation rate filings.

**Section 3** Provides that a design professional who provides professional services for a construction project may not be held civilly liable for an injury to a person receiving workers' compensation benefits if the person is injured at the job site of the construction project. Provides certain exceptions for the immunity of the design professional.

**Section 4** Changes the second independent medical examination of an injured employee from mandatory to optional at the request of the board in cases where there is a medical dispute over workers' compensation coverage.

**Section 5** Requires that benefits payable to recipients residing outside of Alaska be calculated on wages earned in Alaska, if AS 23.30.220(a)(6), (7), or (10) apply to the calculation of gross weekly earnings.

**Section 6** Changes death benefits to provide that benefits are not reduced at five and eight years after death.

Representative Eldon Mulder

March 10, 1995

Page 2

**Section 7.** Provides for calculation of an employee's gross weekly earnings. Gross weekly earnings minus payroll tax deductions equal the employee's spendable weekly wage. The employee's spendable weekly wage is used to calculate the compensation due an injured employee under AS 23.30. *W. H. R.*

**Section 8.** Imposes penalties for fraudulent or misleading acts related to workers' compensation benefits. Requires that a person who obtains benefits fraudulently, must make full reimbursement and pay costs and attorney fees of the employer and employer's carrier. Provides for default and collection procedures.

**Section 9.** Provides that an employer's safety inspector is not civilly liable for acts or omissions in performing certain workplace safety services, unless the act or omission constitutes intentional misconduct. *H. H. R.*

**Section 10.** Definitions of seasonal and temporary work.

**Section 11.** Transition section for certain insurance rate filings.

**Section 12.** Applicability section for section 2.

**Section 13.** Effective date.

MFF:glc

95-211.glc

# ALASKA

## LABOR-MANAGEMENT AD HOC COMMITTEE ON WORKERS' COMPENSATION

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February 23, 1995

The Honorable Eldon Mulder  
Alaska State Legislature  
State Capitol  
Juneau, Alaska 99801-1182

Dear Representative Mulder:

The Alaska Labor-Management Ad Hoc Committee on Workers' Compensation is in its thirteenth year of service as a private citizen initiative group formed to fairly address concerns in regard to the Alaska Workers' Compensation system. It was through the efforts of the Ad Hoc Committee that major legislative reform was passed in 1989. Those measures resulted in four years of premium reductions, with 1994 being the first year of a rate increase since 1987.

The Ad Hoc Committee has been meeting regularly since October, 1993 in an attempt to work through some major issues related to workers' compensation. We have recently reached a resolution on several key items that form the basis of our proposed 1995 legislation. Our proposed legislation has had a preliminary review by the Division of Workers' Compensation. The proposed bill contains the following elements:

- **Death Benefit Revision** - The current death benefit has a 10-year cap and also calls for the reduction of benefits at the 5- and 8-year time frame. Although the 10-year cap is still retained to control the cost of claims, it was suggested that the reduction intervals could create hardships for a surviving spouse with small children. It has been estimated that the elimination of the 5- and 8-year reductions will result in an average premium increase of 0.6%.
- **Van Blene** - This portion of the bill provides immunity for insurance carriers, trade associations and other persons providing worksite safety inspections. These inspections are often voluntary and are conducted in the interest of promoting safety in the workplace. Without this immunity, many of the workplace safety inspections will be curtailed to the disadvantage of both employees and employers.

Representative Mulder  
February 23, 1995  
Page 2

- **Design Professional Construction Site Liability Limit** - Design professionals (i.e. architects, engineers and land surveyors) have limited involvement at the construction site with their main function being periodic observation for conformance to design requirements. While the role of design professionals is clearly defined in contract language, there have been a number of instances in which design professionals have been drawn into lawsuits based simply on their presence at the site.

The proposed statute still allows the injured employee of the contractor to bring suit against the design professional based on negligent plans and specifications. However, the statute prevents the more general charge of professional negligence through failing to detect potentially 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.

Fourteen other states provide a similar immunity, with eight states utilizing nearly identical language.

- **Contractor Premium Adjustment Rate** - The construction industry has long sought a more equitable method of distributing the cost of workers' compensation premiums. With the large variance in pay scale, higher paying employers pay a larger cost for workers' compensation although some costs related to injuries are fixed regardless of wage (e.g. medical, vocational rehabilitation). To bring about a more equitable system, twelve states have adopted regulations establishing a premium adjustment program for the contracting classifications. The process is handled administratively by the rate setting authority.
- **Determination of Spendable Weekly Wages** - A recent Supreme Court decision in the Gilmore case has resulted in confusion regarding the calculation of compensation benefits. The proposed legislation provides a fair, efficient and predictable method of calculating compensation benefits. The methods developed are patterned after model language suggested by the court in the Gilmore ruling. The legislation recognizes the importance of establishing a fair approximation that does not rely on various open-ended determinations that cause uncertainty and increases litigation for both the injured worker and their employers.
- **Fraud** - The revised section broadens the definition of misrepresentation and gives the Board the authority to order reimbursement of monies fraudulently obtained.


Representative Mulder  
February 23, 1995  
Page 3

The Ad Hoc Committee supports the proposed bill as a single package agreed to by both sides. If you have any questions pertaining to any portion of the bill, please feel free to contact us at any time.

We would also like to point out that there are more issues involving workers' compensation that we will be addressing in the future. These include group self-insurance, medical cost containment (the medical cost portion of worker's compensation payouts in Alaska have more than doubled between 1988 and 1992, from approximately \$20 million to in excess of \$50 million), review of presumption of compensability, and review of benefits including health insurance. These issues will take further research and a great deal of discussion with various groups but they must be dealt with to insure that Alaska's Workers' Compensation system adequately protects injured workers while maintaining an equitable program for employers.

We thank you for your patience in allowing the Ad Hoc Committee to prepare our agreement and we look forward to your continued support in the future.

Sincerely yours,

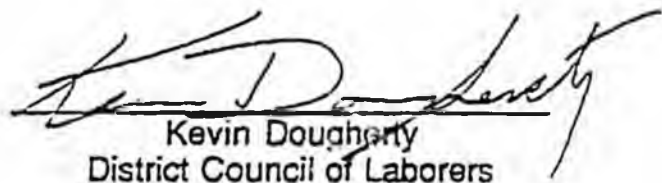


Willem Van Hemert  
CRW Engineering Group

Elaine Taylor  
Taylored Restoration Services

Mary Shields  
Northwest Technical Services

Eric Tolleisen  
CARRS Quality Centers  
Treasurer, WCCA



Kevin Dougherty  
District Council of Laborers

Jeffrey Wertz  
Machinist Union Local 601

Royce Rock  
Carpenters Union Local 1281

David Ford  
Alaska Ironworkers

cc: Senator Tim Kelly  
Representative Pete Kott  
Representative Brian Porter

K. Scott McEntire  
6530 East 16th Avenue  
Anchorage, Alaska 99504  
(907) 337-8614

March 28, 1995

House Judiciary Committee  
State Capital  
Juneau, Alaska 99801  
(907) 465-4990

Dear Representatives,

House Bill No. 237, and those who introduced it, require very serious investigation and consideration before this bill is elevated to the status of law. The Alaska Labor-Management Ad Hoc Committee on Workers' Compensation purports itself to be "a private citizen initiative group formed to fairly address concerns in regard to the Alaska Workers' Compensation system. It was through the efforts of the Ad Hoc Committee that major legislative reform was passed in 1989(1988). Those measures resulted in four years of premium reductions, with 1994 being the first year of a rate increase since 1987." (Letter from the Alaska Labor-Management Ad Hoc Committee on Workers' Compensation to the Honorable Tim Kelly, Alaska State Legislature (Feb. 16, 1994)). That this Ad Hoc Committee cannot conceive of any concerns to fairly address until there is a rate increase, speaks clearly of its alliance with employers and insurers. The Ad Hoc Committee's relationship with the Workers' Compensation Committee of Alaska is of particular concern. "The Workers' Compensation Committee of Alaska is a state-wide organization of employers dedicated to reform of the workers' compensation insurance system in Alaska...The WCCA led the effort to bring management and labor representatives to the table to work out a compromise in which both sides achieved specific goals. The result was passage by the 1988 legislature of a major reform of the workers' compensation system...The WCCA maintains a lobbyist in Juneau to monitor legislation which may potentially impact workers' compensation insurance costs. Small working committees are created from time to time within the organization to address specific issues such as proposed regulations, corrective legislation requirements and reform of the business classification and rating system."(Jeff Day, Alaska's Workers' Compensation Laws (Corporate Communication Strategies, ed., The Workers' Compensation Committee of Alaska 1990)). After reviewing the Ad Hoc Committee's proposed legislation in House Bill No. 237 and ever mindful of the major legislative reforms it claims responsibility for in 1989 (1988), it is inescapably clear that the Committee represents the WCCA and not injured employees

In April of 1994, Josh Fink, legislative assistant to Senator Tim Kelly, provided me with a copy of the Ad Hoc Committee's February 16, 1994 letter to Senator Kelly. Mr. Fink also informed me that a bill that did not come from the Ad Hoc Committee would have little chance of being considered by the legislature. I then contacted a representative of each "side" of the committee. I spoke with Willem Van Hemert of CRW Engineering Group And Kevin Dougherty of the District Council of Laborers and asked each of them to advise me of the next committee meeting so that I might attend. I never heard from either one of them again. It is important to note who the other committee members are. On the employer side there is Elaine Taylor, Taylored Restoration

Services; Mary Shields, Northwest Technical Services, President, WCCA; and Eric Tollefsen, CARRS Quality Centers, Treasurer, WCCA. Clearly the WCCA has a strong voice on the committee. What is not clear, however, is for whom they speak. They sound a lot like the insurance industry in that their script is more fictional than fact. They write what appears to be a believable story as long as the reader is ignorant on the topic. If the Judicial Committee does not have a clear understanding of all aspects of Alaska's seriously flawed workers' compensation statutes and administration codes, it must educate itself with unbiased, substantiated facts. Members of the Labor and Commerce Committee have already shown their ignorance by passing this bill unanimously. Perhaps the Judiciary Committee could take the time to read the bill and ponder the implications instead of just sounding out the words.

In addition to Kevin Dougherty, the employee side of the committee is represented by Jeffrey Wertz, Machinist Union Local 601; Royce Rock, Carpenters Union Local 1281; and Matt Groske, Alaska Ironworker. It is presumptuous to assume that unions represent all employees in the state. It is just as presumptuous to assume they represent all injured employees. When unions are making major concessions with regard to the benefit packages of their general membership to meet market (employer) demands, it is not particularly hard to deduce how little consideration is given to injured employee's benefits where injured employees make up only a minor portion of the general membership. After all, you have to become an employee before you can become an injured employee. Those injured employees who can never go back to their former jobs are *fired*. They lose all of their health benefits, as does the rest of their family. Even those who may have been in a union are not going to find much that a union can do for them when they can no longer ply their trade.

Where does an injured employee find representation? On the Alaska Workers' Compensation Board? No, the board consists of the commissioner of labor, representatives of industry, and representatives of labor. No experience, expertise or injury required. The Division of Workers' Compensation? This is little more than an under budgeted, under staffed retirement home for former insurance adjusters where a future assistant attorney general can do an internship before moving up to represent the State of Alaska against its injured employees. This is the place where the phrase *the board shall* means...if the board wants to or can afford to, it might, provided, when, notwithstanding...What about private attorneys? They are awarded fees based on a percentage of the compensation in dispute, provided they prevail before the board. Unfortunately, for each individual section of the Alaska Workers' Compensation Act, the meaning of the word *compensation* has to be argued all the way to the Alaska Supreme Court. Despite the court's expressed displeasure in numerous cases, neither the legislature, the board, nor the Ad Hoc committee have addressed this very costly situation. When this is combined with the fact that the Ad Hoc committee has been extremely successful in eliminating benefits to such an extent that few remain worth pursuing, an attorney representing an injured employee becomes very selective in who he chooses to represent. Even when an injured employee's attorney prevails, it is not unusual for the attorney to spend more time and effort justifying his fees to the board than was spent securing benefits for the injured employee. Since there is no continuity in the board's membership or decisions, an attorney's reluctance to enter into a card game with an unknown dealer and unsure rules is unfortunate for the injured employee, but understandable. There are some judges, however, who might even consider this to be *unfair*.

If the House Judiciary Committee cannot find enough wrong with House Bill No. 237 on its own, I would suggest that it consider the following questions and be sure of its answers.

(1) If the legislature finds that "many workers in the state are only seasonally employed in the construction, tourism, fishing, and education industries" does Sec. 7. AS 23.30.220(a)(6) determine gross weekly earnings fairly in light of this? Since many members of the legislature may find themselves caught somewhere between seasonal and temporary employment, maybe a poll could be conducted in house (so to speak), to see how fairly they think they would be treated should they trip over the Capital steps as they rush to meet a role call.

(2) Does the legislature really want to find that "benefits for permanent total disability can last for a substantial period into the future and serve a different purpose than benefits for temporary partial or temporary total disability?" Should anyone ask, I hope the legislature is prepared to explain what this different purpose is. In addition, the existing statutes do not recognize permanent partial impairment as a disability, yet like permanent total disability, it too can last for a substantial period into the future. Does it also serve a different purpose?

(3) Does the answer to question (2) above somehow explain Sec. 7. AS 23.30.220. (a) (10). Remember, AS 23.30.180 only defines permanent total disability and the compensation to be paid for it. A review of Larson or the CJS (ask a legislative attorney) explains that all injured employees are naturally born malingerers and must be paid only 80 percent of their spendable weekly wage to ensure that they do not get too comfortable and neglect their rehabilitation. Permanent total disability is no excuse! With \$10,000 worth of job modification devices and training anyone can earn 60 percent of their former wages so that their former employer will not have to keep paying them compensation. However, if this approach fails, this permanent total disability could last for a substantial period into the future (and cost a lot of money). Since these benefits serve a different purpose than other benefits (remember (2) above), it is certainly justified to enact legislation that requires the board to reduce, in the interest of fairness, "the gross weekly earnings of a permanently totally disabled employee by considering the nature of the employee's work, work history, and resulting disability." Remember, if "compensation calculated under this paragraph may not exceed the employee's gross weekly earnings at the time of injury" as determined "under (1) - (7) of this subsection" they obviously can only go down! Apparently there is no need to consider the A.D.A. (Americans with Disabilities Act) either. After all, it is just another one of those unfunded mandates like the E.P.A.

It is to be hoped that these questions will raise a little curiosity and thoughtful discussion. Perhaps the House Judiciary Committee will even be moved to review a few of the Legislative Affairs Agency's reports prepared for each legislative session that examine court decisions and opinions of the Attorney General construing Alaska statutes. It is interesting how the Ad Hoc committee has taken virtually every supreme court decision that granted an injured employee a benefit and managed to write and have enacted legislation that specifically precludes the benefit. Yet the Legislative Counsel, in its review of the same decisions, found them to be reasonable and did not even recommend legislative review.

Considering that workers' compensation acts are examples of some of the earliest tort reform, it would be wise to examine their history with great scrutiny. The constitutionally guaranteed right of an injured employee to file a civil tort action against an employer was taken away as a legitimate exercise of the police power of the state in exchange for guaranteed benefits. Have the uncertainty and cost of litigation been reduced, though, and are commensurate benefits being provided? In Alaska, reducing the employer's cost for workers' compensation insurance has become the sole criteria for reducing the benefits to injured employees. As the cost of medical care continues to escalate an injured employee's benefits will eventually disappear altogether. As they stand right now, even a good lawyer would find it hard to prove that Alaska's workers' compensation statutes serve a legitimate purpose. Benefits, however, are not the only things disappearing. The tort reform is vanishing along with it. Sec. 8. As 23.30.250 was evidently drafted by the Ad Hoc committee out of recognition that existing tort reform manifest in the workers' compensation act may have gone too far in barring tortious acts by employees from recovery by employers. Then there is that little problem with trying to suck blood from a turnip. Being limited to taking only 20 percent off the top of future benefit payments to recover past overpayments just does not make sense when you are doing your damndest to ensure that you do not *have* any future payments. So while they were at it, the Ad Hoc committee decided to add paragraph (b) to enable employers to get a superior court judgment for the whole amount by using the existing Sec. 23.30.170, despite the fact that this section's sole purpose was to redress default by the employer in the payment of compensation already awarded by the board. Then, to make it even better, the Ad Hoc committee also made it mandatory for the board to order the employee to pay the employer's attorney fees and costs incurred in securing this judgment. They just forgot to also make it mandatory on behalf of the employee against the employer. This tort reform act seems to be becoming ever more tortuous (according to my grammar checker "This word may be confused with torturous").

When you take the worker, and the compensation, and the tort reform out of the Workers' Compensation Act the performance suffers. When the curtain rises, the audience will gaze upon a stage filled with actors whose only lines are hollow excuses and they will wonder who the producer was, and it will have been you.

Sincerely,

K. Scott McEntire

cc:	House Judiciary Committee	(907) 465-4990	
	Brian Porter, Chair	(907) 465-4930	FAX (907) 465-3834
	Joe Green, Vice Chair	(907) 465-4931	FAX (907) 465-4316
	Con Bunde	(907) 465-4843	FAX (907) 465-3871
	Cynthia Toohey	(907) 465-4919	FAX (907) 465-2137
	Al Vezey	(907) 465-3719	FAX (907) 465-3258
	Bettye Davis	(907) 465-3875	FAX (907) 465-458
	David Finkelstein	(907) 465-2435	FAX (907) 465-2294

WinFax PRO Cover Page

I'm sending  
this report  
because  
I have to get it  
off my chest!



Phone (907) 337-8614, Fax (907) 337-8614

To: Brian Porter

Fax Number: -1-907-465-3834

From: K. Scott McEntire

Pages: 5

Date: 3/30/95

9-LS0778\C.6 ✓  
Cramer  
3/29/95

A M E N D M E N T

OFFERED IN THE HOUSE

BY REPRESENTATIVE VEZEY

TO: HB 237

1 Page 1, line 7, after ";":

2 Insert "repealing the limitation on the hours a person may be employed in a mine;  
3 making a related technical amendment to avoid changing the penalties for failing to  
4 make payments into an employee benefit fund;"

5 Page 3, after line 5:

6 Insert new bill sections to read:

7 **\*\* Sec. 3.** AS 23.10.045(b) is amended to read:

8 (b) Each violation of this section is a separate offense and a person found  
9 guilty of a violation is punishable under (c) - (d) of this section [IN ACCORDANCE  
10 WITH THE SCHEDULE OF PUNISHMENT SET OUT IN AS 23.10.415].

11 **\* Sec. 4.** AS 23.10.045 is amended by adding new subsections to read:

12 (c) A person who, whether as principal or agent, violates this section is guilty  
13 of a misdemeanor and upon a first conviction is punishable by a fine of not less than  
14 \$100 nor more than \$500 or by imprisonment in a jail for not less than 60 days, nor  
15 more than six months, or by both.

16 (d) Upon a second conviction for a violation of this section, the punishment  
17 is imprisonment in a jail for not less than 60 days, nor more than one year. A  
18 "second conviction" under this section means a conviction for a violation of this  
19 section that was committed within two years after a previous conviction for a  
20 violation of this section. Other convictions are first convictions."

21 Renumber the following bill sections accordingly.

22 Page 8, after line 24:

9-LS0778\C.6

- 1           Insert a new bill section to read:
- 2           "\* Sec. 13. AS 23.10.405, 23.10.410, and 23.10.415 are repealed."
  
- 3    Renumber the following bill sections accordingly.



*Alaska Action Trust*

P.O. Box 102323 • Anchorage, Alaska 99510  
Office: 540 "L" Street, Suite 206 • Anchorage, AK 99501  
(907) 258-4040 • FAX (907) 276-7185

March 30, 1995

Anne Carpeneti  
House Judiciary Committee  
State Capitol. Room 118  
Juneau, Alaska 99801

HAND DELIVERED

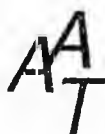
Dear Ms. Carpeneti,

Attached are copies of our position paper on HB 237, section 9, immunity for safety inspections. I have provided copies for each committee member and the Judiciary secretary. Please distribute these papers in Judiciary committee packets on HB 237, which I understand is the fourth bill under consideration April 1st.

Thank you.

A handwritten signature in cursive script that reads "Debra C. Gravo".

Debra C. Gravo  
Executive Director  
dch/encl.



Alaska Action Trust

P.O. Box 102323 • Anchorage, Alaska 99510  
Office: 540 "L" Street, Suite 206 • Anchorage, AK 99501  
(907) 258-4040 • FAX (907) 276-7185

TO: Representative Porter, Chairman  
Representative Green, Vice-Chairman  
Representative Bunde  
Representative Toohey  
Representative Vezey  
Representative B. Davis  
Representative Finkelstein

Members of House Judiciary Committee

FROM: Debra C. Gravo, Executive Director  
Alaska Action Trust/Alaska Academy of Trial Lawyers

DATE: March 30, 1995

RE: HB 237, section 9: immunity for safety inspections

\*\*\*\*\*

On behalf of Alaskan trial lawyers, I wish to express our strong opposition to section 9 of HB 237.

In 1989, the Alaska Supreme Court announced its ruling in Van Biene v. Era Helicopters, Inc., 779 P.2d 315 (Alaska 1989). It held that those negligently (unreasonably) performing safety inspections could be liable if their negligent conduct was a legal cause of someone else's injury. This ruling was no surprise to the insurance industry. Illinois has had this rule of law for approximately 30 years, Alabama for over 20 years and Georgia for about 20 years. The rule is codified in the Restatement (Second) of Torts, at Section 323, and has been well established in the United States for the better part of a century.

It should be noted that an injured worker can never sue his employer or co-employees. That has been the law in Alaska for over thirty years. See AS 23.30.055. Van Biene is the only reported case in Alaska where this kind of a claim has been made against a defendant. There appear to be very few cases of this type that have been brought in the past.

There is no hard evidence before the legislature that safety inspections are not being performed, or that those performing them are being sued. The end of the "deep-pocket" theory with the passage of Proposition II in 1988 (effective March 5, 1989) means that a safety inspector could never be responsible for much of plaintiff's damages unless the faulty inspection was the main reason for plaintiff's injury.

Under current law, the public policy of Alaska is in line with that of other states. Those of us who engage in activities, whether we are driving our vehicles or acting in our professions, are encouraged to do so reasonably. If our unreasonable conduct is the legal cause of injury, then we may be held accountable in damages for the consequences of that unreasonable conduct. This rule is broadly applicable to all of us, appropriately encourages reasonable and responsible conduct, and discourages the indifferent performances of important professional services such as safety inspections.

Under current law, we are all equal before the law. The legislature, in evaluating HB 237, section 9, is being asked to carve out a special exception for the insurance industry. This largely foreign industry is no more entitled to this sort of special treatment than anyone else. Section 9 of HB 237 would leave injured workers without a meaningful remedy against safety inspectors on those rare occasions where negligence causes serious injury. If a shoddy inspection relied upon by an employer caused injury to a worker, the worker and his or her family would be left with nothing more than the meager benefits allowed under the workers' compensation system. Those unreasonably performing the safety inspection would be taken off the hook by this new law that encourages a disregard for the important professional functions relied upon by workers and employers around the state. Section 9 of HB 237 is bad public policy, and should be deleted from the bill.

*Break - Full  
Need Amendment -  
2/ top of section 19  
should include  
provision to  
protect on to  
provision by*

HB237

1/ Rates filings for workers' comp can't have a higher rate when the only basis for the higher rate is wages paid;

2/ Rate filings for workers' comp may be files if there is reasonable bethod of recognizing different wage rates;

3/ A person covered by worker's comp may not sue a design professional responsible for the project except

1/ If professional specifically assumed responsibility for safety;

2/ Professional exercises control of project;

3/ Professional prepared plans with negligence, recklessness, or intentional misconduct;

4/ Redrafts section on rules for out of state recipients to add workers with concurrent contracts and permanent total disability recipients to the provision that the benefits can only be based on in state wages;

5/ Eliminates the reduction of benefits after 5 and 8 years to surviving spouses (keeps provision that all benefits stop a 10 years from death);

6/ Redrafts AS 23.30.220(a) (Determination of spendable weekly wage); it adopts a method for reducing wage rates for other than weekly wages to a weekly basis; gives the board discretion to adjust weekly earnings calculations for permanent totally disabled people for fairness;

7/ Expands sections setting out fraudulent or misleading conduct, although the penalties are the same;

8/ Provides immunity from civil liability for safety inspectors of employers; it excepts intentional misconduct from immunity.

# FISCAL NOTE

**STATE OF ALASKA**  
**1995 LEGISLATIVE SESSION**

**BILL NO. CSHB 130 (STA)**

Revision Date: \_\_\_\_\_  
 Title: Regulation Adoption Procedures and Review  
 \_\_\_\_\_  
 Sponsor: Representative Kelly  
 Requestor: \_\_\_\_\_

Department Affected: Commerce and Economic Development  
 BRU: Banking, Securities and Corporations  
 Component: Banking, Securities and Corporations  
 \_\_\_\_\_  
**COMPONENT SERIAL NO. 1233**

**Expenditures/Revenues:** (Thousands of Dollars)

OPERATING EXPENDITURES	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
<b>TOTAL OPERATING</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

<b>CAPITAL EXPENDITURES</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
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<b>CHANGE IN REVENUES ( )</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts	0	0	0	0	0	0
1003 GF Match	0	0	0	0	0	0
1004 GF	0	0	0	0	0	0
1005 GF/Program Receipts	0	0	0	0	0	0
1006 GF/MHTIA	0	0	0	0	0	0
Other	0	0	0	0	0	0
<b>TOTAL</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

Estimate of current year (FY 95) cost: \$ \_\_\_\_\_

**POSITIONS**

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary.)

Prepared by: Willis F. Kirkpatrick, Director  
 Division: Banking, Securities and Corporations  
 Approved by Commissioner: William L. Hensley  
 Agency: Commerce and Economic Development

Phone: 465-2521  
 Date: 3-30-95  
 Date: 3/30/95

# FISCAL NOTE

STATE OF ALASKA  
1995 LEGISLATIVE SESSION

BILL NO. CSHB 130 (STA)

Revision Date: \_\_\_\_\_  
Title: Regulation Adoption Procedures and Review

Department: Commerce and Economic Development  
BRU: Insurance  
Component: Operations

Sponsor: Representative Kelly  
Requestor: Representative Kelly

COMPONENT SERIAL NO. \_\_\_\_\_ #354

Expenditures/Revenues	(Thousands of Dollars)					
OPERATING EXPENDITURES	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
----------------------	--	--	--	--	--	--

CHANGE IN REVENUES						
--------------------	--	--	--	--	--	--

FUND SOURCE	(Thousands of Dollars)					
1002 Federal Receipts						
1003 GF Match						
1004 General Fund						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
<b>TOTAL</b>	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY 95) cost: \$ 0.0

POSITIONS	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
FULL-TIME	0	0	0	0	0	0
PART-TIME						
TEMPORARY						

**ANALYSIS:** (Attach a separate page if necessary)  
No fiscal impact.

Prepared by: Joan Brown, Administrative Officer  
Division: Insurance  
Approved by Commissioner: William L. Hensley  
Agency: Commerce and Economic Development

Phone: 465-2597  
Date: 3/30/95  
Date: 3/30/95

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# FISCAL NOTE

STATE OF ALASKA  
1995 LEGISLATIVE SESSION

BILL NO. CSHB 130 (STA)

Revision Date: \_\_\_\_\_  
Title: Regulation Adoption Procedures and Review

Department: Commerce and Economic Development  
BRU: Insurance  
Component: Operations

Sponsor: Representative Kelly  
Requestor: Representative Kelly

COMPONENT SERIAL NO. #354

Expenditures/Revenues	(Thousands of Dollars)					
OPERATING EXPENDITURES	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
----------------------	--	--	--	--	--	--

CHANGE IN REVENUES						
--------------------	--	--	--	--	--	--

FUND SOURCE	(Thousands of Dollars)					
1002 Federal Receipts						
1003 GF Match						
1004 General Fund						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
<b>TOTAL</b>	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY 95) cost: \$ 0.0

POSITIONS	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
FULL-TIME	0	0	0	0	0	0
PART-TIME						
TEMPORARY						

**ANALYSIS:** (Attach a separate page if necessary)  
No fiscal impact.

Prepared by:	Joan Brown, Administrative Officer <i>J. Brown</i>	Phone: 465-2597
Division:	Insurance	Date: 3/30/95
Approved by Commissioner:	William L. Hensley <i>W. Hensley</i>	Date: 3/30/95
Agency:	Commerce and Economic Development	

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AMENDMENT # 2

OFFERED IN THE HOUSE  
TO: HB 237

BY REPRESENTATIVE MULDER

- 1 Page 8, lines 20 - 21:
- 2 Delete "does not continue through an entire calendar year"
- 3 Insert "is not intended to continue through an entire calendar year, but recurs on an
- 4 annual basis"

AMENDMENT

OFFERED IN THE HOUSE

TO: HB 237

- 1 Page 3, line 19, after "occurred;":
- 2 Insert "or"

## Sponsor Statement House Bill 237

For the past 13 years, the Ad Hoc Committee on Workers' Compensation, a private citizen initiative group with representatives from both management and labor associations from around the state, has been working to find solutions to the concerns surrounding Alaska's Workers' Compensation system. Through their efforts the Ad Hoc Committee has been very instrumental in getting several pieces of major workers' compensation reform passed by the legislature.

In October of 1993, the Ad Hoc Committee began meeting regularly and came up with the framework of what is now House Bill 237. The Ad Hoc Committee addressed six specific problem areas in Alaska's workers' compensation laws and came up with solutions agreeable to both labor and management. The six issues dealt with by the Ad Hoc Committee and now House Bill 237 are: death benefit revision, immunity for workplace safety inspections (also known as Van Biene), design professional construction site liability limit, contractor premium adjustable rate, determination of spendable weekly wages (also known as Gilmore), and workers' compensation fraud. Attached to this sponsor statement is a letter from the Ad Hoc Committee giving a break down of these six issues.

It is my hope that the effort put forth by this group will be recognized for its importance and House Bill 237 will be accepted without change.

HOUSE COMMITTEE REPORT

3/17/95

(7)

Date Referred: March 6, 1995

FURTHER REFERRALS:

Judiciary

Date of Committee Action: 3-15-95

The LABOR AND COMMERCE Committee considered:

HB 237

HOUSE BILL NO. 237

WORKERS' COMPENSATION AMENDMENTS

"An Act relating to workers' compensation insurance rate filings; to second independent medical evaluations for workers' compensation claims; to immunity for third-party design professionals from civil actions by recipients of workers' compensation benefits; to workers' compensation death benefits; to computation of workers' compensation benefits; to penalties for fraudulent acts related to workers' compensation; to immunity for employer workplace safety inspections related to workers' compensation insurance; and providing for an effective date."

recommends it be replaced with the following committee substitute \_\_\_\_\_  the same title  a new title

additional referral to \_\_\_\_\_ Committee  
 attached amendment(s)

ADOPTS: \_\_\_\_\_ Letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept) \_\_\_\_\_ APPROVES PREVIOUS: (Dept/Date) \_\_\_\_\_  
 fiscal note(s) \_\_\_\_\_  fiscal note(s) \_\_\_\_\_

3)  zero fiscal note(s) Commerce  zero fiscal note(s) \_\_\_\_\_  
Labour; Admin

SIGNING WITH RECOMMENDATIONS	DP	DNP	NR	AM
<i>[Signature]</i> Rokeberg	✓			
<i>[Signature]</i> Kott	✓			
<i>[Signature]</i> MASEK			✓	
<i>[Signature]</i> Kubina			✓	
<i>[Signature]</i> Elton			✓	
<i>[Signature]</i> Porter	✓			
	(3)		(3)	

CHAIR'S SIGNATURE *[Signature]*  
 Kott

# FISCAL NOTE

NO. \_\_\_\_\_  
 Bill Version: HB 237  
 (H) Publish Date: 3/17/95

**STATE OF ALASKA  
 1995 LEGISLATIVE SESSION**

Revision Date: \_\_\_\_\_  
 Title: Workers' Compensation  
Amendments  
 Sponsor: Representative Mulder  
 Requestor: House Labor & Commerce

Department Affected: Labor  
 BRU: Workers' Compensation  
 Componer: Workers' Compensation  
 COMPONENT SERIAL NO. 344

**EXPENDITURES/REVENUES:**

(Thousands of Dollars)

OPERATING	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	0.0	0.0	0.0	0.0	0.0	0.0

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

CHANGE IN REVENUE						
FUND SOURCE #						

**FUNDING:**

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipt						
1006 GF/MHTIA						
Other						
<b>TOTAL</b>	0.0	0.0	0.0	0.0	0.0	0.0

**POSITIONS:**

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY95) impact \$ None

**ANALYSIS:** (Attach a separate page if necessary) Two sections of HB237 would fiscally impact the Workers' Compensation Division. Section 4, AS 23.30.095 (k) "...board may require that a second independent medical evaluation (SHALL) be conducted..." Having the board determine when an IME is necessary would reduce current work load of the adjudication unit. However, the workload reduction of Section 4 would be offset by Section 8, AS23.30.250 (b) "If the board after a hearing, finds that a person has obtained..." This section requires additional hearings that would be complex in nature and require an increase in staff time. The combined effect of these two sections of HB 237 is a zero fiscal impact for the Division.

Prepared by: Paul Grossl, Director Phone: 465-2790  
 Division: Workers' Compensation Date: 3/10/95

Approved by Commissioner: Tom Cashen, Commissioner  
 Agency: Department of Labor Date: 3/10/95

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**COMMITTEE COPY**



FISCAL NOTE

No. 1  
 Bill Version: HR 237  
 (H) Publish Date: 3/17/95

STATE OF ALASKA  
 1995 LEGISLATIVE SESSION

Revision Date: \_\_\_\_\_  
 Title: "An Act relating to workers' compensation insurance rate filings to second independent medical evaluations..."  
 Sponsor: Mulder  
 Requestor: (H) L&C

Department Affected: Administration  
 BRU: Risk Management  
 Component: Risk Management  
 COMPONENT SERIAL NO. 0071

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
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CHANGE IN REVENUES ( )	0.0	0.0	0.0	0.0	0.0	0.0
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FUND SOURCE: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
OTHER						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY 95) cost: \$-0-

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary.)

There is no fiscal impact to the Division of Risk Management.

Prepared by: J. Brad Thompson, Director  
 Division: Risk Management

Phone: 465-5723  
 Date: \_\_\_\_\_

Approved by Commissioner: Mark Boyer  
 Agency: Department of Administration

Date: 3/13/95

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# ALASKA

## LABOR-MANAGEMENT AD HOC COMMITTEE ON WORKERS' COMPENSATION

---

February 23, 1995

The Honorable Eldon Mulder  
Alaska State Legislature  
State Capitol  
Juneau, Alaska 99801-1182

Dear Representative Mulder:

The Alaska Labor-Management Ad Hoc Committee on Workers' Compensation is in its thirteenth year of service as a private citizen initiative group formed to fairly address concerns in regard to the Alaska Workers' Compensation system. It was through the efforts of the Ad Hoc Committee that major legislative reform was passed in 1989. Those measures resulted in four years of premium reductions, with 1994 being the first year of a rate increase since 1987.

The Ad Hoc Committee has been meeting regularly since October, 1993 in an attempt to work through some major issues related to workers' compensation. We have recently reached a resolution on several key items that form the basis of our proposed 1995 legislation. Our proposed legislation has had a preliminary review by the Division of Workers' Compensation. The proposed bill contains the following elements:

- **Death Benefit Revision** - The current death benefit has a 10-year cap and also calls for the reduction of benefits at the 5- and 8-year time frame. Although the 10-year cap is still retained to control the cost of claims, it was suggested that the reduction intervals could create hardships for a surviving spouse with small children. It has been estimated that the elimination of the 5- and 8-year reductions will result in an average premium increase of 0.6%.
- **Van Blene** - This portion of the bill provides immunity for insurance carriers, trade associations and other persons providing worksite safety inspections. These inspections are often voluntary and are conducted in the interest of promoting safety in the workplace. Without this immunity, many of the workplace safety inspections will be curtailed to the disadvantage of both employees and employers.

Post-It™ brand fax transmittal memo 7671		# of pages	11
To: Eldon Mulder		From:	W. Mulder Hensel
Co.		Phone #	907-3050
Dept.	Fax #		
Fax # 465-3518	Fax #		

- **Design Professional Construction Site Liability Limit** - Design professionals (i.e. architects, engineers and land surveyors) have limited involvement at the construction site with their main function being periodic observation for conformance to design requirements. While the role of design professionals is clearly defined in contract language, there have been a number of instances in which design professionals have been drawn into lawsuits based simply on their presence at the site.

The proposed statute still allows the injured employee of the contractor to bring suit against the design professional based on negligent plans and specifications. However, the statute prevents the more general charge of professional negligence through failing to detect potentially 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.

Fourteen other states provide a similar immunity, with eight states utilizing nearly identical language.

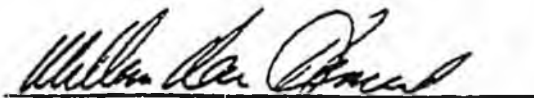
- **Contractor Premium Adjustment Rate** - The construction industry has long sought a more equitable method of distributing the cost of workers' compensation premiums. With the large variance in pay scale, higher paying employers pay a larger cost for workers' compensation although some costs related to injuries are fixed regardless of wage (e.g. medical, vocational rehabilitation). To bring about a more equitable system, twelve states have adopted regulations establishing a premium adjustment program for the contracting classifications. The process is handled administratively by the rate setting authority.
- **Determination of Spendable Weekly Wages** - A recent Supreme Court decision in the Gilmore case has resulted in confusion regarding the calculation of compensation benefits. The proposed legislation provides a fair, efficient and predictable method of calculating compensation benefits. The methods developed are patterned after model language suggested by the court in the Gilmore ruling. The legislation recognizes the importance of establishing a fair approximation that does not rely on various open-ended determinations that cause uncertainty and increases litigation for both the injured worker and their employers.
- **Fraud** - The revised section broadens the definition of misrepresentation and gives the Board the authority to order reimbursement of monies fraudulently obtained.

The Ad Hoc Committee supports the proposed bill as a single package agreed to by both sides. If you have any questions pertaining to any portion of the bill, please feel free to contact us at any time.

We would also like to point out that there are more issues involving workers' compensation that we will be addressing in the future. These include group self-insurance, medical cost containment (the medical cost portion of worker's compensation payouts in Alaska have more than doubled between 1988 and 1992, from approximately \$20 million to in excess of \$50 million), review of presumption of compensability, and review of benefits including health insurance. These issues will take further research and a great deal of discussion with various groups but they must be dealt with to insure that Alaska's Workers' Compensation system adequately protects injured workers while maintaining an equitable program for employers.

We thank you for your patience in allowing the Ad Hoc Committee to prepare our agreement and we look forward to your continued support in the future.

Sincerely yours,



Willem Van Hemert  
CRW Engineering Group

Elaine Taylor  
Taylcred Restoration Services

Mary Shields  
Northwest Technical Services

Eric Tollefsen  
CARRS Quality Centers  
Treasurer, WCCA



Kevin Dougherty  
District Council of Laborers

Jeffrey Wertz  
Machinist Union Local 601

Royce Rock  
Carpenters Union Local 1281

David Ford  
Alaska Ironworkers

cc: Senator Tim Kelly  
Representative Pete Kott  
Representative Brian Porter

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A BILL

FOR AN ACT ENTITLED

"An Act related to workers' compensation; and providing for a effective date."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA

\*Sec. 1. PURPOSE. SEE ATTACHED LEGISLATIVE INTENT FOR GILMORE. OTHER WILL  
BE PROVIDED IF DEEMED NECESSARY.

\*Sec. 2 AS 23.30 is amended by adding a new section to read:

AS 23.30.016 ACTION AGAINST THIRD PERSON - IMMUNITY FOR DESIGN PROFESSIONALS 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.

*WST*  
*KD*

1 •Sec. 3 AS 23.30 is amended by adding a new section to read:

2 AS 23.36.036 PREMIUM RATES FOR CONSTRUCTION INDUSTRY. (a) With respect to  
3 each classification of risk in the construction industry, the rating organization described in State  
4 Statutes shall file with the Director of Insurance a method of computing premiums that does not  
5 impose a higher insurance premium solely because of an employer's higher rate of wages paid.

6 (b) The Director shall accept a filing under subsection (1) that includes a reasonable  
7 method of recognizing differences in rates of pay. This method must use a credit scale with the  
8 starting point set at the Alaska average weekly wage as reported by the department.

9 (c) The rating organization shall file a revenue neutral plan for a new and renewed  
10 policies by January 1, 1996 for prompt and orderly transition to a method of computing that is in  
11 compliance with the requirements of this section.

12  
13 •Sec. 4 AS 23.30.215 is amended to read:

14 AS 23.30.215 COMPENSATION FOR DEATH (a) If the injury causes death, the  
15 compensation is known as a death benefit and is payable in the following amounts to or for the  
16 benefit of the following persons:

17 (1) reasonable and necessary funeral expenses not exceeding \$2,500;

18 (2) if there is a widow or widower or a child or children of the deceased, the  
19 following percentages of the spendable weekly wages of the deceased:

20 (A) 80 percent for the widow or widower with no children;

21 (B) 40 percent for the widow or widower with one child and 40 percent for the  
22 child;

23 (C) 25 percent for the widow or widower with two or more children and 55 percent  
24 divided equally among the children;

25 (D) 80 percent for an only child when there is no widow or widower;

26 (E) 80 percent, divided equally, if there are two or more children and no widow or  
27 widower;

1 (3) if the widow or widower remarried, the widow or widower is entitled to be paid  
2 in one sum an amount equal to the compensation to which the widow or widower would  
3 otherwise be entitled in the tow years commencing on the date of remarriage as full and  
4 final settlement of all sums due the widow or widower;

5 (4) if there is no widow or widower or child or children, then for the support of  
6 father, mother, grandchildren, brothers and sisters, if dependent upon the deceased at  
7 the time of injury, 42 percent of the spendable weekly wage of the deceased to such  
8 beneficiaries share and share alike, not to exceed \$20,000 in the aggregate.

9 (b) In computing death benefits, the spendable weekly wage of the deceased shall be  
10 computed under AS 23.30.220 and shall be paid in accordance with AS 23.30.155 and subject  
11 to the weekly maximum limitation in the aggregate as provided in AS 23.20.175, but the total  
12 weekly compensation may not be less than \$75 for a widow or widower no less than \$25 weekly  
13 for a child or \$50 for children.

14 (c) All questions of dependency shall be determined as of the time of the injury, or  
15 death.

16 (d) Compensation under this chapter to aliens not residents, or about to become  
17 nonresidents, of the United States or Canada is the same in amount as provided for residents,  
18 except that dependents in a foreign country are limited to widow or widower and child or  
19 children, or if there is no widow or widower and child or children, to surviving father or mother  
20 whom the employee has supported, either wholly or in part, for a period of one year before the  
21 date of injury. The board, at its option, or upon the application of the insurance carrier, may  
22 commute all future installments of compensation to be paid to an alien dependent who is not a  
23 resident of the United States or Canada by paying or causing to be paid to the alien dependent  
24 one-half of the commuted amount of the future installments of compensation as determined by  
25 the board.

26 (e) Death benefits payable to a widow or widower in accordance with (a) of this section  
27 shall abate as that person ceases to be entitled and does not inure to persons subject to

1 continued entitlement. In the event a child ceases to be entitled, that child's share shall inure to  
2 the benefit of the surviving spouse. [subject to adjustment as provided in (f) of this section.]

3 (f) Except as provided in (g) of this section, the death benefit payable to a widow or  
4 widower shall

5 [(1) FIVE YEARS FOLLOWING DATE OF DEATH OF THE DECEASED  
6 EMPLOYEE BE REDUCED TO 66 2/3 PERCENT OF THE BENEFIT BEING THEN PAID;

7 (2) EIGHT YEARS FOLLOWING DATE OF DEATH OF THE DECEASED  
8 EMPLOYEE BE REDUCED TO 50 PERCENT OF THE BENEFIT BEING THEN PAID;

9 (3)] Terminate 10 years following death of the deceased employee.

10 (g) the provisions of (f) of this section do not apply to a widow or widower who at the time  
11 of death of the deceased worker is permanently and totally disabled. The death benefits  
12 payable to a widow or widower are not subject to reduction under (f) of this section after the  
13 widow or widower has attained the age of 52 years.

14 (h) In the event a deceased worker is survived by children of a former marriage not living  
15 with the surviving widow or widower, then those children shall receive the amount being paid  
16 under a decree of child support; the difference between this amount and the maximum benefit  
17 payable under this section shall be distributed pro rata to the remainder of those entitled.

18 (i) In the event the total amount of all benefits computed under (a)(2) of this section  
19 exceeds the maximum benefit provided in AS 23.30.175, the maximum benefit under AS  
20 23.20.175 shall be prorated among entitled survivors.

21  
22 \*Sec. 5 AS 23.30.220(a) is replaced and reenacted to read:

23 AS 23.30(220) DETERMINATION OF SPENDABLE WEEKLY WAGES (a) The spendable  
24 weekly wage of an injured employee at the time of an injury is the basis for computing  
25 compensation. It is the employee's gross weekly earnings minus payroll tax deductions. The  
26 gross weekly earnings shall be calculated as follows:

1 (1) If at the time of injury the wages are fixed by the week, the amount so fixed  
2 shall be gross weekly earnings.

3 (2) If at the time of injury the wages are fixed by the month, the gross weekly  
4 earnings shall be monthly wage so fixed multiplied by twelve and divided by fifty-two.

5 (3) If at the time of injury the wages are fixed by the year, the gross weekly  
6 earnings shall be the yearly wage so fixed divided by fifty-two.

7 (4)(a) If at the time of injury the wages are fixed by the day, hour, or by the output of  
8 the employee, the gross weekly earnings shall be the wage most favorable to the  
9 employee computed by dividing by thirteen the wages (not including overtime or  
10 premium pay) of said employee earned in the employ of the employer in the first, second,  
11 third, or fourth period of thirteen consecutive calendar weeks in the fifty-two weeks  
12 immediately preceding the injury.

13 (b) If at the time of injury the employee has been in the employ of the employer  
14 less than thirteen calendar weeks immediately preceding the injury, his average weekly  
15 wage shall be computed under the foregoing paragraph, taking the wages (not including  
16 overtime or premium pay) for such purpose to be the amount he would have earned had  
17 he been so employed by the employer the full thirteen calendar weeks immediately  
18 preceding the injury and has worked, when work was available to other employees in a  
19 similar occupation.

20 (5) If at the time of injury the wage has not been fixed or can not be ascertained,  
21 the wage for the purpose of calculating compensation shall be taken to be the usual wage  
22 for similar services where such services are rendered by paid employees.

23 (6) In employment which is exclusively seasonal or temporary, the gross weekly  
24 earnings shall be taken to be one-fiftieth of the total wages which the employee has  
25 earned from all employment during the calendar year immediately preceding the injury.

1 (7) When the employee is working under concurrent contracts with two or more  
2 employers and the defendant employer has knowledge of such employment prior to the  
3 injury, his wages from all such employers shall be considered as if earned from the  
4 employer liable for compensation.

5 (8) current AS 23.30.220(a)(3)

6 (9) current AS 23.20.220(a)(4)

7 (10) if any claim for benefits under section .180 of this chapter were wages  
8 calculated under subsection (a)(1)-(7) above do not fairly reflect the employee's earnings  
9 during the period of disability, the board shall determine gross weekly earnings by  
10 considering the nature of employee's work, work history, and resulting disability, but  
11 gross weekly earnings so calculated may not exceed the employee's gross weekly  
12 earnings at the time of injury.

13  
14 \*Sec. 6 AS 23.30.250 is repealed and reenacted to read:

15 AS 23.30.250 REMEDIES FOR FRAUDULENT OR MISLEADING ACTS (a) Any person,  
16 insurer or employer who (1) knowingly makes a false or misleading statement, representation or  
17 submission, (2) knowingly assists, abets, solicits, or conspires in the making of any false or  
18 misleading statement, representation, or submission affecting the payment, coverage, or other  
19 benefit under this chapter; (3) knowingly misclassifies employees or engages in deceptive  
20 leasing practices for the purpose of evading full payment of insurance premiums; or (4) employs  
21 or contracts persons or firms to coerce or encourage individuals to file fraudulent compensation  
22 claims shall be civilly liable to any party adversely affected by such conduct, shall be guilty of  
23 theft by deception as defined in AS 11.46.180 and is punishable as provided by AS 11.46.120-  
24 150.

25 (b) After hearing and upon a finding that a person has obtained any payment of  
26 compensation, medical treatment, or other benefit under this Chapter by willingly making a false  
7 of misleading statement or representation for the purpose of obtaining that benefit, the Board

1 shall order that person to make full reimbursement of the cost of all such benefits obtained.  
2 Upon entry of an order authorized under this subsection, the Board shall also order that person  
3 to pay all reasonable costs and attorneys' fees incurred by the employer and its insurer in  
4 obtaining an order under this section and in defending any claim made for such benefits under  
5 this chapter. Orders requiring reimbursement of compensation and payment of costs and  
6 attorney's fees under this section may be enforced as under Sec. 170(b) of this chapter.  
7

8 \*Sec. 7 AS 23.30 is amended by adding a new section to read:

9 AS 23.30.263 IMMUNITY FROM CIVIL LIABILITY FOR WORKPLACE SAFETY  
10 INSPECTIONS. An employer's safety inspector is not liable for civil damages for injury to an  
11 employee of that employer resulting from an act or omission in performing or failing to perform a  
12 loss control service, a workplace safety inspection, or a safety advisory service provided in  
13 connection with an employer's workers' compensation insurance coverage, unless the act or  
14 failure to act constitutes intentional misconduct. In this section "safety inspector" means a  
15 carrier and an employee or agent of the carrier, a trade association of which the employer is a  
16 member, or a person providing adjusting or inspection services to an employer who is a member  
17 of an association established under AS 21.76.010 or an employer who is self-insured under AS  
18 23.30.090.  
19

20 \*Sec. 8 AS 23.30.265 is amended by adding:

21 (35) "Seasonal" employment is work which does not continue through an entire  
22 calendar year.

23 (36) "Temporary" employment is work which is not permanent, will end upon  
24 completion of the task, job or contract and will end within six months from the date of  
25 injury.

### Legislative intent.

It is the purpose of this amendment to redefine the calculation of compensation benefits to comply with the decision of the Alaska Supreme Court in *Gilmore v. Alaska Timber Exchange*, S. Ct. No. S-4765 (October 14, 1994). The legislature recognizes, as the Alaska Supreme Court stated in *Gilmore*, that efficiency in the method of calculating compensation benefits does not require unfairness and that "(a) quick, efficient, and predictable scheme for determining a worker's gross weekly earnings could be formulated without denying workers ... benefits commensurate with their actual losses. Many jurisdictions avoid the need for an alternative open-ended determination of actual future earning capacity by focusing narrowly on wages at the time of injury and converting, by formula or formulas, the worker's rate of pay into a weekly wage." *Gilmore* at 15. It is therefore the intent of this legislation to fix a fair approximation of the employee's probable future earning capacity throughout the period of disability without the need for alternative, open-ended determinations of actual future earning capacity under AS 23.30.185 and .200 in an effort to avoid uncertainty and litigation for injured workers and their employers. The legislature also recognizes that many Alaskan workers are only seasonally employed in the construction, tourism, fishing and education industries and that many Alaskans choose a subsistence lifestyle and are only occasional, sporadic and part-time, temporary members of the labor market. The statute is designed to achieve fairness to those full-time permanent members of the work force and fairness to those employers who hire the temporary or seasonal workers who are soon injured and probably would not have continued full time permanent employment given the nature of their work and work history.

The legislature further declares, however, that because benefits under AS 23.30.180 can last for a substantially longer period of time into the future and therefore serves a different purpose than temporary benefits under AS 23.30.185 and .200, an alternative open-ended determination of actual future earnings should be available for those cases where wages cannot be fairly calculated under AS 23.30.220(a)(1)-(7).