

HB

419

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March 29, 2000

Representative Pete Kott
Chairman of House Judiciary Committee
State of Alaska
Juneau, AK

Dear Representative Kott:

RE: HB 0419 - Section 7 (r)

I am Marjorie Linder, a vocational rehabilitation counselor in the workers' compensation system. I served on the WCCA in 1988 and helped draft Section .041 of the current law. Because of my past involvement, I offer a unique perspective. I know that I had good intentions with these law changes, but, like Frankenstein, I helped to create a monster.

In 1988, there was the perception that the law was unbalanced in favor of injured workers. Premiums were on the rise. Thus, the law was overhauled and, since then, **employers have enjoyed a 41.5% reduction in premiums**, according to the recent legislative audit. It is clear that there is no crisis for employers.

Unfortunately, **injured workers have paid the price** for their employers' tremendous savings in workers' compensation insurance. Today, only 300 out of 28,000 workers injured each year qualify for the reemployment benefit. Both a laborer and an office worker receive as little as \$9450 for a herniated disc despite the disparate ways that injury affects them. The reemployment benefit attempts to assist the laborer to learn to earn a living again because he, unlike the office worker, can't return to his job.

Workers with no ratable impairment are ineligible for retraining. This affects office workers, cannery workers, and others with repetitive stress injuries to their forearms, for instance.

Young Slope workers who are able to return to work at the fast foods job they held in high school are ineligible for the benefit. The wage disparity does not matter.

Workers whose job is described inaccurately with physical demands that are lower than the actual job are also found ineligible.

Instead of curing such problems with the present Act, Section 7 (r) of HB 419 seeks to further restrict access to retraining for injured workers. It "allows" workers to forfeit their reemployment benefits before they know whether they will need them and before they know how much they are worth to them. Once they have signed on the dotted line, they can not retract their waiver if they find they are unable to return to work or continue to work because of their injuries.

With no legal advice or explanation from anyone other than their claims adjusters, workers who don't typically read what they sign, who can't speak English, who are functionally illiterate, or who are on pain pills will sign these affidavits "as a matter of course" — a paper sandwiched among others.

At present, workers can already waive their benefit, but only after they reach medical stability, after they understand that the value of the benefit they are forfeiting, and after they have legal advice or advice from the workers' compensation board to assure they understand exactly what they are waiving. Unless they have signed a compromise and release, they can also retract their waiver if they find their new physical limitations prevent their ability to work. Under the present act, the reemployment benefit for uncooperative workers can easily be controverted. **No law changes need occur to make sure the reemployment benefit is voluntary. The mechanism for waiving the benefit is already in place without the passage of Section 7 (r). At this writing, there is nothing to prevent a worker from opting to accept his PPI award and do his own thing after he reaches medical stability. UNDER THE CURRENT ACT, THE REEMPLOYMENT BENEFIT IS VOLUNTARY!**

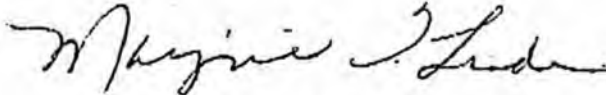
Section 7 (r) invites numerous negative consequences:

- The waiver's irrevocability will encourage numerous legal challenges. Like the Miranda warning has done, this waiver will tie up the legal system for years to come. That litigation will cost the State of Alaska money.
- Workers with no way to earn a living will lose their homes, their savings, and their buying power. That will hurt, not help Alaskan businesses.
- Section 7 (r) of this law is a veiled attempt by the insurance industry to get the State to supplement the benefits for which they collect premiums. Injured workers not adequately served by the comp system will be forced to obtain financial support for themselves from Public Assistance, medical benefits for themselves and their families through Medicaid, and retraining through DVR. That will cost the State of Alaska money.
- As time passes and their resources decrease, injured workers who are able, will accept inappropriate employment and put themselves, their co-workers, and their next employer at risk. All of us will suffer.

- If workers waive the benefit and their waiver is irrevocable, then subsequently find that they can not work, they may be eligible to be declared permanently and totally disabled. Employers will pay for a lifetime of benefits that could have been over in two years.

Therefore, I urge you to **remove Section 7 (r) from HB 419** to protect the people of Alaska and the State budget. One life is a precious thing to waste.

Yours truly,

A handwritten signature in cursive script, appearing to read "Marjorie T. Linder".

Marjorie T. Linder, M.A., CRC

LAW OFFICES OF

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April 3, 2000ATTORNEYS AT LAW
JOSEPH A. KALAMARIDES
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PHYLLIS LAVITA
DOUGLAS JOHNSTON
Via: Fax & letterRepresentative Norm Rokeberg
716 West 4th Avenue
Anchorage, AK 99501RECEIVED
APR 03 2000

Re: House Bill 419

Representative Rokeburg:

I am an attorney who practices workers compensation law. I have had the opportunity to review House Bill 419 regarding changes to the current workers' compensation act.

I have some serious concerns about section 7 of the bill. This provision provides that an employee can waive his right to re-employment benefits without approval by the Alaska Workers' Compensation Board required by AS 23.30.012.

This section would authorize adjustors to require waiver of re-employment benefits as a condition of payment of permanent partial impairment benefits. Ordinarily if no re-employment benefits are requested the law requires payment of permanent partial benefits in a lump sum. There is no signing of any documents. This is automatic.

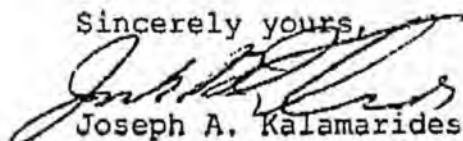
However if re-employment benefits are requested then permanent partial impairments are paid bi-weekly until the re-employment process is completed.

My concern is that the "unscrupulous adjustor" will require an individual who has not requested re-employment benefits to sign a waiver as a condition of payment of permanent partial impairment benefits. This would be an abuse of the system.

This would also lead to litigation before the board in setting aside the waiver, if the employee needed re-employment benefits later.

I therefore urge you to delete this provision of the bill.

Sincerely yours,


Joseph A. Kalamarides

ALASKA STATE LEGISLATURE

HOUSE LABOR AND COMMERCE COMMITTEE

Representative Norman Rokeberg, Chairman
Representative Andrew Halcro, Vice-Chairman
Representative John Harris
Representative Lisa Murkowski
Representative Jerry Sanders
Representative Tom Brice
Representative Sharon Cissna



State Capitol
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MEMORANDUM

TO: Rep. Pete Kott, Chairman
House Judiciary Committee

FROM: Rep. Norman Rokeberg, Chairman
House Labor & Commerce Committee

DATE: March 30, 2000

RE: House Bill 419 - Worker's Compensation

A handwritten signature in black ink, appearing to read "Norman Rokeberg".

Thank you for scheduling House Bill 419 for a hearing this coming Monday.

Attached are:

1. CSHB 419 (L&C)
2. Sponsor Statement
3. Sectional Analysis provided to the original bill by the Department of Labor & Workforce Development.
Changes made in House L&C were:
Page 7, lines 20-22 were added to clarify that broad-brush requests for information were not intended. Information requests were to be made about the injury only and additional information can be requested as needed.
Page 13, Section 30 was added to cover religious nonmedical health care services.
4. HB 419, Side-by-Side Analysis, provided Labor. This compares present law and proposed law.
5. February 1, 2000 letter from Alaska Labor-Management Ad Hoc Committee on Workers' Compensation
6. February 2, 2000 letter from NCCI to Paul Grossi
7. March 20, 2000 letter from Alaska Timber Insurance Exchange

The fiscal notes, audit of the Division of Workers' Compensation, and other letters addressing the bill were provided your staff in the referral file from the House Labor & Commerce Committee.

ALASKA STATE LEGISLATURE

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SPONSOR STATEMENT CSHB 419 (L&C) WORKER'S COMPENSATION

The House Labor and Commerce Committee introduced CSHB 419 (L&C) at the request of the Ad Hoc Committee on Workers Comp and the Department of Labor & Workforce Development. The bill updates and revises Alaska's Worker's Compensation law that was last extensively revised in 1988.

The Ad Hoc Committee on Workers Comp consists of representatives from management and labor. This committee reviews worker's comp laws and suggests necessary changes. The bill before you is a result of such review.

Workers' compensation is a system that compensated a worker for on-the-job injuries not proximately caused by the worker. It is meant to provide worker protection when that worker is injured on the job.

Among the changes set forth in HB 419 are: (1) an intent section so that the Legislature's thoughts on worker's compensation are plainly set forth; (2) assurance of continuous employee participation in any reemployment plan; (3) sets forth that the average weekly wage amount is tied to a percent rather than stated amount; (4) mandate of an annual update of the usual, customary and reasonable medical fee schedules; (5) formula for exact weekly compensation in statute so the worker's compensation statute may change as wages change in Alaska; and (6) raises from \$135,000 to \$177,000 the ceiling amount that is used to determine a disability payment.

The Legislative Audit Division recently released a special report on the Workers' Compensation Division. An area of concern was the cap on injury awards and burial costs as set out in the 1988 statute. Legislative Audit indicated that the benefits have eroded over time by inflation. The report also points out that the main thrust of the 1988 statute has been accomplished with workers compensation insurance rates falling 41.5% since 1989. Legislative Audit further estimates that the whole body value of \$135,000, with inflation, should be around \$189,600, more than the \$177,000 agreed to in compromises made by the Ad Hoc committee.

The overall goal of this legislation is to increase the caps (i.e., increase worker benefits), streamline the system, provide the Division with more tools, and provide the employer and the employee with a workers' compensation system fair to all.

ED02:3/30/00

CS FOR HOUSE BILL NO. 419(L&C)
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FIRST LEGISLATURE - SECOND SESSION

BY THE HOUSE LABOR AND COMMERCE COMMITTEE

Offered:
Referred:

Sponsor(s): HOUSE LABOR AND COMMERCE COMMITTEE BY REQUEST

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the weekly rate of compensation and minimum and maximum
2 compensation rates for workers' compensation; specifying components of a workers'
3 compensation reemployment plan; adjusting workers' compensation benefits for
4 permanent partial impairment, for reemployment plans, for rehabilitation benefits,
5 for widows, widowers, and orphans, and for funerals; relating to permanent total
6 disability of an employee receiving rehabilitation benefits; relating to calculation
7 of gross weekly earnings for workers' compensation benefits for seasonal and
8 temporary workers and for workers with overtime or premium pay; setting time
9 limits for requesting a hearing on claims for workers' compensation, for selecting
10 a rehabilitation specialist, and for payment of medical bills; relating to termination
11 and to waiver of rehabilitation benefits, obtaining medical releases, and resolving
12 discovery disputes relating to workers' compensation; setting an interest rate for

1 late payments of workers' compensation; providing for updating the workers'
2 compensation medical fee schedule; relating to the effect of religious nonmedical
3 treatment on workers' compensation coverage; and providing for an effective
4 date."

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

6 * Section 1. The uncodified law of the State of Alaska is amended by adding a new
7 section to read:

8 INTENT. It is the intent of the legislature that

9 (1) AS 23.30 be interpreted so as to ensure the quick, efficient, fair, and
10 predictable delivery of indemnity and medical benefits to injured workers at a reasonable cost
11 to the employers who are subject to the provisions of AS 23.30;

12 (2) AS 23.30 not be construed by the courts in favor of any party;

13 (3) workers' compensation cases be decided on the merits, except when
14 otherwise provided by statute;

15 (4) increases in benefits be tied to the state average weekly wage so as to more
16 fairly compensate injured workers and that the benefit rate in effect at the time of injury
17 remain the benefit rate for the life of the claim without regard to any changes that may occur
18 in the state average weekly wage subsequent to the year of injury;

19 (5) AS 23.30.041 be amended to clarify existing language and to mandate
20 compliance by the board, the reemployment administrator, and the parties with the deadlines
21 in AS 23.30.041;

22 (6) vocational rehabilitation clearly be a voluntary process that allows
23 claimants to waive their rights to receive reemployment benefits;

24 (7) claimants be entitled to permanent impairment benefits and reduced
25 compensation while involved in the reemployment process so as to encourage injured workers
26 to complete that process as quickly as possible and return to the workplace in an expeditious
27 and efficient manner;

28 (8) claimants provide releases of information that allow employers and insurers
29 and their agents to obtain promptly information needed to investigate and adjust claims;

1 (9) medical information relevant to a claim be discoverable and be promptly
2 provided; and

3 (10) the discovery process be improved to encourage the quick and efficient
4 resolution of discovery disputes under AS 23.30.

5 * Sec. 2. AS 23.30.041(g) is amended to read:

6 (g) Within 15 [10] days after the employee receives the administrator's
7 notification of eligibility for benefits, an employee who desires to use these benefits
8 shall give written notice to the employer of the employee's selection of a rehabilitation
9 specialist who shall provide a complete reemployment benefits plan. Failure to give
10 notice required by this subsection constitutes noncooperation under (n) of this
11 section. If the employer disagrees with the employee's choice of rehabilitation
12 specialist to develop the plan and the disagreement cannot be resolved, then the
13 administrator shall assign a rehabilitation specialist. The employer and employee each
14 have one right of refusal of a rehabilitation specialist.

15 * Sec. 3. AS 23.30.041(h) is amended to read:

16 (n) Within 90 days after the rehabilitation specialist's selection under (g) of
17 this section, the reemployment plan must be formulated and approved. The
18 reemployment plan must require continuous participation by the employee and
19 must maximize the usage of the employee's transferrable skills. The reemployment
20 plan must include at least the following:

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

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

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

26 (4) the cost estimate of the reemployment plan, including provider fees;
27 and [;] the cost [AMOUNT] of tuition, books, tools, and supplies, [;] transportation,
28 [;] temporary lodging, [;] or job modification devices;

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

30 (6) the date that the plan will commence;

31 (7) the estimated time of medical stability as predicted by a treating

1 physician or by a physician who has examined the employee at the request of the
 2 employer or the board, or by referral of the treating physician;

3 (8) a detailed description and plan schedule; and

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

8 * Sec. 4. AS 23.30.041(k) is amended to read:

9 (k) Benefits related to the reemployment plan may not extend past two years
 10 from date of plan approval or acceptance, whichever date occurs first, at which time
 11 the benefits expire. If an employee reaches medical stability before completion of the
 12 plan, temporary total disability benefits shall cease and permanent impairment benefits
 13 shall then be paid at the employee's temporary total disability rate. If the employee's
 14 permanent impairment benefits are exhausted before the completion or termination of
 15 the reemployment plan, the employer shall provide compensation [WAGES] equal to
 16 70 [60] percent of the employee's spendable weekly wages, but not to exceed 105
 17 percent of the average weekly wage [\$525], until the completion or termination of
 18 the plan, except that any compensation paid under this subsection is reduced by
 19 wages earned by the employee while participating in the plan to the extent that
 20 the wages earned, when combined with the compensation paid under this
 21 subsection, exceed the employee's temporary total disability rate. If permanent
 22 partial disability benefits have been paid in a lump sum before the employee
 23 requested or was found eligible for reemployment benefits, payment of benefits
 24 under this subsection is suspended until permanent partial disability benefits
 25 would have ceased, had those benefits been paid at the employee's temporary total
 26 disability rate, notwithstanding the provisions of AS 23.30.155(i). A permanent
 27 impairment benefit remaining unpaid upon the completion or termination of the plan
 28 shall be paid to the employee in a single lump sum. An employee may not be
 29 considered permanently totally disabled so long as the employee is involved in the
 30 rehabilitation process under this chapter. The fees of the rehabilitation specialist
 31 or rehabilitation professional shall be paid by the employer and may not be included

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in determining the cost of the reemployment plan.

* Sec. 5. AS 23.30.041(l) is amended to read:

(l) The cost of the reemployment plan incurred under this section shall be the responsibility of the employer, shall be paid on an expense incurred basis, and may not exceed \$13,300 [\$10,000].

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

(n) After the employee has elected to participate in reemployment benefits, if the employer believes the employee has not cooperated, the employer may terminate reemployment benefits on the date of noncooperation. Noncooperation means

(1) unreasonable failure to

(A) [(1)] keep appointments;

(B) [(2)] maintain passing grades;

(C) [(3)] attend designated programs;

(D) [(4)] maintain contact with the rehabilitation specialist;

(E) [(5)] cooperate with the rehabilitation specialist in

developing a reemployment plan and participating in activities relating to reemployability on a full-time basis;

(F) [(6)] comply with the employee's responsibilities outlined

in the reemployment plan; or

(G) [(7)] participate in any planned reemployment activity as

determined by the administrator; or

(2) failure to give written notice to the employer of the employee's

choice of rehabilitation specialists within 15 days after receiving notice of

eligibility for benefits from the administrator as required by (g) of this section.

* Sec. 7. AS 23.30.041 is amended by adding a new subsection to read:

(r) Notwithstanding AS 23.30.012, an employee may waive, ~~at any time~~, any benefits or rights under this section, including an eligibility evaluation and benefits related to a reemployment plan. To waive any benefits or rights under this section, an employee must file a statement under oath with the board to notify the parties of the waiver and to specify the scope of benefits or rights that the employee seeks to waive. The statement must be on a form prescribed or approved by the board. The

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-5- Amendments

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CSHB 419(L&C)

New Text Underlined [DELETED TEXT BRACKETED]

the applicant that
it should seek
legal counsel

1 board shall serve the notice of waiver on all parties to the claim within 10 days after
2 filing. The waiver is effective upon service to the party. A waiver effective under this
3 subsection discharges the liability of the employer for the benefits or rights contained
4 in this section. The waiver may not be modified under AS 23.30.130.

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

6 (f) All fees and other charges for medical treatment or service shall be subject
7 to regulation by the board but may not exceed usual, customary, and reasonable fees
8 for the treatment or service in the community in which it is rendered, as determined
9 by the board. An employee may not be required to pay a fee or charge for medical
10 treatment or service. The board shall adopt updated usual, customary, and
11 reasonable medical fee schedules at least once each year.

12 * Sec. 9. AS 23.30.095 is amended by adding new subsections to read:

13 (l) An employer shall pay an employee's bills for medical treatment under this
14 chapter, excluding prescription charges or transportation for medical treatment, within
15 30 days after the date that the employer receives the health care provider's bill or a
16 completed report, whichever is later.

17 (m) Unless the employer controverts a charge, an employer shall reimburse an
18 employee's prescription charges under this chapter within 30 days after the employer
19 received the health care provider's completed report and an itemization of the
20 prescription charges for the employee. Unless the employer controverts a charge, an
21 employer shall reimburse any transportation expenses for medical treatment under this
22 chapter within 30 days after the employer received the health care provider's
23 completed report and an itemization of the dates, destination, and transportation
24 expenses for each date of travel for medical treatment. If the employer does not plan
25 to make or does not make payment or reimbursement in full as required by this
26 subsection, the employer shall notify in writing the employee and the employee's
27 health care provider that payment will not be timely made and the reasons for the
28 nonpayment. The notification must be provided on or before the date that payment is
29 due under this subsection or (l) of this section.

30 * Sec. 10. AS 23.30.105(a) is amended to read:

31 (a) The right to compensation for disability under this chapter is barred unless

1 a claim for it is filed within two years after the employee has knowledge of the nature
 2 of the employee's disability and its relation to the employment and after disablement.
 3 However, the maximum time for filing the claim in any event other than arising out
 4 of an occupational disease shall be four years from the date of injury, and the right to
 5 compensation for death is barred unless a claim therefor is filed within one year after
 6 the death, except that if payment of compensation has been made without an award on
 7 account of the injury or death, a claim may be filed within two years after the date of
 8 the last payment of benefits under AS 23.30.041, 23.30.180 [AS 23.30.180], 23.30.185,
 9 23.30.190, 23.30.200, or 23.30.215. It is additionally provided that, in the case of
 10 latent defects pertinent to and causing compensable disability, the injured employee has
 11 full right to claim as shall be determined by the board, time limitations
 12 notwithstanding.

13 * Sec. 11. AS 23.30.107(a) is amended to read:

14 (a) Upon written request, an employee shall provide written authority to the
 15 employer, carrier, rehabilitation specialist, or reemployment benefits administrator to
 16 obtain medical and rehabilitation information relative to the employee's injury. The
 17 request must include notice of the employee's right to file a petition for a
 18 protective order with the board and must be served by certified mail to the
 19 employee's address on the notice of injury or by hand delivery to the employee.
 20 This subsection may not be construed to authorize an employer, carrier,
 21 rehabilitation specialist, or reemployment benefits administrator to request
 22 medical or other information that is not applicable to the employee's injury.

23 * Sec. 12. AS 23.30 is amended by adding a new section to read:

24 Sec. 23.30.108. Prehearings on discovery matters; objections to requests
 25 for release of information; sanctions for noncompliance. (a) If an employee
 26 objects to a request for written authority under AS 23.30.107, the employee must file
 27 a petition with the board seeking a protective order within 14 days after service of the
 28 request. If the employee fails to file a petition and fails to deliver the written authority
 29 as required by AS 23.30.107 within 14 days after service of the request, the
 30 employee's rights to benefits under this chapter are suspended until the written
 31 authority is delivered.

1 (b) If a petition seeking a protective order is filed, the board shall set a
2 prehearing within 21 days after the filing date of the petition. At a prehearing
3 conducted by the board's designee, the board's designee has the authority to resolve
4 disputes concerning the written authority. If the board or the board's designee orders
5 delivery of the written authority and if the employee refuses to deliver it within 10
6 days after being ordered to do so, the employee's rights to benefits under this chapter
7 are suspended until the written authority is delivered. During any period of suspension
8 under this subsection, the employee's benefits under this chapter are forfeited unless
9 the board, or the court determining an action brought for the recovery of damages
10 under this chapter, determines that good cause existed for the refusal to provide the
11 written authority.

12 (c) At a prehearing on discovery matters conducted by the board's designee,
13 the board's designee shall direct parties to sign releases or produce documents, or both,
14 if the parties present releases or documents that are likely to lead to admissible
15 evidence relative to an employee's injury. If a party refuses to comply with an order
16 by the board's designee or the board concerning discovery matters, the board may
17 impose appropriate sanctions in addition to any forfeiture of benefits, including
18 dismissing the party's claim, petition, or defense. If a discovery dispute comes before
19 the board for review of a determination by the board's designee, the board may not
20 consider any evidence or argument that was not presented to the board's designee, but
21 shall determine the issue solely on the basis of the written record. The decision by the
22 board on a discovery dispute shall be made within 30 days. The board shall uphold
23 the designee's decision except when the board's designee's determination is an abuse
24 of discretion.

25 * Sec. 13. AS 23.30.110 is amended by adding a new subsection to read:

26 (h) The filing of a hearing request under (c) of this section suspends the
27 running of the two-year time period specified in (c) of this section. However, if the
28 employee subsequently requests a continuance of the hearing and the request is
29 approved by the board, the granting of the continuance renders the request for hearing
30 inoperative, and the two-year time period specified in (c) of this section continues to
31 run again from the date of the board's notice to the employee of the board's granting

1 of the continuance and of its effect. If the employee fails to again request a hearing
 2 before the conclusion of the two-year time period in (c) of this section, the claim is
 3 denied.

4 * Sec. 14. AS 23.30.155 is amended by adding a new subsection to read:

5 (p) An employer shall pay interest on compensation that is not paid when due.
 6 Interest required under this subsection accrues at the rate specified in AS 09.30.070(a)
 7 that is in effect on the date the compensation is due.

8 * Sec. 15. AS 23.30.175(a) is amended to read:

9 (a) The weekly rate of compensation for disability or death may not exceed
 10 the maximum compensation rate, may not be less than 22 percent of the
 11 maximum compensation rate, [\$700] and initially may not be less than \$110.
 12 However, if the board determines that the employee's spendable weekly wages are less
 13 than \$110 a week as computed under AS 23.30.220, or less than 22 percent of the
 14 maximum compensation rate [\$154] a week in the case of an employee who has
 15 furnished documentary proof of the employee's wages, it shall issue an order adjusting
 16 the weekly rate of compensation to a rate equal to the employee's spendable weekly
 17 wages. If the employer can verify that the employee's spendable weekly wages are
 18 less than 22 percent of the maximum compensation rate [\$154], the employer may
 19 adjust the weekly rate of compensation to a rate equal to the employee's spendable
 20 weekly wages without an order of the board. If the employee's spendable weekly
 21 wages are greater than 22 percent of the maximum compensation rate [\$154], but
 22 80 percent of the employee's spendable weekly wages is less than 22 percent of the
 23 maximum compensation rate [\$154], the employee's weekly rate of compensation
 24 shall be 22 percent of the maximum compensation rate [\$154]. Prior payments
 25 made in excess of the adjusted rate shall be deducted from the unpaid compensation
 26 in the manner the board determines. In any case, the employer shall pay timely
 27 compensation. In this subsection, "maximum compensation rate" means 120
 28 percent of the average weekly wage, calculated under (d) of this section,
 29 applicable on the date of injury of the employee.

30 * Sec. 16. AS 23.30.175 is amended by adding a new subsection to read:

31 (d) By December 1 of each year, the commissioner shall determine the average

1 weekly wage in this state by dividing the average annual wage in this state for the
 2 preceding calendar year by 52. The resulting figure is the average weekly wage in this
 3 state applicable for the period beginning January 1 and ending December 31 of the
 4 following calendar year. The average annual wage calculation required under this
 5 subsection shall include the wages of all employees in the state, both public and
 6 private, who are covered by this chapter.

7 * Sec. 17. AS 23.30.190(a) is amended to read:

8 (a) In case of impairment partial in character but permanent in quality, and not
 9 resulting in permanent total disability, the compensation is \$177,000 [\$135,000]
 10 multiplied by the employee's percentage of permanent impairment of the whole person.
 11 The percentage of permanent impairment of the whole person is the percentage of
 12 impairment to the particular body part, system, or function converted to the percentage
 13 of impairment to the whole person as provided under (b) of this section. The
 14 compensation is payable in a single lump sum, except as otherwise provided in
 15 AS 23.30.041, but the compensation may not be discounted for any present value
 16 considerations.

17 * Sec. 18. AS 23.30.215(a) is amended to read:

18 (a) If the injury causes death, the compensation is known as a death benefit
 19 and is payable in the following amounts to or for the benefit of the following persons:

20 (1) reasonable and necessary funeral expenses not exceeding \$3,300
 21 [\$2,500];

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

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

25 (B) 50 [40] percent for the widow or widower with one child
 26 and 40 percent for the child;

27 (C) 30 [25] percent for the widow or widower with two or more
 28 children and 70 [55] percent divided equally among the children;

29 (D) 100 [80] percent for an only child when there is no widow
 30 or widower;

31 (E) 100 [80] percent, divided equally, if there are two or more

amend 3
 *189,662

1 children and no widow or widower;

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

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

11 * Sec. 19. AS 23.30.220(a) is amended to read:

12 (a) Computation of compensation under this chapter shall be on the basis of
13 an employee's spendable weekly wage at the time of injury. An employee's spendable
14 weekly wage is the employee's gross weekly earnings minus payroll tax deductions.
15 An employee's gross weekly earnings shall be calculated as follows:

16 (1) if at the time of injury the employee's earnings are calculated by
17 the week, the weekly amount is the employee's gross weekly earnings;

18 (2) if at the time of injury the employee's earnings are calculated by
19 the month, the employee's gross weekly earnings are the monthly earnings multiplied
20 by 12 and divided by 52;

21 (3) if at the time of injury the employee's earnings are calculated by
22 the year, the employee's gross weekly earnings are the yearly earnings divided by 52;

23 (4) if at the time of injury the

24 (A) employee's earnings are calculated by the day, hour, or by
25 the output of the employee, the employee's gross weekly earnings are the
26 employee's earnings most favorable to the employee computed by dividing by
27 13 the employee's earnings, [NOT] including overtime or premium pay, earned
28 during any period of 13 consecutive calendar weeks within the 52 weeks
29 immediately preceding the injury;

30 (B) employee has been employed for less than 13 calendar
31 weeks immediately preceding the injury, then, notwithstanding (1) - (3) of this

1 subsection and (A) of this paragraph, the employee's gross weekly earnings are
2 computed by determining the amount that the employee would have earned,
3 [NOT] including overtime or premium pay, had the employee been employed
4 by the employer for 13 calendar weeks immediately preceding the injury and
5 dividing this sum by 13;

6 (5) if at the time of injury the employee's earnings have not been fixed
7 or cannot be ascertained, the employee's earnings for the purpose of calculating
8 compensation are the usual wage for similar services when the services are rendered
9 by paid employees;

10 (6) if at the time of injury the employment is exclusively seasonal or
11 temporary, then, notwithstanding (1) - (5) of this subsection, the gross weekly earnings
12 are 1/50 [1/50th] of the total wages that the employee has earned from all occupations
13 during the 12 calendar months [YEAR] immediately preceding the injury;

14 (7) when the employee is working under concurrent contracts with two
15 or more employers, the employee's earnings from all employers is considered as if
16 earned from the employer liable for compensation;

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

21 (9) if the employee is injured while performing duties as a volunteer
22 ambulance attendant, volunteer police officer, or volunteer fire fighter, then,
23 notwithstanding (1) - (6) of this subsection, the gross weekly earnings for calculating
24 compensation shall be the minimum gross weekly earnings paid a full-time ambulance
25 attendant, police officer, or fire fighter employed in the political subdivision where the
26 injury occurred, or, if the political subdivision has no full-time ambulance attendants,
27 police officers, or fire fighters, at a reasonable figure previously set by the political
28 subdivision to make this determination, but in no case may the gross weekly earnings
29 for calculating compensation be less than the minimum wage computed on the basis
30 of 40 hours work per week;

31 (10) if an employee is entitled to compensation under AS 23.30.180

1 and the board determines that calculation of the employee's gross weekly earnings
2 under (1) - (7) of this subsection does not fairly reflect the employee's earnings during
3 the period of disability, the board shall determine gross weekly earnings by considering
4 the nature of the employee's work, work history, and resulting disability, but
5 compensation calculated under this paragraph may not exceed the employee's gross
6 weekly earnings at the time of injury.

7 * Sec. 20. AS 23.30 is amended by adding a new section to read:

8 **Sec. 23.30.280. Coverage for religious nonmedical health care services.**

9 Nothing in this chapter shall be construed to prevent an employee with an injury from
10 relying in good faith on religious nonmedical services for healing through prayer alone
11 or care through religious nonmedical nursing services provided by an individual, a
12 nursing facility, or a visiting nurse service without incurring a loss or reduction of
13 compensation or benefits due under this chapter. This section does not exempt an
14 employee from submitting to an examination by a physician or surgeon as required
15 under AS 23.30.095(e).

#4
Delete

16 * Sec. 21. The uncodified law of the State of Alaska is amended by adding a new section
17 to read:

18 **TRANSITION: REGULATIONS.** The agency affected by the changes made by this
19 Act may proceed to adopt regulations under AS 23.30.005 to implement the changes. The
20 regulations take effect under AS 44.62 (Administrative Procedure Act), but not before the
21 effective date of secs. 2 - 20 of this Act.

22 * Sec. 22. Section 21 of this Act takes effect immediately under AS 01.10.070(c).

23 * Sec. 23. Except as provided in sec. 22 of this Act, this Act takes effect July 1, 2000.

HB 419 Sectional analysis

Section 1 states the legislature's intent to provide quick, efficient, fair, and predictable benefits; its intent that the statute not be construed by the courts in any party's favor; and its intent to address the specific topics of sections 2-23.

Section 2 amends AS 23.30.041(g) to increase the deadline for the employee's choice of a rehabilitation specialist from 10 to 15 days, but subjects the employee to the suspension of benefits for failure to give the employer timely notice of the choice of specialist.

Section 3 amends AS 23.30.041(h) to require reemployment plans to require continuous participation by employees and to maximize the use of the employees' transferable skills. It also permits an employee's medical stability to be determined by a Board-appointed physician or a physician retained by the employer, as well as by a treating physician.

Section 4 amends AS 23.30.041(k) to change reemployment "wages" into a form of "compensation", allowing certain offsets and reductions. It increases the weekly compensation rate under this section from 60% to 70% of employee's spendable weekly wage. It also provides an offset of compensation when compensation and wages exceed 80% of the employee's spendable weekly wage. It suspends compensation when a lump-sum permanent partial impairment (PPI) payment has been made, until that PPI amount would have been paid out as weekly compensation benefits. It also bars entitlement to permanent total disability (PTD) benefits while an employee is engaged in a reemployment process, changing the law as interpreted by the Alaska Supreme Court decision in *Meek v. Unocal Corp.*, 914 P.2d. 1276 (Alaska 1996).

Section 5 amends AS 23.30.041(l) to increase the maximum cost of a reemployment plan from \$10,000 to \$13,300.

Section 6 amends AS 23.30.041(n) to permit an employer to suspend benefits if an employee fails to give the employer timely notice of the employee's choice of rehabilitation specialist under AS 23.30.041(g).

Section 7 adds a new subsection, AS 23.30.041(r), to permit an employee to waive reemployment benefits at any time, without having to go through a reemployment evaluation, and without having to go through a formal Compromise and Release (C&R) agreement. It removes the requirement for Board approval of the waiver under AS 23.30.012, and removes the Board's ability to modify the waiver under AS 23.30.130.

Section 8 amends AS 23.30.095(t) to require the usual, customary, and reasonable medical fee schedule to be updated at least once a year.

Section 9 adds new subsections, AS 23.30.095(l)&(m), increasing the deadline for the payment of medical bills from 14 to 30 days in conformity with the national industry standard. This changes the law resulting from the Alaska Supreme Court decision in *Childs v. Copper Valley Electrical Association*, 860 P.2d 1184 (Alaska 1993).

Section 10 amends AS 23.30.105(a) to place a two-year time limit on the employee's right to request reemployment benefits.

Section 11 amends AS 23.30.107(a) to require requests for medical releases to be in writing, and to give notice of the employee's right to request a protective order from the Board.

Section 12 adds a new section, AS 23.30.108, requiring decisions concerning medical releases to be made in prehearing conferences by a Board designee, with a limited right of appeal to the Board for abuse of discretion.

Section 13 adds a new subsection, AS 23.30.110(h), which restarts a two-year statute of limitations on an employee's right to pursue a claim, whenever the Board continues or cancels a hearing. This changes the law from the Alaska Supreme Court decisions in *Tipton v. ARCO Alaska, Inc.*, 922 P.2d 910 (Alaska 1996) and *Huston v. Coho Electric*, 923 P. 2d 818 (Alaska 1996).

Section 14 adds a new subsection, AS 23.30.155(p), requiring interest on late benefits to be paid at the rate used by the Alaska courts.

Section 15 amends AS 23.30.175(a), tying future maximum and minimum weekly compensation rates to the Alaska average weekly wage rate of the year preceding the injury. The maximum compensation rate would be 122% of the Alaska average weekly wage rate, and the minimum compensation rate would be 22% of the maximum compensation rate.

Section 16 adds a new section, AS 23.30.175(d), requiring the annual determination of Alaska average weekly wage.

Section 17 amends AS 23.30.190(a) to increase the whole-person value for permanent partial impairment ratings from \$135,000 to \$177,000.

Section 18 amends AS 23.30.215(a) to increase funeral expense benefits from \$2,500 to \$3,300. It also increases the combined benefits for a widow/widower with one child from 80% to 90% of the spendable weekly wage. It increases the combined benefits of a widow/widower with two children from 80% to 100% of the spendable weekly wage. It increases the benefits of orphans from 80% to 100% of the spendable weekly wage.

Section 19 amends AS 23.30.220(a) to incorporate overtime wages into the calculation of an employee's gross weekly wages. It bases the calculation of seasonal and temporary workers' gross weekly wages on earnings from the 12 months immediately preceding the injury, instead of from the previous calendar year.

Section 20 makes sections 2 & 6-13 retroactive in application, and sections 3-5 & 14-19 effective prospectively from July 1, 2000.

Section 21 authorizes the department to adopt regulations and/or emergency regulations necessary to carry out the changes in the statute.

Section 22 permits the department to begin adopting necessary regulations immediately.

Section 23 provides an effective date of July 1, 2000.

HB 419
Side-by-Side Analysis

SB 278 Section & Alaska Statute Citation	Proposed Law	Present Law
Section 1	Quick, efficient, fair, etc.	The same.
Section 2 amends AS 23.30.041(g)	The employee's choice of a rehabilitation specialist must be made within 15 days. Allows suspension of benefits for failure to give the employer timely notice of the choice of specialist.	The employee must notify the employer of a choice of a rehabilitation specialist within 10 days. There is no penalty for late notification.
Section 3 amends AS 23.30.041(h)	Reemployment plans require continuous participation by employees Plans must maximize use of the employees' transferable skills. An employee's medical stability to be determined by a Board- appointed physician or a physician retained by the employer, as well as by a treating physician.	Reemployment plans require a defined schedule, not continuous participation. An employee's technical skills are simply one element of the plan. An employee's medical stability is to be determined by a treating physician.
Section 4 amends AS 23.30.041(k)	Provides benefits in this section be called "compensation." Increases the weekly benefit rate to 70% of employee's spendable weekly wage. Allows an offset or reduction of compensation when compensation and wages exceed 80% of the spendable weekly wage.	Benefits under this section are termed "wages." Weekly compensation under this section is 60% of the employee's spendable weekly wage. Benefits are not reduced for wages earned for work in a reemployment plan.

It suspends compensation when a lump-sum permanent partial impairment (PPI) payment has been made, until that PPI amount would have been paid out as weekly compensation benefits.

Uncertain if a PPI lump-sum paid before rehabilitation may be offset against benefits received during the reemployment plan.

Bars entitlement to permanent total disability (PTD) benefits while an employee is engaged in the reemployment process, changing the law as interpreted by the Alaska Supreme Court decision in Meek v. Unocal.

An employee may be entitled to PTD benefits while an employee is engaged in the reemployment process, when no compensation is provided.

Section 5
amends AS 23.30.041(l)

Increases the maximum cost of a reemployment plan to \$13,300.

The maximum cost of a reemployment plan is \$10,000.

Section 6
amends AS 23.30.041(n)

Permits an employer to suspend benefits if an employee fails to give the employer timely notice of the employee's choice of rehabilitation specialist under AS 23.30.041(g).

There is no penalty if an employee fails to give timely notice to the employer, concerning the employee's choice of rehabilitation specialist under AS 23.30.041(g).

Section 7
adds a new subsection,
AS 23.30.041(r)

Permits an employee to waive reemployment benefits at any time, without having to go through a formal Compromise and Release (C&R) agreement.

An employee's entitlement to reemployment benefits may not be forfeited or waived without Board approval of a formal C&R agreement.

Section 8
amends AS 23.30.095(f)

Requires the usual, customary and reasonable (UCR) medical fee schedule to be updated at least once a year.

The UCR medical fee schedule has no specific updating requirement.

Section 9
adds new subsections,
AS 23.30.095(l)&(m)

Delays the deadline for the payment of medical bills to 30 days. This changes the law resulting from the Alaska Supreme Court decision in Childs v. Copper Valley Electrical Association.

The Alaska Supreme Court decided in Childs that payment on medical bills is due within 14 days under AS 23.30.155.

Section 10
amends AS 23.30.105(a)

Places a two-year time limit on the employee's right to request reemployment benefits.

AS 23.30.105(a) does not list reemployment benefits under the provision placing a two-year time limit on requests for benefits.

Section 11
amends AS 23.30.107(a)

Requires all requests for medical releases to be in writing, and to give notice of the employee's right to request a protective order from the Board.

Does not require requests for medical releases to be in any particular form; and does not require the employer to give notice of the employee's right to request a protective order from the Board.

Section 12
adds a new section,
AS 23.30.108

Requires decisions concerning medical releases to be made in prehearing conferences by a Board designee, with a limited right of appeal to the Board for abuse of discretion.

Decisions concerning medical releases may be made in prehearing conferences or by the Board in a hearing. The Board reviews prehearing release decisions under a "preponderance of the evidence" standard.

Section 13
adds a new subsection,
AS 23.30.110(h)

Restarts a two-year statute of limitations on an employee's right to pursue a claim, whenever the Board continues or cancels a hearing. This changes the law from the Alaska Supreme Court decisions in Tipton v. ARCO and Huston v. Coho.

The Alaska Supreme Court decided in the Tipton and Huston cases, that a request for a hearing completely stops the running of 110(c), the two-year statute of limitations on an employee's right to pursue a claim.

Section 14
adds a new subsection,
AS 23.30.155(p)

Requires interest on late benefits to be paid at the rate used by the Alaska courts (3% above the January 2d prime).

Interest on late benefits are paid at the rate of 10.5 % under A S 45.45.010.

Section 15 amends AS 23.30.175(a)	Ties future maximum and minimum weekly compensation rates to the Alaska average weekly wage rate of the year preceding the injury. The maximum compensation rate would be 122% of the Alaska average weekly wage rate, and the minimum compensation rate would be 22% of the maximum compensation rate.	Maximum weekly compensation rate is \$700 per week. Minimum compensation rate is \$154/\$110.
Section 16 adds a new section, AS 23.30.175(d)	Requires the annual determination of Alaska average weekly wage	N/A
Section 17 amends AS 23.30.190(a)	Increases the whole-person value for permanent partial impairment ratings to \$177,000.	The whole-person value for a permanent partial impairment rating is \$135,000.
Section 18 amends AS 23.30.215(a)	Increases funeral expense benefits to \$3,300.	Funeral expense benefits are \$2,500.
	It increases the combined benefits for a widow / widower with one child to 90% of the spendable weekly wage.	Combined benefits for a widow/widower with one child are 80% of the spendable weekly wage.
	It increases the combined , benefits of a widow/widower with two children to 100% of the spendable weekly wage.	The combined benefits of a widow/widower with two children are 80% of the spendable weekly wage.
	It increases the benefits of orphans to 100% of the spendable weekly wage.	The benefits of orphans are 80% of the spendable weekly wage.
Section 19 amends AS 23.30.220(a)	Incorporates overtime wages into the calculation of an employee's gross weekly wages.	Overtime and premium pay are excluded from the calculation of an employee's gross weekly wages.

It bases the calculation of seasonal and temporary workers' gross weekly wages on earnings from the 12 months immediately preceding the injury.

It bases the calculation of seasonal and temporary workers' gross weekly wages on earnings from the calendar year preceding the calendar year of injury.

ALASKA

LABOR-MANAGEMENT AD HOC COMMITTEE ON WORKERS' COMPENSATION

February 1, 2000

The Honorable Norman Rokeberg
Alaska State Legislature
State Capitol
Juneau, Alaska 99801-1182

Dear Representative Rokeberg:

The Alaska Labor-Management Ad Hoc Committee on Workers' Compensation is in its eighteenth 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 1988 and as well as continuing reform in 1995. Those measures have helped to stabilize the Workers' Compensation system for employers and employees .

The Ad Hoc Committee has been meeting again in an attempt to work through some issues related to workers' compensation. We have recently reached a resolution on several key items that form the basis of our proposed 2000 legislation. Our proposed legislation has had a preliminary review by the Division of Workers' Compensation. A summary of items in the bill is attached. Key elements of the bill include:

- Increases in basic benefits consistent with changes in wages. Future maximum and minimum weekly benefits will be tied to the average weekly wage.
- Increases to the maximum weekly benefit under the death benefit as the number of dependents increase.
- Expands wage calculations to include overtime wages.
- Increases the Vocational Rehabilitation Stipend from 60% to 70 % of the average weekly spendable wage.
- Enhances the Vocational Rehabilitation process by making the process more timely, avoiding duplication of benefits and setting a reasonable maximum time period to obtain benefits.

Representative Norman Rokeberg
February 1, 2000
Page 2

- Defines process and time frame in which to obtain reasonable medical releases.
- Clarifies a reasonable time frame in which a claim can be brought forward.

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. Should you have any questions or require further information, do not hesitate to contact us.

Sincerely yours,

Willem Van Hemert
CRW Engineering Group

Sally Ann Carey
Natchiq, inc

Judy Peterson & Mary Shields
Northwest Technical Services

John Garrett
Alyeska Pipeline

Kevin Dougherty
District Council of Laborers

Jim Robison
Former Commissioner of Labor

John Giuchici
International Brotherhood of Electrical Workers

David Ford
Alaska Ironworkers

cc: Governor Tony Knowles
Senator Jerry Mackie
Senator Tim Kelly
Representative Andrew Halcro

LEGISLATIVE AGENDA – YEAR 2000

MANAGEMENT

- Annual Updates – Medical Fee Schedule (09.30.070(a))
- Change Interest Rate to State Specified (095f)
- Medical Bill Payment Within 30 Days (095c)
- Clarification of Time Limitation on Bringing a Claim (110c)
- Reasonable Medical Releases (107a)
- Vocational Rehabilitation
 - Worker Right to Waive (041c)
 - Notice to Accept Re-Employment Benefit (041g)
 - Failure constitutes noncooperation (041n)
 - Transferable Skills (041h(2) / 041l)
 - Medical Stability by an Examining Physician (041h 7)
 - Wages Reduce Benefits Above TTD Limits (041K)
 - Credit for PPI if paid out lump sum (041k)
 - No PTD Benefits During Rehabilitation (041k)
 - 2- year limitation on requesting Voc Rehab (105a)

LABOR

- Increase PPI - \$177,000 (190a)
- Increase Death Benefit to 100% (215a)
 - Increase Funeral Expense - \$3,300
- Wage Calculations to Include Overtime (220a)
- Establish Weekly Max at 120% of Average Weekly Wage (175a)
- Establish Weekly Min at 22% of Weekly Max (175a)
- Increase Rehabilitation Stipend to 70% (041k)
- Increase Vocational Rehab to \$13,300 (041l)
- Clarify Seasonal / Temporary Worker (220a)
 - Change to Model Act – Last 12 Months

Paul



Carolyn Pearl, CPCU
State Relations Executive

(907) 465-2797
Via Facsimile

February 2, 2000

Paul Grossi
Director, Workers Compensation Division
State of Alaska
Department of Labor
P.O. Box 25512
Juneau, AK 99802-5512

Re: Proposed Alaska Benefit Changes

Dear Paul:

As you requested, NCCI has reviewed the impact of the workers compensation benefits changes under consideration in Alaska.

Based on the most recent information on the type, distribution and severity of injuries, and the nature of the proposed changes, we have determined that the impact of these changes on overall costs would be between 7.7% and 8.9%.

A number of the proposed changes are difficult to quantify, but could have an impact over time. The ultimate cost will depend on several factors including how any law change is enacted, interpreted and utilized.

I hope this information is helpful, however, please contact me if you have any questions, need additional information or if this proposal becomes legislation.

Sincerely,

Carolyn Pearl, CPCU
State Relations Executive

DOL-W.C.
JUNEAU FEB 08 2000