

SB

130

SENATE COMMITTEE REPORT

DATE: 4/1/05

FURTHER: Finance

DATE TURNED
IN TO OFFICE: _____

Judiciary Committee considered

SENATE BILL NO. 130

SB 130 WORKERS' COMPENSATION

"An Act relating to a special deposit for workers' compensation and employers' liability insurers; relating to assigned risk pools; relating to workers' compensation insurers; stating the intent of the legislature, and setting out limitations, concerning the interpretation, construction, and implementation of workers' compensation laws; relating to the Alaska Workers' Compensation Board; assigning certain Alaska Workers' Compensation Board functions to the division of workers' compensation in the Department of Labor and Workforce Development and to that department, and authorizing the board to delegate administrative and enforcement duties to the division; establishing a Workers' Compensation Appeals Commission; providing for workers' compensation hearing officers in workers' compensation proceedings; relating to workers' compensation medical benefits and to charges for and payment of fees for the medical benefits; relating to agreements that discharge workers' compensation liability; relating to workers' compensation awards; relating to reemployment benefits and job dislocation benefits; relating to coordination of workers' compensation and certain disability benefits; relating to division of workers' compensation records; relating to release of treatment records; relating to an employer's failure to insure and keep insured or provide security; providing for appeals from compensation orders; relating to workers' compensation proceedings; providing for supreme court jurisdiction of appeals from the Workers' Compensation Appeals Commission; providing for a maximum amount for the cost-of-living adjustment for workers' compensation benefits; relating to attorney fees; providing for the department to enter into contracts with nonprofit organizations to provide information services and legal representation to injured employees; providing for administrative penalties for employers uninsured or without adequate security for workers' compensation; relating to fraudulent acts or false or misleading statements in workers' compensation and penalties for the acts or statements; providing for members of a limited liability company to be included as an employee for purposes of workers' compensation; establishing a workers' compensation benefits guaranty fund; relating to the second injury fund; making conforming amendments; providing for a study and report by the medical services review committee, and providing for an effective date."

and recommends:

- be replaced with _____ CS _____ (_____)
- adopt previous _____ CS _____ (_____)
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to _____ Committee

CS Senate Bill:	
<input type="checkbox"/>	Same Title
<input type="checkbox"/>	New Title
SCS House Bill:	
<input type="checkbox"/>	Same Title
<input type="checkbox"/>	Technical Title Change
<input type="checkbox"/>	New Title w/ SCR # _____

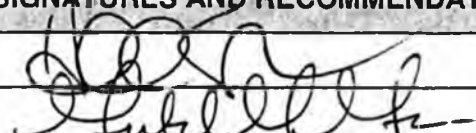
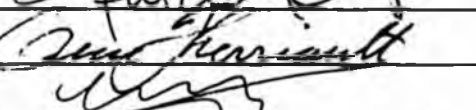
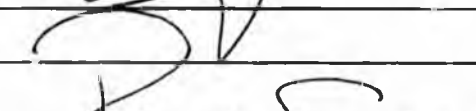
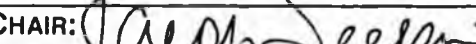
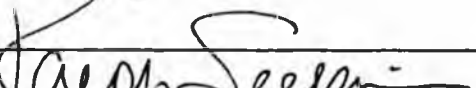
NEW FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	DO PASS	DO NOT PASS	NO REC	AMEND
			X	
			X	
			X	
			X	
CHAIR: 	✓			

AMENDMENT

#1
Passed or amended

OFFERED IN SENATE JUDICIARY
COMMITTEE

BY

TO: CSSB 130 (L&C)

1 * Sec. 54. The uncodified law of the State of Alaska is amended by adding a new section to
2 read:

3 "TASK FORCE ON WORKERS' COMPENSATION. (a) There is established
4 in the legislative branch the Task Force on Workers' Compensation to address the
5 improvement of the Alaska workers' compensation system, including

6 (1) a review of workers' compensation and insurance reform
7 measures throughout the United States and an assessment of the effects of those
8 reforms;

9 (2) an analysis and assessment of proposals for workers'
10 compensation and workers' compensation liability insurance reform in Alaska;

11 (3) a review of current Alaskan workers' compensation benefits
12 and costs and an assessment of needed changes;

13 (4) a review of compliance with current Alaska workers'
14 compensation laws;

15 (5) a consideration of other issues determined to be relevant by
16 members of the task force.

17 (b) The task force established under (a) of this section shall consist of ~~nine~~ ¹⁰
18 voting members. One member shall be a state senator appointed by the president
19 of the senate and one member shall be a representative appointed by the speaker of
20 the house of representatives. ~~Seven~~ ^{eight} members shall be appointed jointly by the
21 president of the senate and speaker of the house of representatives, as follows:

22 (1) Representative of ASMA

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- (2) a corp. entity w/ experience in workers comp. (2)
- (3) a rep. of the insurance industry
- (4) org. labor
- (5) unorg. labor
- (6) small bus.
- (7) large bus.

(c) The task force established under (a) of this section

- (1) may begin work immediately upon the appointment of its full voting membership and shall meet at least three times telephonically or in person;
- (2) shall hold public hearings and may perform research related to its work;
- (3) may meet in the interim and vote telephonically;
- (4) shall report its written findings and give a copy of proposed legislation and other recommendations to the legislature before December 1, 2005; and
- (5) is terminated on February 1, 2006.

AMENDMENT

Passed
2 as amended

OFFERED IN SENATE JUDICIARY
COMMITTEE

BY

TO: CSSB 130 (LRC)

1 Page 26, following line 23:

2 Insert the following new material:

3 "(35) "attending physician" means one of the following designated by the
4 employee under AS 23.30.095(a) or (b):

5 (A) a licensed medical doctor;

6 (B) a licensed doctor of osteopathy;

7 (C) a licensed dentist or dental surgeon;

8 (D) a licensed physician's assistant acting under supervision of a licensed
9 medical doctor or doctor of osteopathy;

10 (E) a licensed ~~advanced~~ nurse practitioner acting under supervision of a
11 licensed medical doctor or doctor of osteopathy; or,

12 (F) for a period of 30 days from the date of first visit following an injury
13 or for 12 visits, whichever first occurs, a licensed chiropractor;"

14

15 Page 26, line 24:

16 Delete "(35)"

17 Insert "(36)"

18

19 Page 26, line 26:

20 Delete "(36)"

21 Insert "(37)"

1

2 Page 26, line 28:

3 Delete "(37)"

4 Insert "(38)"

5

6 Page 26, line 30:

7 Delete "(38)"

8 Insert "(39)"

9

AMENDMENT #3

Passed

BY _____

In the SENATE JUDICIARY COMMITTEE

TO: CS SB 130 (L&C)

Page 15, Line 31, after "...medical treatment or services."

INSERT:

Treatment may not be denied based on American College of Occupational and Environmental Medicine Practice Guidelines if the treatment for the indication in question is not specifically addressed by the American College of Occupational and Environmental Medicine Practice Guidelines.

AMENDMENT

#4

Passed

BY _____

In the SENATE JUDICIARY COMMITTEE
TO: CS SB 130 (L&C)

Page 4, Delete Section 5

Page 6, Delete Section 11

Page 22, Delete Section 37

Page 27, Delete Section 46

Page 28, Delete Sections 50 and 54

Renumber all other sections accordingly

AMENDMENT

OFFERED IN SENATE JUDICIARY
COMMITTEE

TO: CSSB 130 (L&C)

BY

Passed

Taffler

#5

1 Page 26, following line 23:

2 Insert a new bill section to read:

3 ***Sec. 42.** AS 23.30.395(17) is amended to read:

4 (17) "injury" means accidental injury or death arising out of and in the course of
5 employment, and an occupational disease or infection which arises naturally out of the
6 employment or which naturally or unavoidably results from an accidental injury; "injury"
7 includes breakage or damage to eyeglasses, hearing aids, dentures, or any prosthetic
8 devices which function as part of the body and further includes an injury caused by the
9 wilful act of a third person directed against an employee because of the employment;
10 **"injury" does not include aggravation, acceleration or combination with a pre-**
11 **existing condition unless the employment is the major contributing cause of**
12 **disability or need for medical treatment;** "injury" does not include mental injury
13 caused by mental stress unless it is established that (A) the work stress was extraordinary
14 and unusual in comparison to pressures and tensions experienced by individuals in a
15 comparable work environment, and (B) the work stress was the predominant cause of the
16 mental injury; the amount of work stress shall be measured by actual events; a mental
17 injury is not considered to arise out of and in the course of employment if it results from a
18 disciplinary action, work evaluation, job transfer, layoff, demotion, termination, or
19 similar action, taken in good faith by the employer;"

20

21 Renumber the following bill sections accordingly.

A M E N D M E N T

Passed
#6

OFFERED IN SENATE JUDICIARY
COMMITTEE

BY

TO: CSSB 130 (L&C)

1 Page 15, following line 3:

2 Insert a new bill section to read:

3 ****Sec. 23.** AS 23.30.095(c) is amended to read:

4 (c) A claim for medical or surgical treatment, or treatment requiring continuing
5 and multiple treatments of a similar nature is not valid and enforceable against the
6 employer unless, within 14 days following treatment, the physician or health care
7 provider giving the treatment or the employee receiving it furnishes to the employer and
8 the board notice of the injury and treatment, preferably on a form prescribed by the
9 board. The board shall, however, excuse the failure to furnish notice within 14 days
10 when it finds it to be in the interest of justice to do so, and it may, upon application by a
11 party in interest, make an award for the reasonable value of the medical or surgical
12 treatment so obtained by the employee.

13 (1) When a claim is made for a course of treatment requiring continuing
14 and multiple treatments of a similar nature, in addition to the notice, the physician or
15 health care provider shall furnish a written treatment plan if the course of treatment will
16 require more frequent outpatient visits than the standard treatment frequency for the
17 nature and degree of the injury and the type of treatments. The treatment plan shall be
18 furnished to the employee and the employer within 14 days after treatment begins. The
19 treatment plan must include objectives, modalities, frequency of treatments, and reasons
20 for the frequency of treatments. If the treatment plan is not furnished as required under
21 this subsection, neither the employer nor the employee may be required to pay for

AMENDMENT to AMENDMENT ~~136~~



BY _____

In the SENATE JUDICIARY COMMITTEE

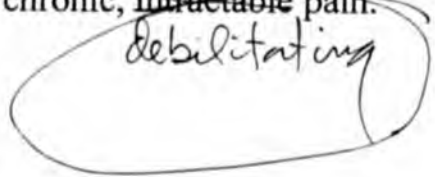
TO: CS SB 130 (L&C)

Page 2, Line 11, after "...treatments of a similar nature."

Insert:

"Limitations described in this subsection do not apply in the event that the physician certifies that the treatment is needed to treat chronic, ~~intractable~~ pain."

debilitating



1 treatments that exceed the frequency standard. The board shall adopt regulations
2 establishing standards for frequency of treatment.

3 (2) Notwithstanding subsection (a) of this section, a claim for
4 palliative care or treatment provided after the employee's condition is medically
5 stable is not valid and enforceable against the employer unless the employee's
6 attending physician certifies that the palliative care or treatment is required to
7 enable the employee to continue in the employee's employment at the time of
8 treatment or to enable the employee to continue to participate in an agreed or
9 approved reemployment plan. Palliative care or treatment is also subject to the
10 requirements of subsection (1) of this section if the palliative care or treatment
11 involves continuing and multiple treatments of a similar nature."

12
13 Remember the following bill sections accordingly.
14

24-GS1112V.1
Craver
4/7/05

AMENDMENT

#7

OFFERED IN THE SENATE
TO: CSSB 130(L&C)

BY SENATOR FRENCH

1 Page 11, line 8, following "AS 23.30.130":

2 Insert ":

3 (4) the administrator may not accept an election to accept a job
4 reallocation benefit by an employee who is not represented by an attorney"

*was not sign which
unapropriately notes the benefit
is being awarded.*

24-GS1112G.2
Craver
4/7/05

AMENDMENT

#8
Failed
BY SENATOR FRENCH

OFFERED IN THE SENATE
TO: CSSB 130(L&C)

- 1 Page 12, line 18, following "AS 23.30.130.":
- 2 Insert "The division may not accept a wavier executed by an employee who is not
- 3 represented by an attorney before the board's review and approval of the employee's
- 4 wavier."

just who makes the form

AMENDMENT

#9 tabled
Passed

OFFERED IN SENATE JUDICIARY
COMMITTEE

BY

TO: CSSB 130 (L&C)

1 Page 23, line 6, following "this chapter":

2 Insert ", or that a provider has received a payment,"

3

4 Page 25, line 21:

5 Delete "AS 23.30.250"

6 Insert "AS 23.30.250(a)"

7

8 Page 25, line 22:

9 Delete "Sec. 23.30.250. Penalties for fraudulent or misleading acts."

10

11 Page 26, lines 3 - 14:

12 Delete all material.

13

14 Page 26, lines 15 - 17:

15 Delete all material and insert:

16 **** Sec. 40.** AS 23.30.250(b) is repealed and reenacted to read:

17 (b) To the extent allowed by law, in a civil action under (a) of this section, an
18 award of damages by a court or jury may include compensatory and punitive damages,
19 subject to AS 09.17. Attorneys fees may be awarded to a prevailing party as allowed
20 by law."

allow compensatory
but not punitive
damages

#

Pending #10 Based

*Sec. 17. AS 23.30.041(k) is amended to read:

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

AMENDMENT

#11

BY SENATOR GUESS

11-A adopted

OFFERED IN THE SENATE
TO: CSSB 130(I & C)

1 Page 10, line 8:

2 Delete "15"

3 Insert "30 [15]"

5 Page 11, line 7, following "elected";:

6 Insert "except as provided in (4) of this subsection,"

8 Page 11, line 8, following "AS 23.30.130";:

9 Insert ";

10 (4) an employee who elects to accept a job dislocation benefit under (2) of
11 this subsection may revoke that election if the employee

12 (A) notifies the administrator in writing within one year after the
13 receipt of the job dislocation benefit under (2) of this subsection, that the
14 employee chooses reemployment benefits; and

15 (B) refunds the entire job dislocation benefit received, without
16 interest"

18 Page 11, following line 19:

19 Insert a new bill section to read:

20 "** Sec. 18. AS 23.30.041(n) is amended to read:

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

11-b failed

- 1 (1) unreasonable failure to
 2 (A) keep appointments;
 3 (B) maintain passing grades;
 4 (C) attend designated programs;
 5 (D) maintain contact with the rehabilitation specialist;
 6 (E) cooperate with the rehabilitation specialist in developing a
 7 reemployment plan and participating in activities relating to reemployability on
 8 a full-time basis;
 9 (F) comply with the employee's responsibilities outlined in the
 10 reemployment plan; or
 11 (G) participate in any planned reemployment activity as
 12 determined by the administrator; or
 13 (2) failure to give written notice to the employer of the employee's
 14 choice of rehabilitation specialists within 30 [15] days after receiving notice of
 15 eligibility for benefits from the administrator as required by (g) of this section."
 16

17 Renumber the following bill sections accordingly.

18

19 Page 27, line 11:

20 Delete "sec. 30"

21 Insert "sec. 31"

22

23 Page 27, line 12:

24 Delete "sec. 30"

25 Insert "sec. 31"

26

27 Page 28, line 10:

28 Delete "sec. 23"

29 Insert "sec. 24"

30

31 Page 28, line 14:

- 1 Delete "Section 49"
- 2 Insert "Section 50"
- 3
- 4 Page 28, line 15:
 - 5 Delete "30, and 51"
 - 6 Insert "31, and 52"
 - 7
- 8 Page 28, line 16:
 - 9 Delete "37, 46, and 50"
 - 10 Insert "38, 47, and 51"
 - 11
- 12 Page 28, line 21:
 - 13 Delete "52 - 54"
 - 14 Insert "53 - 55"



FROM THE DESK OF SENATOR JOHNNY ELLIS

MEMORANDUM

To: Senator Ralph Seekins
From: Senator Johnny Ellis, Senate Minority Leader
Date: 4/7/2005
Re: Conceptual Amendment to SB 130

A handwritten signature, likely of Senator Johnny Ellis, written in dark ink.

Senator Seekins,

Here is a copy of the conceptual amendment that was adopted in Senate Labor and Commerce on March 31, 2005. The goal of the amendment is to prevent conflicts of interest with rehabilitation specialists who have been working on behalf of the insurance company on a particular claim from being selected or assigned to write the vocational plan for the same claimant.

Because the bill drafter is slammed with amendments and bills, she can not offer a written legal opinion. However, she told my staff this amendment does not disqualify any company or entity. The amendment allows for a new rehabilitation specialist to be picked if there is a conflict of interest with the current specialist. She says the last 4 words of the amendment address that concern.

Thank you for considering this conceptual amendment.

Cc: Sen. Gretchen Guess
Sen. Hollis French

AMENDMENT

#12
passed

OFFERED IN THE SENATE
TO (SSB 130(L&C))

- 1 Page 9, line 19, following "evaluation.":
- 2 Insert "If the company, firm, or other entity that employs a rehabilitation specialist
- 3 selected by the administrator to perform an eligibility evaluation under this subsection is
- 4 performing any other work on the same workers' compensation claim involving the injured
- 5 employee, the administrator shall select a different rehabilitation specialist."

AMENDMENT A

#13

BY

Legal

OFFERED IN SENATE JUDICIARY
COMMITTEE

TO: CSSB 130 (LLC)

- 1 Page 15
- 2 Delete Section 24 lines 10 through 31;
- 3 Page 16
- 4 Delete Section 24 lines 1 through 7; and
- 5 Page 17
- 6 Delete Section 25 lines 1 through 27 .

#14

AMENDMENT B

**OFFERED IN SENATE JUDICIARY
COMMITTEE**

BY

TO: CSSB 130 (L&C)

- 1 Page 16, line 15:
- 2 Is amended to read:
- 3 " ... schedule specified by the board in its published bulletin ^{*was effect*} ~~dated~~ December, 1~~5~~ [2003]
- 4 2004; or..."

AMENDMENT C

**OFFERED IN SENATE JUDICIARY
COMMITTEE**

BY

TO: CSSB 130 (L&C)

#15
Amend
report to
legislators

- 1 Page 15
- 2 Delete Section 24, subsection (o), lines 18 through 31
- 3 Page 16
- 4 Delete Section 24, subsection (p), lines 1 through 7; and
- 5 Page 15
- 6 Amend line 9 to read:
- 7 "... this chapter. The medical services review committee shall also study and make a
- 8 recommendation as to the use of guidelines set out in the American College of Occupational and
- 9 Environmental Medicine's Practice Guidelines or other guidelines that it may find appropriate
- 10 and;"
- 11 Page 28 Section 54
- 12 Insert a new subsection to read
- 13 "(5) a review and to present a recommendation as to the use of guidelines set out in the
- 14 American College of Occupational and Environmental Medicine's Practice Guidelines or other
- 15 guidelines that it may find appropriate;"
- 16 Remember the following subsections accordingly

AMENDMENT D

#16

OFFERED IN SENATE JUDICIARY
COMMITTEE

BY

- 1 Sec 23.30.095. Preferred drug list: limitation of drug coverage. (n) The department shall
 2 adopt a preferred drug list by adoption of a regulation. The regulations must include
 3 (1) standards for placing or not placing a drug on the preferred drug list;
 4 (2) an opportunity for public comment before the department places or
 5 determines not to place a drug on the preferred drug list;
 6 (3) an appeal process for a person who is affected by a decision of the
 7 department to place or not to place a drug on the preferred drug list; and
 8 (4) a provision under which the department will approve coverage of a drug
 9 that is not on a preferred drug list without requiring additional medical justification if a
 10 physician documents on the prescription that the drug as prescribed is medically
 11 necessary for the patient as being the most effective drug available for the patient's
 12 condition by writing on the prescription the phrase "dispense as written," "medically
 13 necessary," or other wording with similar import.
 14 (o) Subject to AS 36.30 (State Procurement Code), the department may contract
 15 for the services necessary to assist the department in developing a preferred drug list or
 16 determining whether coverage for a drug should be limited.
 17 (p) The commissioner shall appoint a Prescription Drug Review Advisory
 18 Committee consisting of practitioners who treat injured workers of at least two members
 19 who are licensed pharmacists under AS 08.80, at least two members who are licensed to
 20 practice medicine under AS 08.64, at least two members who are dentists licensed under
 21 AS 08.36 at least two advanced nurse practitioners licensed under AS 08. ; and at least
 22 two Physician Assistants licensed under AS 08. .
 23 (1) conducting public meetings on developing a preferred drug list or
 24 limiting coverage for a drug;
 25 (2) assisting the department in setting standards in regulations for the review
 26 and selection of drugs for a referred drug list;
 27 (3) reviewing each drug and making recommendations to the department as
 28 to whether the drug should be on a preferred drug list or subject to limitation of coverage
 29 under the standards adopted under (2) of this subsection.
 30 (d) A committee member appointed under (p) of this section serves without
 31 compensation but is entitled to per diem and travel expenses authorized for boards and
 32 commissions under AS 39.20.180. The committee shall select a chair from among its
 33 membership who may be removed from the position as chair only by a majority vote of
 34 the full committee.
 35 (q) In this section.
 36 (1) "drug" means a prescription drug;
 37 (2) "preferred drug list" means a list of drugs
 38 (A) that comprise a restrictive formulary;
 39 (B) for which the department will not require a prior
 40 or retroactive prescription approval process;

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- (C) for which the department will not require medical justification by the prescriber as a condition of coverage under this chapter before the drugs may be dispensed to a recipient of assistance under this chapter; or
- (D) for which the department will not establish other similar restrictions for coverage under this chapter

Renumber the following sections accordingly

24-GS111210.3
Craver
4/7/05

AMENDMENT

#17
Adopted

BY SENATOR FRENCH

OFFERED IN THE SENATE
TO: CSSB 130(L&C)

- 1 Page 28, line 12:
- 2 Delete "March 1, 2007"
- 3 Insert "the first week of the First Regular Session of the Twenty-Fifth Alaska State
- 4 Legislature"
- 5 Following "provide to the":
- 6 Insert "legislature and the"

CS FOR SENATE BILL NO. 130(L&C)
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FOURTH LEGISLATURE - FIRST SESSION

BY THE SENATE LABOR AND COMMERCE COMMITTEE

Offered: 4/1/05

Referred: Judiciary, Finance

Sponsor(s): SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

A BILL
FOR AN ACT ENTITLED

1 "An Act relating to a special deposit for workers' compensation and employers' liability
2 insurers; relating to assigned risk pools; relating to workers' compensation insurers;
3 stating the intent of the legislature, and setting out limitations, concerning the
4 interpretation, construction, and implementation of workers' compensation laws;
5 relating to the Alaska Workers' Compensation Board; assigning certain Alaska
6 Workers' Compensation Board functions to the division of workers' compensation in the
7 Department of Labor and Workforce Development and to that department, and
8 authorizing the board to delegate administrative and enforcement duties to the division;
9 providing for workers' compensation hearing officers in workers' compensation
10 proceedings; relating to workers' compensation medical benefits and to charges for and
11 payment of fees for the medical benefits; relating to agreements that discharge workers'
12 compensation liability; relating to workers' compensation awards; relating to

1 reemployment benefits and job dislocation benefits; relating to coordination of workers'
 2 compensation and certain disability benefits; relating to division of workers'
 3 compensation records; relating to release of treatment records; relating to an employer's
 4 failure to insure and keep insured or provide security; relating to workers'
 5 compensation proceedings; providing for a maximum amount for the cost-of-living
 6 adjustment for workers' compensation benefits; relating to attorney fees with respect to
 7 workers' compensation; providing for the department to enter into contracts with
 8 nonprofit organizations to provide information services and legal representation to
 9 injured employees; providing for administrative penalties for employers uninsured or
 10 without adequate security for workers' compensation; relating to fraudulent acts or
 11 false or misleading statements in workers' compensation and penalties for the acts or
 12 statements; providing for members of a limited liability company to be included as an
 13 employee for purposes of workers' compensation; establishing a workers' compensation
 14 benefits guaranty fund; relating to the second injury fund; making conforming
 15 amendments; providing for a study and report by the medical services review
 16 committee; and providing for an effective date "

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

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

20 **LEGISLATIVE INTENT.** It is the intent of the legislature by secs. 2 - 4 of this Act

21 (1) to reform the workers' compensation system in Alaska to ensure the
 22 continued payment of benefits in the event of an insurer insolvency; and

23 (2) to reduce the overall costs of workers' compensation premiums to
 24 employers.

25 * Sec. 2. AS 21.09.090 is amended by adding new subsections to read:

(c) In addition to and separate from the deposit required under (b) of this section, an insurer that is authorized to transact workers' compensation and employer's liability insurance as defined in AS 21.12.070(a)(3) shall deposit in this state, through the director, for the protection of persons in this state covered by workers' compensation insurance issued by the insurer, an amount not less than the greater of

(1) \$100,000; or

(2) an amount equal to the sum of the following less any credit for reinsurance that the insurer may take under (f) of this section:

(A) the aggregate of the present value at four percent interest of the total determined and estimated future loss and loss expense payment upon each claim incurred under a policy written in this state more than three years before the date of computation; and

(B) for each of the three years before the date of computation, 65 percent of the earned premium for the year less each loss and loss expense payment made upon a claim incurred in the corresponding year, except that the amount for any year may not be less than the present value at four percent interest of the total determined and estimated future loss and loss expense payment upon each claim incurred under a policy written in this state that year.

(f) In calculating the deposit amount required under (c)(2) of this section, an insurer may take a credit for reinsurance if the reinsurer has deposited in trust in this state, through the director, an amount at least equal to the credit to be taken, and not less than the aggregate of all credits taken by each insurer under this subsection.

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* Sec. 3. AS 21.24.130 is amended by adding a new subsection to read:

(f) If an insurer is found to be insolvent by a proceeding under AS 21.78 or by a court of competent jurisdiction in another state, the director shall take control of the insurer's deposit made under AS 21.09.090(e). The deposit assets shall be released, at the discretion of the director, to the Alaska Insurance Guaranty Association (AS 21.80) to reimburse for a valid loss and loss expense claim payment made by the association that is within the purpose of the deposit. The director shall pay the remaining deposit assets to the receiver, conservator, rehabilitator, or liquidator of the insurer, or to another properly designated official who succeeds to the management

1 and control of the insurer's assets, after the director determines that all loss and loss
 2 expense liabilities have been paid that were incurred on the insurer's policies written in
 3 this state for which the deposit was required.

4 * Sec. 4. AS 21.39.155(a) is amended to read:

5 (a) The director may require insurers, except a reciprocal insurer formed [BY
 6 AND INSURING ONLY A GROUP OF MUNICIPALITIES OR NONPROFIT
 7 PUBLIC UTILITIES] under AS 21.75 [OR A RECIPROCAL INSURER FORMED
 8 UNDER AS 21.75 TO PROVIDE MARINE INSURANCE], as a condition of writing
 9 a line of insurance dealing with medical malpractice or workers' compensation, to
 10 participate in an assigned risk pool if the director finds that mandatory carrier
 11 participation is in the public interest.

12 * Sec. 5. AS 23.05.067(a) is amended to read:

13 (a) Each insurer providing workers' compensation insurance and each
 14 employer who is self-insured or uninsured for purposes of AS 23.30 in this state shall
 15 pay an annual service fee to the department for the administrative expenses of the state
 16 for workers' safety programs under AS 18.60 and the workers' compensation program
 17 under AS 23.30 as follows:

18 (1) for each employer,

19 (A) except as provided in (b) of this section, the service fee
 20 shall be paid each year to the department at the time that the annual report is
 21 required to be filed under AS 23.30.155(m) or (n); and

22 (B) the service fee is 2.9 percent of all payments reported to the
 23 Alaska Workers' Compensation Board under AS 23.30.155(m) or (n) [,
 24 EXCEPT SECOND INJURY FUND PAYMENTS]; and

25 (2) for each insurer, the director of the division of insurance shall,
 26 under (e) of this section, deposit from funds received from the insurer under
 27 AS 21.09.210 a service fee of 1.82 percent of the direct premium income for workers'
 28 compensation insurance received by the insurer during the year ending on the
 29 preceding December 31, subject to all the deductions specified in AS 21.09.210(b).

30 * Sec. 6. AS 23.30 is amended by adding a new section to read:

31 **Sec. 23.30.001. Intent of the legislature and construction of chapter. It is**

1 the intent of the legislature that

2 (1) this chapter be interpreted so as to ensure the quick, efficient, fair,
3 and predictable delivery of indemnity and medical benefit to injured workers at a
4 reasonable cost to the employers who are subject to the provisions of this chapter;

5 (2) workers' compensation cases shall be decided on their merits
6 except where otherwise provided by statute;

7 (3) this chapter may not be construed by the courts in favor of a party;

8 (4) hearings in workers' compensation cases shall be impartial and fair
9 to all parties and that all parties shall be afforded due process and an opportunity to be
10 heard and for their arguments and evidence to be fairly considered.

11 * Sec. 7. AS 23.30.005(a) is amended to read:

12 (a) The Alaska Workers' Compensation Board consists of a southern panel of
13 three members sitting for the first judicial district, a northern panel of three members
14 sitting for the second and fourth judicial districts, four southcentral panels of three
15 members each sitting for the third judicial district, and one panel of three members
16 that may sit in any judicial district. Each panel must include the commissioner of
17 labor and workforce development or a hearing officer designated to represent [THE
18 DESIGNATED REPRESENTATIVE OF] the commissioner, a representative of
19 industry, and a representative of labor. The latter two members of each panel shall be
20 appointed by the governor and are subject to confirmation by a majority of the
21 members of the legislature in joint session. The board shall by regulation provide
22 procedures to avoid conflicts and the appearance of impropriety in hearings.

23 * Sec. 8 AS 23.30.005(b) is amended to read:

24 (b) The commissioner shall act as chair [CHAIRMAN] and executive officer
25 of the board and chair [CHAIRMAN] of each panel. The commissioner may
26 designate a representative to act for the commissioner as chair and executive
27 officer of the board. The commissioner may designate hearing officers to serve as
28 chairs of panels for hearing claims [IF THE COMMISSIONER DESIGNATES A
29 REPRESENTATIVE TO ACT FOR THE COMMISSIONER, THE
30 REPRESENTATIVE SHALL SERVE IN THAT CAPACITY ON THE BOARD
31 AND ON EACH PANEL].

1 * Sec. 9. AS 23.30.005 is amended by adding new subsections to read:

2 (m) The department may, in its discretion, contract with a nonprofit
3 organization to provide information services and legal representation to employees in
4 proceedings under this chapter.

5 (n) The board may by regulation delegate authority to the director to assist the
6 board in administering and enforcing this chapter.

7 * Sec. 10. AS 23.30.012 is amended to read:

8 **Sec. 23.30.012. Agreements in regard to claims.** (a) At any time after
9 death, or after 30 days subsequent to the date of the injury, the employer and the
10 employee or the beneficiary or beneficiaries, as the case may be, have the right to
11 reach an agreement in regard to a claim for injury or death under this chapter [IN
12 ACCORDANCE WITH THE APPLICABLE SCHEDULE IN THIS CHAPTER], but
13 a memorandum of the agreement in a form prescribed by the director [BOARD] shall
14 be filed with the division [BOARD]. Otherwise, the agreement is void for any
15 purpose. Except as provided in (b) of this section, an agreement filed with the
16 division discharges the liability of the employer for the compensation,
17 notwithstanding the provisions of AS 23.30.130, 23.30.160, and 23.30.245, and is
18 enforceable as a compensation order.

19 (b) If the claimant or beneficiary is not represented by an attorney
20 licensed to practice in this state or the beneficiary is a minor or incompetent, the
21 agreement shall be reviewed by a panel of the board. If approved by the board, the
22 agreement is enforceable the same as an order or award of the board and discharges
23 the liability of the employer for the compensation notwithstanding the provisions of
24 AS 23.30.130, 23.30.160, and 23.30.245. The agreement shall be approved by the
25 board only when the terms conform to the provisions of this chapter, and, if it involves
26 or is likely to involve permanent disability, the board may require an impartial medical
27 examination and a hearing in order to determine whether or not to approve the
28 agreement. A [THE BOARD MAY APPROVE] lump-sum settlement may be
29 approved [SETTLEMENTS] when it appears to be to the best interest of the
30 employee or beneficiary or beneficiaries.

31 * Sec. 11. AS 23.30.015(e) is amended to read:

1 (e) An amount recovered by the employer under an assignment, whether by
2 action or compromise, shall be distributed as follows:

3 (1) the employer shall retain an amount equal to

4 (A) the expenses incurred by the employer with respect to the
5 action or compromise, including a reasonable attorney fee determined by the
6 board;

7 (B) the cost of all benefits actually furnished by the employer
8 under this chapter;

9 (C) all amounts paid as compensation [AND SECOND-
10 INJURY FUND] payments [,] and, if the employer is self-insured or
11 uninsured, all service fees paid under AS 23.05.067;

12 (D) the present value of all amounts payable later as
13 compensation, computed from a schedule prepared by the board, [;] and the
14 present value of the cost of all benefits to be furnished later under
15 AS 23.30.095 as estimated by the board; the amounts so computed and
16 estimated shall [TO] be retained by the employer as a trust fund to pay
17 compensation and the cost of benefits as they become due and to pay any
18 finally remaining excess sum to the person entitled to compensation or to the
19 representative; and

20 (2) the employer shall pay any excess to the person entitled to
21 compensation or to the representative of that person.

22 * Sec. 12. AS 23.30.041(a) is amended to read:

23 (a) The director [BOARD] shall select and employ a reemployment benefits
24 administrator. The director [BOARD] may authorize the administrator to select and
25 employ additional staff. The administrator is in the partially exempt service under
26 AS 39.25.120.

27 * Sec. 13. AS 23.30.041(b) is amended to read:

28 (b) The administrator shall

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

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

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

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

5 (5) submit to the department, on or before May 1 of each year, a report
6 of reemployment benefits provided under this section for the previous calendar year;
7 the report must include a general section, sections related to each rehabilitation
8 specialist employed under this section, and a statistical summary of all rehabilitation
9 cases, including

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

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

13 (C) a status report on all individuals requesting, waiving,
14 beginning, completing, or terminating a reemployment benefits program
15 including

16 (i) reasons for denial, waiver, suspension, or
17 termination;

18 (ii) dates of completion and [A] return to work; and

19 (iii) other information required by the director
20 [DATE];

21 (D) the cost of reemployment benefits;

22 (E) status reports of all individuals who successfully
23 completed a reemployment plan that includes

24 (i) the plan's occupational goal and whether the
25 individual obtained work after completion in the planned or
26 another occupation; and

27 (ii) the individual's employment status six months,
28 one year, and two years after reemployment plan completion;

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

31 (7) promote awareness among physicians, adjusters, injured workers,

1 employers, employees, attorneys, training providers, and rehabilitation specialists of
2 the reemployment program established in this subsection.

3 * Sec. 14. AS 23.30.041(c) is repealed and reenacted to read:

4 (c) An employee and an employer may stipulate to the employee's eligibility
5 for reemployment benefits at any time. If an employee suffers a compensable injury
6 and, as a result of the injury, the employee is totally unable, for 45 consecutive days,
7 to return to the employee's employment at the time of injury, the administrator shall
8 notify the employee of the employee's rights under this section within 14 days after the
9 45th day. If the employee is totally unable to return to the employee's employment for
10 60 consecutive days as a result of the injury, the employee or employer may request an
11 eligibility evaluation. The administrator may approve the request if the employee's
12 injury may permanently preclude the employee's return to the employee's occupation
13 at the time of the injury. If the employee is totally unable to return to the employee's
14 employment at the time of the injury for 90 consecutive days as a result of the injury,
15 the administrator shall, without a request, order an eligibility evaluation unless a
16 stipulation of eligibility was submitted. If the administrator approves a request or
17 orders an evaluation, the administrator shall, on a rotating and geographic basis, select
18 a rehabilitation specialist from the list maintained under (b)(6) of this section to
19 perform the eligibility evaluation.

20 * Sec. 15. AS 23.30.041(f) is amended to read:

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

22 (1) the employer offers employment within the employee's predicted
23 post-injury physical capacities at a wage equivalent to at least the state minimum wage
24 under AS 23.10.065 or 75 percent of the worker's gross hourly wages at the time of
25 injury, whichever is greater, and the employment prepares the employee to be
26 employable in other jobs that exist in the labor market;

27 (2) the employee previously declined the development of a
28 reemployment benefits plan under (g) of this section, received a job dislocation
29 benefit under (g)(2) of this section, and returned to work in the same or similar
30 occupation in terms of physical demands required of the employee at the time of
31 the previous injury;

1 **(3)** the employee has been previously rehabilitated in a former
 2 worker's compensation claim and returned to work in the same or similar occupation
 3 in terms of physical demands required of the employee at the time of the previous
 4 injury; or

5 **(4)** [(3)] at the time of medical stability, no permanent impairment is
 6 identified or expected.

7 * Sec. 16. AS 23.30.041(g) is amended to read:

8 (g) Within 15 days after the employee receives the administrator's notification
 9 of eligibility for benefits, an employee [WHO DESIRES TO USE THESE
 10 BENEFITS] shall give written notice under oath, on a form provided by the
 11 division, to the administrator and the employer of the employee's election to
 12 either use the reemployment benefits or to accept a job dislocation benefit under
 13 (2) of this subsection. The following apply to an election under this subsection:

14 **(1)** an employee who elects to use the reemployment benefits also
 15 shall notify the employer of the employee's selection of a rehabilitation specialist who
 16 shall provide a complete reemployment benefits plan; failure [. FAILURE] to give
 17 notice of selection of a rehabilitation specialist required by this paragraph
 18 [SUBSECTION] constitutes noncooperation under (n) of this section; if [. IF] the
 19 employer disagrees with the employee's choice of rehabilitation specialist to develop
 20 the plan and the disagreement cannot be resolved, then the administrator shall assign a
 21 rehabilitation specialist; the [. THE] employer and employee each have one right of
 22 refusal of a rehabilitation specialist;

23 **(2)** an employee who elects to accept a job dislocation benefit in
 24 place of reemployment benefits and who has been given a permanent partial
 25 impairment rating by a physician shall be paid

26 **(A)** \$5,000 if the employee's permanent partial impairment
 27 rating is greater than zero and less than 15 percent;

28 **(B)** \$8,000 if the employee's permanent partial impairment
 29 rating is 15 percent or greater but less than 30 percent; or

30 **(C)** \$13,500 if the employee's permanent partial
 31 impairment rating is 30 percent or greater;

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1 (3) the form provided by the division for election must specify that
 2 the employee understands the scope of the benefits and rights being waived by
 3 the election; the administrator shall serve a copy of the executed election form on
 4 the parties within 10 days after receiving the form from the employee; the
 5 election and waiver of unchosen benefits is effective upon service to the parties; a
 6 waiver and election effective under this subsection discharges the employer's
 7 liability for the benefits or rights under this section that were not elected; a
 8 waiver may not be modified under AS 23.30.130.

9 * Sec. 17. AS 23.30.041(j) is amended to read:

10 (j) The employee, rehabilitation specialist, and [THE] employer shall sign the
 11 reemployment benefits plan. If the employer and employee fail to agree on a
 12 reemployment plan, either party may submit a reemployment plan for approval to the
 13 administrator. The [; THE] administrator shall approve or deny a plan within 14 days
 14 after the plan is submitted. Within [; WITHIN] 10 days after [OF] the decision,
 15 either party may seek review of the decision by requesting a hearing under
 16 AS 23.30.110. The [; THE] board shall uphold the decision of the administrator
 17 unless evidence is submitted supporting an allegation of abuse of discretion on the part
 18 of the administrator. The [; THE] board shall render a decision within 30 days after
 19 completion of the hearing.

20 * Sec. 18. AS 23.30.041(p) is amended to read:

21 (p) When the United States Department of Labor publishes a new edition,
 22 revision, or replacement for the "Selected Characteristics of Occupations Defined in
 23 the Revised Dictionary of Occupational Titles" referred to in (e) of this section, the
 24 director [BOARD] shall, not later than 90 days after the last day of the month in
 25 which the new edition, revision, or replacement standard is published, hold an open
 26 meeting under AS 44.62.310 to select the proposed date on which the new edition,
 27 revision, or replacement standard will be implemented to make all eligibility
 28 determinations required under (e) of this section. The date selected by the
 29 department [BOARD] for implementing the new edition, revision, or replacement
 30 standard may not be later than 90 days after the last day of the month in which the new
 31 edition, revision, or replacement standard is published. After the meeting, the

1 director [BOARD] shall issue a public notice announcing the date selected by the
2 department. The requirements of AS 44.62.010 - 44.62.300 do not apply to the
3 selection or announcement of the date under this subsection.

4 * Sec. 19. AS 23.30.041(q) is amended to read:

5 (q) Notwithstanding AS 23.30.012, after medical stability has been determined
6 and a physician has predicted that the employee may have a permanent impairment
7 that may cause the employee to have permanent physical capacities that are less than
8 the physical demands of the employee's job at the time of injury, an employee may
9 waive any benefits or rights under this section, including an eligibility evaluation and
10 benefits related to a reemployment plan. To waive any benefits or rights under this
11 section, an employee must file a statement under oath with the division [BOARD] to
12 notify the parties of the waiver and to specify the scope of benefits or rights that the
13 employee seeks to waive. The statement must be on a form prescribed or approved by
14 the director [BOARD]. The division [BOARD] shall serve the notice of waiver on
15 all parties to the claim within 10 days after filing. The waiver is effective upon service
16 to the party. A waiver effective under this subsection discharges the liability of the
17 employer for the benefits or rights contained in this section. The waiver may not be
18 modified under AS 23.30.130.

19 * Sec. 20. AS 23.30.080(d) is amended to read:

20 (d) If an employer fails to insure or provide security as required by
21 AS 23.30.075, the board may issue a stop order at the request of the division
22 prohibiting the use of employee labor by the employer until the employer insures or
23 provides security as required by AS 23.30.075. The failure of an employer to file
24 evidence of compliance as required by AS 23.30.085 creates a rebuttable presumption
25 that the employer has failed to insure or provide security as required by AS 23.30.075.
26 If an employer fails to comply with a stop order issued under this section, the board
27 shall assess a civil penalty of \$1,000 a [PER] day. The employer may not obtain a
28 public contract with the state or a political subdivision of the state for three years
29 following the violation of the stop order.

30 * Sec. 21. AS 23.30.080 is amended by adding new subsections to read:

31 (e) If a representative of the department investigates an employer's failure to

1 file the evidence of compliance required by AS 23.30.085 and, after investigation,
2 there is substantial evidence that the employer failed to insure or provide security as
3 required by AS 23.30.075, the representative shall inform the employer. The
4 representative may request the director to issue a stop order prohibiting the use of
5 employee labor by the employer until the employer insures or provides security as
6 required by AS 23.30.075. The director may issue a stop order, without a hearing,
7 based on the representative's investigation. The director shall dissolve a stop order
8 issued under this subsection upon receipt of substantial evidence that the employer is
9 insured or has provided security as required by AS 23.30.075(a). If an employer fails
10 to comply with a stop order issued under this subsection, the division may petition the
11 board to assess a civil penalty. The board may assess a civil penalty of \$1,000 per
12 day. An employer who is assessed a penalty under this subsection may not obtain a
13 public contract with the state or a political subdivision of the state for the three years
14 following violation of the stop order.

15 (f) If an employer fails to insure or provide security as required by
16 AS 23.30.075, the division may petition the board to assess a civil penalty of up to
17 \$1,000 for each employee for each day an employee is employed while the employer
18 failed to insure or provide the security required by AS 23.30.075. The failure of an
19 employer to file evidence of compliance as required by AS 23.30.085 creates a
20 rebuttable presumption that the employer failed to insure or provide security as
21 required by AS 23.30.075.

22 (g) If an employer fails to pay a civil penalty order issued under (d), (e), or (f)
23 of this section within seven days after the date of service of the order upon the
24 employer, the director may declare the employer in default. The director shall file a
25 certified copy of the penalty order and declaration of default with the clerk of the
26 superior court. The court shall, upon the filing of the copy of the order and
27 declaration, enter judgment for the amount declared in default if it is in accordance
28 with law. Anytime after a declaration of default, the attorney general shall, when
29 requested to do so by the director, take appropriate action to ensure collection of the
30 defaulted payment. Review of the judgment may be had as provided under the Alaska
31 Rules of Civil Procedure. Final proceedings to execute the judgment may be had by

1 writ of execution.

2 * **Sec. 22.** AS 23.30 is amended by adding a new section to read:

3 **Sec. 23.30.082. Workers' compensation benefits guaranty fund.** (a) The
4 workers' compensation benefits guaranty fund is established in the general fund to
5 carry out the purposes of this section. The fund is composed of civil penalty payments
6 made by employers under AS 23.30.080, income earned on investment of the money
7 in the fund, money deposited in the fund by the department, and appropriations to the
8 fund. Money appropriated to the fund does not lapse. Amounts in the fund may be
9 appropriated for claims against the fund, for expenses directly related to fund
10 operations and claims, and for legal expenses.

11 (b) Every three months, the Department of Revenue shall provide the division
12 with a statement of the activities of, balances in, interest earned on, and interest
13 returned to the fund.

14 (c) Subject to the provisions of this section, an employee employed by an
15 employer who fails to meet the requirements of AS 23.30.075 and who fails to pay
16 compensation and benefits due to the employee under this chapter, may file a claim for
17 payment by the fund. In order to be eligible for payment, the claim form must be filed
18 within the same time, and in the same manner, as a workers' compensation claim. The
19 fund may assert the same defenses as an insured employer under this chapter.

20 (d) If the fund pays benefits to an employee under this section, the fund shall
21 be subrogated to all of the rights of the employee to the amount paid, and the
22 employee shall assign all right, title, and interest in that portion of the employee's
23 workers' compensation claim and any recovery under AS 23.30.015 to the fund.
24 Money collected by the division on the claim or recovery shall be deposited in the
25 fund.

26 (e) If the money deposited in the fund is insufficient at a given time to satisfy
27 a duly authorized claim against the fund, the fund shall, when sufficient money has
28 been deposited in the fund and appropriated, satisfy unpaid claims in the order in
29 which the claims were originally filed, without interest.

30 (f) The division may contract under AS 36.30 (State Procurement Code) with
31 a person for the person to adjust claims against the fund. The contract may cover one

1 or more claims.

2 (g) In this section, "fund" means the workers' compensation benefits guaranty
3 fund.

4 * Sec. 23. AS 23.30.095(j) is amended to read:

5 (j) The commissioner shall [BOARD MAY] appoint a medical services
6 review committee, or contract with an existing organization in the state or another
7 state, to assist and advise the department and the board in matters involving the
8 appropriateness, necessity, and cost of medical and related services provided under
9 this chapter.

#3

Attending
Physician

10 * Sec. 24. AS 23.30.095 is amended by adding new subsections to read:

11 (n) A generic drug product must be used when ~~dispensing~~ a drug product to an
12 employee under this chapter unless the prescribing physician provides justification in
13 writing explaining the medical necessity for the name-brand drug product. The
14 department, by regulation, shall establish a preferred drug list and a procedure for
15 establishing medical necessity to depart from the list and to use a name-brand drug
16 product. In this subsection, "generic drug product" has the meaning given the term
17 "equivalent drug product" in AS 08.80.480.

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attending

18 (o) For purposes of this chapter, the medical treatment or service that the
19 nature of the injury or the process of recovery requires under (a) of this section means
20 treatment or service that is within the recommended guidelines set out in the American
21 College of Occupational and Environmental Medicine's Occupational Medicine
22 Practice Guidelines in effect at the time the treatment or service is provided. The
23 American College of Occupational and Environmental Medicine's Occupational
24 Medicine Practice Guidelines shall be presumed correct on the issue of the nature,
25 extent, and scope of medical treatment or services. For an injury not covered by the
26 American College of Occupational and Environmental Medicine's Occupational
27 Medicine Practice Guidelines, the treatment or service shall be in accordance with
28 standards based on other scientific, evidence-based medical treatment guidelines
29 generally recognized by the national medical community and adopted by the board by
30 regulation, and those standards shall also be presumed correct on the issue of the
31 nature, extent, and scope of medical treatment or services.

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1 (p) The presumptions established under (o) of this section may be rebutted by
2 an employee's physician's written certification explaining

3 (1) the nature, extent, and scope of provided medical treatment or
4 service that is at variance with the applicable guidelines or standards; and

5 (2) the basis for the physician's conclusion that the provided medical
6 treatment or service at variance was reasonably required by the nature of the injury or
7 process of recovery.

8 * Sec. 25. AS 23.30 is amended by adding a new section to article 2 to read:

9 **Sec. 23.30.097. Fees for medical treatment and services; payment of bills.**

10 (a) All fees and other charges for medical treatment or service are subject to
11 regulation by the board consistent with this section. A fee or other charge for medical
12 treatment or service may not exceed the lesser of

13 (1) the usual, customary, and reasonable fees for the treatment or
14 service in the community in which it is rendered, not to exceed the fees in the fee
15 schedule specified by the board in its published bulletin dated December 16, 2003; or

16 (2) the payment made by the employer as negotiated by the provider
17 and the employer under (c) of this section.

18 (b) An employer, or group of employers, may establish a list of preferred
19 physicians and treatment service providers to provide medical, surgical, and other
20 attendance or treatment services to the employer's employees under this chapter;
21 however,

22 (1) the employee's right to chose the employee's attending physician
23 under AS 23.30.095(a) is not impaired;

24 (2) when given to the employee, the employer's preferred physician list
25 must clearly state that the list is voluntary, that the employee's choice is not restricted
26 to the list, that the employee's rights under this chapter are not impaired by choosing
27 an attending physician from the list, and that, if the employee chooses an attending
28 physician from the list, the employee may, in the manner provided in AS 23.30.095,
29 make one change of attending physician, from the list or otherwise; and

30 (3) establishment of a list of preferred physicians does not affect the
31 employer's choice of physician for an employer medical examination under

1 AS 23.30.095.

2 (c) An employer or group of employers may negotiate with physicians and
3 other treatment service providers under this chapter to obtain reduced fees and service
4 charges and may take the fees and charges into account when forming a list of
5 preferred physicians and providers. In no event may an employer or group of
6 employers attempt to influence the treatment, medical decisions, or permanent
7 impairment ratings by physicians in the course of the negotiations regarding a
8 preferred physician and provider fee list.

9 (d) An employer shall pay an employee's bills for medical treatment under this
10 chapter, excluding prescription charges or transportation for medical treatment, within
11 30 days after the date that the employer receives the provider's bill or a completed
12 report as required by AS 23.30.095(c), whichever is later.

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

26 (f) An employee may not be required to pay a fee or charge for medical
27 treatment or service provided under this chapter.

28 * Sec. 26. AS 23.30.100(b) is amended to read:

29 (b) The notice must be in writing, contain the name and address of the
30 employee, [AND] a statement of the time, place, nature, and cause of the injury or
31 death, and authority to release records of medical treatment for the injury or

1 death, and be signed by the employee or by a person on behalf of the employee, or, in
 2 case of death, by a person claiming to be entitled to compensation for the death or by a
 3 person on behalf of that person.

4 * Sec. 27. AS 23.30.107(b) is amended to read:

5 (b) Medical or rehabilitation records in an employee's file maintained by the
 6 division or held by the board are not public records subject to public inspection and
 7 copying under AS 40.25. This subsection does not prohibit

8 (1) the reemployment benefits administrator, the division, the board,
 9 or the department from releasing medical or rehabilitation records in an employee's
 10 file, without the employee's consent, to a physician providing medical services under
 11 AS 23.30.095(k) or 23.30.110(g), a party to a claim filed by the employee, or a
 12 governmental agency; or

13 (2) the quoting or discussing of medical or rehabilitation records
 14 contained in an employee's file during a hearing on a claim for compensation [,] or in
 15 a decision and order of the board.

16 * Sec. 28. AS 23.30.107 is amended by adding a new subsection to read:

17 (c) The division may not assemble, or provide information respecting,
 18 individual records for commercial purposes that are outside the scope of this chapter.

19 * Sec. 29. AS 23.30.122 is repealed and reenacted to read:

20 **Sec. 23.30.122. Credibility of witnesses.** The board has the sole power to
 21 determine the credibility of testimony presented by a witness. When credibility is
 22 disputed in a proceeding before the board, the board's determination of credibility
 23 must be supported by specific findings.

24 * Sec. 30. AS 23 30.175(b) is amended to read:

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

27 (1) the weekly rate of compensation shall be calculated by multiplying
 28 the recipient's weekly compensation rate calculated under AS 23.30.180, 23.30.185,
 29 23.30.190, 23.30.200, or 23.30.215 [,] by the ratio of the cost of living of the area in
 30 which the recipient resides to the cost of living in this state;

31 (2) the calculation required by (1) of this subsection does not apply if

1 the recipient is absent from the state for medical or rehabilitation services not
2 reasonably available in the state;

3 (3) if the gross weekly earnings of the recipient and the resulting
4 compensation rate are determined under AS 23.30.220(a)(6), (7), or (10), the
5 calculation required by this subsection applies only to the portion of the recipient's
6 weekly compensation rate attributable to wages earned in the state

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

9 (5) application of (1) - (4) of this subsection may not result in
10 raising a recipient's weekly compensation rate to an amount that exceeds the
11 weekly compensation rate that the recipient would have received if the recipient
12 had been residing in the state.

13 * Sec. 31. AS 23.30.175(c) is amended to read:

14 (c) The department [BOARD] shall provide by regulation for the
15 determination and comparison of living costs for this state and the other areas in which
16 recipients reside and for the [ANNUAL] redetermination and comparison of these
17 costs every three years.

18 * Sec. 32. AS 23.30.205(e) is amended to read:

19 (e) The second injury fund may not be bound as to any question of law or fact
20 by reason of an award or an adjudication to which it was not a party or in relation to
21 which the director [COMMISSIONER] was not notified at least three weeks before
22 the award or adjudication [,] that the fund might be subject to liability for the injury or
23 death.

24 * Sec. 33. AS 23.30.205 is amended by adding a new subsection to read:

25 (g) Claims for reimbursement may not be submitted to the fund after
26 September 1, 2005. The fund shall continue to make reimbursement payments on
27 claims accepted before July 1, 2006, or ordered by the board, until the fund's liabilities
28 for the claim are extinguished.

29 * Sec. 34. AS 23.30 is amended by adding a new section to read:

30 **Sec. 23.30.224. Coordination of benefits.** (a) Notwithstanding other
31 provisions of this chapter, an employer's liability for payment of weekly compensation

1 under AS 23.30.180 or 23.30.185 to an employee eligible for a disability benefit under
2 AS 14.25.130, AS 39.35.400, or 39.35.410 may not exceed the lesser of

3 (1) the difference between the disability benefit payable to the
4 employee under AS 14.25.130, AS 39.35.400, or 39.35.410, converted to a weekly
5 basis, and 100 percent of the employee's spendable weekly wage as calculated under
6 AS 23.30.220; or

7 (2) the maximum compensation rate calculated under AS 23.30.175.

8 (b) An employer's liability for payment of compensation under
9 AS 23.30.041(k) to an employee eligible for a disability benefit payable under
10 AS 14.25.130, AS 39.35.400, or 39.35.410 may not exceed the lesser of

11 (1) the difference between the disability benefit payable to the
12 employee under AS 14.25.130, AS 39.35.400, or 39.35.410, converted to a weekly
13 basis, and 80 percent of the employee's spendable weekly wage as calculated under
14 AS 23.30.220; or

15 (2) 105 percent of the average weekly wage calculated under
16 AS 23.30.175(d).

17 (c) Notwithstanding other provisions of this chapter, the liability of an
18 employer for payment of compensation for an injury or illness under AS 23.30.180 or
19 23.30.185 to an employee who is covered by a union or group retirement system to
20 which the employer makes contributions under a collective bargaining agreement or
21 by membership in a welfare or pension plan or trust may not exceed the lesser of

22 (1) the difference between 100 percent of the employee's spendable
23 weekly wage and an amount equal to the disability benefit, disability pension, or
24 medical retirement benefit that the employee is eligible to receive as a result of the
25 injury or illness, as calculated on a weekly basis, under the retirement system or
26 welfare or pension plan or trust; or

27 (2) the maximum compensation rate calculated under AS 23.30.175.

28 (d) If the union or group retirement system, pension plan, or trust referred to in
29 (c) of this section provides by its terms that its benefits are precluded or reduced if
30 benefits are awarded under this chapter, the limitation provided in (c)(1) of this section
31 is not applicable to the extent of the amount precluded or reduced.

1 (e) Notwithstanding other provisions of this chapter, the liability of an
 2 employer for payment of compensation for an injury or illness under AS 23.30.041(k)
 3 to an employee who is covered by a union or group retirement system to which the
 4 employer makes contributions under a collective bargaining agreement or by
 5 membership in a welfare or pension plan or trust may not exceed the lesser of

6 (1) the difference between 80 percent of the employee's spendable
 7 weekly wage and an amount equal to the disability benefit, disability pension, or
 8 medical retirement benefit that the employee is eligible to receive as a result of the
 9 injury or illness, calculated on a weekly basis, under the retirement system or welfare
 10 or pension plan or trust; or

11 (2) 105 percent of the average weekly wage calculated under
 12 AS 23.30.175(d).

13 (f) If the union or group retirement system, pension plan, or trust referred to in
 14 (e) of this section provides by its terms that its benefits are precluded or reduced if
 15 benefits are awarded under this chapter, the limitation provided in (e)(1) of this section
 16 is not applicable to the extent of the amount precluded or reduced.

17 (g) If the employee receives a lump sum distribution of disability benefits,
 18 disability pension, or medical retirement benefits, the combined workers'
 19 compensation and weekly disability or medical retirement benefit specified in this
 20 section shall be calculated by assuming that the employee received weekly disability
 21 or medical retirement payments under the applicable plan from the date of eligibility
 22 for the disability benefit or medical retirement until the total of the weekly payments
 23 equals the amount of the lump sum, exclusive of that portion of the lump sum
 24 specifically set aside under the applicable plan for retraining expenses, medical and
 25 transportation expenses, and attorney fees or other legal costs.

26 * Sec. 35. AS 23.30.240 is amended to read:

27 **Sec. 23.30.240. Officers of corporations, municipal corporations and**
 28 **nonprofit corporations and members of limited liability companies as employees.**
 29 An executive officer elected or appointed and empowered in accordance with the
 30 charter and bylaws of a corporation, other than an official of a municipal corporation
 31 or a charitable, religious, educational, or other nonprofit corporation, is an employee

1 of the corporation under this chapter. However, an executive officer of a corporation
 2 may waive coverage under this chapter, subject to the approval of the director
 3 [COMMISSIONER OF LABOR AND WORKFORCE DEVELOPMENT],
 4 notwithstanding AS 23.30.245(b). Notwithstanding any other provision of this
 5 chapter, an executive officer of a municipal corporation or of a charitable, religious,
 6 educational, or other nonprofit corporation may be brought within the coverage of its
 7 insurance contract by the corporation by specifically including the officer in the
 8 contract of insurance. The election to bring an executive officer within the coverage
 9 continues in force for the period the contract of insurance is in effect. During that
 10 period, an executive officer brought within the coverage of the insurance contract is an
 11 employee of the corporation under this chapter.

12 * Sec. 36. AS 23.30.240 is amended by adding a new subsection to read:

13 (b) Except as provided in this subsection, a member of a limited liability
 14 company organized under AS 10.50 is not an employee of the company under this
 15 chapter. Notwithstanding any other provision of this chapter, a limited liability
 16 company may bring a member of the company within the coverage of the company's
 17 insurance contract by specifically including the member in the contract of insurance.
 18 The election to bring the member within the company's coverage continues in force
 19 for the period the contract of insurance is in effect. During that period, a member
 20 brought within the coverage of the insurance contract is an employee of the company
 21 under this chapter.

22 * Sec. 37. AS 23.30.247(c) is amended to read:

23 (c) This section may not be construed to prohibit an employer from requiring a
 24 prospective employee to fill out a preemployment questionnaire or application
 25 regarding the person's prior health or disability history as long as it is meant to
 26 [EITHER DOCUMENT WRITTEN NOTICE FOR SECOND INJURY FUND
 27 REIMBURSEMENT UNDER AS 23.30.205(c) OR] determine whether the employee
 28 has the physical or mental capacity to meet the documented physical or mental
 29 demands of the work.

30 * Sec. 38. AS 23.30 is amended by adding a new section to read:

31 **Sec. 23.30.249. Fraudulent acts and false or misleading statements.** (a)

1 An employer, insurer, or other person may petition for an order to reimburse a
2 payment and the cost of compensation, medical treatment, or other benefit provided
3 under this chapter obtained by a fraudulent act or false or misleading statement or
4 representation. If the board, after a hearing as provided by AS 23.30.110, finds by a
5 preponderance of the evidence that a person has obtained a payment, compensation,
6 medical treatment, or another benefit provided under this chapter by a fraudulent act
7 or by knowingly making a false or misleading statement or representation for the
8 purpose of obtaining that benefit or payment, the board shall order that person to make
9 full reimbursement of the payment or cost of all benefits obtained. Upon entry of an
10 order authorized under this subsection, the board shall also order that person to pay all
11 reasonable costs and attorney fees incurred in obtaining an order under this section and
12 in defending a fraudulent claim made for benefits under this chapter. If a person fails
13 to comply with an order requiring reimbursement of payment or cost of benefits and
14 payment of costs and attorney fees, the employer, insurer, or other party may declare
15 the person in default and proceed to collect any sum due in the same manner as
16 provided under AS 23.30.170(b) and (c).

17 (b) Except as provided in (c) of this section, a person is not liable for civil
18 damages for filing a report concerning a suspected, anticipated, or completed
19 fraudulent act or a false or misleading statement or representation with, or for
20 furnishing other information, whether written or oral, concerning a suspected,
21 anticipated, or completed fraudulent act or false or misleading statements or
22 representation to

23 (1) law enforcement officials or their agents and employees;

24 (2) the division of workers' compensation, the division of insurance in
25 the Department of Commerce, Community, and Economic Development, or an agency
26 in another state that regulates insurance or workers' compensation;

27 (3) an insurer or adjuster or its agents, employees, or designees, or the
28 risk manager of a self-insured employer under this chapter.

29 (c) The provisions of (b) of this section do not preclude liability for civil
30 damages as described in (b) of this section if the liability arose as a result of reckless,
31 wilful, or intentional misconduct.

1 (d) An insurer, an adjuster, or a risk manager of a self-insured employer that
2 has reason to believe that a fraudulent workers' compensation demand or claim has
3 been made against it shall send the director a report disclosing information that the
4 director may require. An insurer or an adjuster or its employee or agent, or a risk
5 manager of a self-employed employer, or another person acting in good faith is not
6 civilly liable for damages resulting from the filing of the report or the furnishing of
7 information required by this section or by the director.

8 (e) The director may investigate facts reported under this section and may
9 refer facts indicating a possible violation of law to the appropriate prosecutor or
10 agency. If the director determines that there is credible evidence that a person
11 obtained a payment, compensation, medical treatment, or other benefit provided under
12 this chapter by a fraudulent act or false or misleading statement or representation as
13 provided in (a) of this section, the director shall notify the affected employer, insurer,
14 and adjuster upon conclusion of the investigation. If the fraudulent act or false or
15 misleading statement or representation was perpetrated against the division, the
16 director may file a petition as provided in AS 23.30.110 for an order of forfeiture
17 against the person, precluding, in whole or in part, the person from future payment,
18 compensation, medical treatment, or other benefit provided under this chapter.

19 (f) The papers, reports, documents, and evidence received under this section or
20 in an investigation arising from information received under this section are not subject
21 to public inspection for so long as the director considers confidentiality to be in the
22 public interest or reasonably necessary to complete an investigation or protect the
23 person investigated from unwarranted injury. Papers, reports, documents, and
24 evidence relative to an investigation under this section are confidential and not subject
25 to subpoena unless, after notice to the director and a hearing, a court determines that
26 the director would not be unduly hindered by public inspection.

27 (g) If the material that the director seeks to obtain is located outside the state,
28 the material may be made available to the director to examine at the place where the
29 material is located. The director may designate representatives, including officials of
30 the state in which the material is located, to inspect the material on behalf of the
31 director. The director may respond to a request from an official of another state for

1 similar material.

2 (h) In this section, "fraudulent act" includes

3 (1) to knowingly pretend injury or disability with intent to defraud or
4 obtain a benefit under this chapter;

5 (2) to knowingly conceal, suppress, destroy, remove, or alter records
6 with intent to defraud or obtain a benefit under this chapter;

7 (3) to knowingly assist or prepare another person to submit a false or
8 misleading statement in support of a claim for benefits under this chapter with reckless
9 disregard that the person is not entitled to benefits under this chapter;

10 (4) to use force against a person, damage the property of a person, or
11 threaten a person with intent to improperly influence the opinion of a witness, a
12 physician, or other health care provider;

13 (5) except as otherwise authorized under this chapter, to knowingly
14 confer, offer to confer, solicit, agree to accept, or accept property, services, or a
15 benefit

16 (A) to refer an employee to a physician or other health care
17 provider; or

18 (B) for providing medical treatment, services, medicines, or
19 supplies to an employee if the property, services, or benefit is in addition to
20 payment by the employer, insurer, or adjuster allowed under this chapter.

21 * Sec. 39. AS 23.30.250 is amended to read:

22 Sec. 23.30.250. Penalties for fraudulent or misleading acts. (a) A person,
23 including an employee, employer, physician, medical provider, or the
24 representative of a person who (1) knowingly makes a false or misleading statement,
25 representation, or submission related to a benefit under this chapter; (2) knowingly
26 assists, abets, solicits, or conspires in making a false or misleading submission
27 affecting the payment, coverage, or other benefit under this chapter; (3) knowingly
28 misclassifies employees or engages in deceptive leasing practices for the purpose of
29 evading full payment of workers' compensation insurance premiums; or (4) employs
30 or contracts with a person or firm to coerce or encourage an individual to file a
31 fraudulent compensation claim is civilly liable to a person adversely affected by the

1 conduct, is guilty of theft by deception as defined in AS 11.46.180, and may be
2 punished as provided by AS 11.46.120 - 11.46.150.

3 (b) If the board, after a hearing, finds that a person has obtained compensation,
4 medical treatment, or another benefit provided under this chapter, or that a provider
5 has received a payment, by knowingly making a false or misleading statement or
6 representation for the purpose of obtaining that benefit or payment, the board shall
7 order that person to make full reimbursement of the cost of all benefits and payments
8 obtained. Upon entry of an order authorized under this subsection, the board shall also
9 order that person to pay all reasonable costs and attorney fees incurred by the
10 employer and the employer's carrier in obtaining an order under this section and in
11 defending any claim made for benefits under this chapter. If a person fails to comply
12 with an order of the board requiring reimbursement of compensation and payment of
13 costs and attorney fees, the employer may declare the person in default and proceed to
14 collect any sum due as provided under AS 23.30.170(b) and (c).

15 * Sec. 40. AS 23.30.250 is amended by adding a new subsection to read:

16 (c) A court may provide compensatory and punitive damages and attorney
17 fees to a prevailing party in a civil action under (a) or (b) of this section.

18 * Sec. 41. AS 23.30.260 is amended by adding a new subsection to read:

19 (b) Notwithstanding AS 23.30.145 and (a) of this section, approval of a fee is
20 not required if the fee does not exceed \$300 and is a one-time-only charge to an
21 employee by an attorney licensed in this state who performed legal services with
22 respect to the employee's claim but did not enter an appearance.

23 * Sec. 42. AS 23.30.395 is amended by adding new paragraphs to read:

24 (35) "commissioner" means the commissioner of labor and workforce
25 development.

26 (36) "department" means the Department of Labor and Workforce
27 Development;

28 (37) "director" means the director of the division of workers'
29 compensation in the department;

30 (38) "division" means the division of workers' compensation in the
31 department.

1 * **Sec. 43.** AS 37.05.146(c) is amended by adding a new paragraph to read:

2 (78) workers' compensation benefits guaranty fund (AS 23.30.082).

3 * **Sec. 44.** AS 39.25.120(c)(14) is amended to read:

4 (14) the rehabilitation administrator of the division of workers'
5 compensation [WORKERS' COMPENSATION BOARD];

6 * **Sec. 45.** AS 23.30.095(f), 23.30.095(i), and 23.30.095(m) are repealed.

7 * **Sec. 46.** AS 23.30.015(c), 23.30.040, 23.30.205, 23.30.395(27); and AS 37.05.146(c)(12)
8 are repealed.

9 * **Sec. 47.** The uncodified law of the State of Alaska is amended by adding a new section to
10 read:

11 APPLICABILITY. The amendment to AS 23.30.175(b) made by sec. 30 of this Act
12 applies to an injury occurring on or after the effective date of sec. 30 of this Act.

13 * **Sec. 48.** The uncodified law of the State of Alaska is amended by adding a new section to
14 read:

15 TRANSITIONAL PROVISIONS. (a) Litigation, investigations, and other
16 proceedings pending under a law amended or repealed by this Act or in connection with
17 functions transferred by this Act continue in effect and may be continued and completed,
18 notwithstanding a transfer or amendment or repeal provided for in this Act.

19 (b) Certificates, decisions, and orders issued under authority of a law amended or
20 repealed by this Act remain in effect for the term issued, or until revoked, vacated, or
21 otherwise modified under the provisions of this Act. Contracts, rights, liabilities, and
22 obligations created by or under a law amended or repealed by this Act and in effect on the day
23 before the effective date of this section remain in effect, notwithstanding this Act's taking
24 effect.

25 * **Sec. 49.** The uncodified law of the State of Alaska is amended by adding a new section to
26 read:

27 TRANSITION: REGULATIONS. The Department of Labor and Workforce
28 Development and the director of insurance in the Department of Commerce, Community, and
29 Economic Development each may proceed to adopt regulations necessary to implement their
30 respective provisions of this Act. The regulations take effect under AS 44.62 (Administrative
31 Procedure Act), but not before the effective date of the statutory changes.

1 * Sec. 50. The uncodified law of the State of Alaska is amended by adding a new section to
2 read:

3 IMPLEMENTATION OF REPEAL OF SECOND INJURY FUND. The balance of
4 the second injury fund created by former AS 23.30.040 is transferred to the general fund on
5 the effective date of this section.

6 * Sec. 51. The uncodified law of the State of Alaska is amended by adding a new section to
7 read:

8 TRANSITION: MEDICAL SERVICES REVIEW COMMITTEE STUDY AND
9 REPORT. The medical services review committee appointed by the commissioner of labor
10 and workforce development under AS 23.30.095(j), as amended by sec. 23 of this Act, shall
11 proceed to study medical and related benefits provided under AS 23.30 to determine the
12 appropriateness, necessity, and cost of the benefits and shall, by March 1, 2007, provide to the
13 commissioner of labor and workforce development a report of the results of the study.

14 * Sec. 52. Section 49 of this Act takes effect immediately under AS 01.10.070(c).

15 * Sec. 53. Sections 1 - 4, 30, and 51 of this Act take effect September 1, 2005.

16 * Sec. 54. Sections 5, 11, 37, 46, and 50 of this Act take effect on the date that the
17 commissioner of labor and workforce development certifies to the revisor of statutes and the
18 lieutenant governor that all liability for previously accepted claims to the second injury fund
19 created by former AS 23.30.040, and claims ordered to be paid from that fund, have been
20 satisfied.

21 * Sec. 55. Except as provided in secs. 52 - 54 of this Act, this Act takes effect August 1,
22 2005.

2005 Workers' Compensation Issues

Labor/Management Ad Hoc Committee:

Management

Dick Cattanach, Associated General Contractors
Co-chair
Judy Peterson Northwest Technical Services
April Reilly, Rainproof Roofing
Tim Slabaugh, Veco, Inc
Dave Kester, Ribelin, Lowell & Co
Laura Jackson, University of Alaska

Labor

Kevin Dougherty, Laborers
Co-chair
Jim Sampson, AFL/CIO
Barbara Huff-Tuckness, Teamsters
Dave Ford, Ironworkers
John Giuchici, IBEW
Jim Robison, Retired

Comments offered by:

William Pfeifer, D.C., VP, Alaska Chiropractic Society
Ms. Debbie Ryan, Exec. Sec'y, Alaska Chiropractic Society
Loren Morgan, D.C., Past President, Alaska Chiropractic Society
Mr. Dennis Murray, Alaska State Hospital & Nursing Home Assoc.
Mr. Rob Bennett, Alaska State Hospital & Nursing Home Assoc.
Michael Haugen, Esq., Exec. Dir., Alaska Physicians and Surgeons
Bruce Kiessling, M.D., Primary Care Associates
Paul Worrell, M.D., Pres., Alaska State Medical Assoc.
Ms. Janice Weaver, Alaska Spine Institute
Ms. Beth Balen, Anchorage Fracture Clinic
Ms. Sharon Anderson, ACL Health
Mr. Gerald Brown, Alaska Pharmacy Assoc.
Ms. Margie Linder, Vocational Rehabilitation Counselor
Mr. John Micks, Vocational Rehabilitation Counselor
Ms. Barbara Williams, Alaska Injured Workers' Alliance
Mr. Shawn Pierre
Mr. Sam Sorich, VP, Property Casualty Insurers Assoc. of America
Mr. Steve Beckham, Liberty Northwest Insurance Company
Joseph Kalamarides, Esq.
Chancy Croft, Esq.
Michael Jensen, Esq.
Steven Constantino, Esq.

STATE OF ALASKA

Department Of Labor and Workforce Development

FRANK H. MURKOWSKI, GOVERNOR

P. O. Box 21149
Juneau, AK 99802-1149
Phone: (907)465-2700
Fax: (907)465-2784

OFFICE OF THE COMMISSIONER

April 6, 2005

The Honorable Ralph Seekins
State Capitol, Room 125
Juneau, Alaska 99801-1182

Dear Senator Seekins:

In responding to questions about the scope of health care benefits at the Judiciary Committee hearings this morning, we alluded to the annual summary of state workers' compensation laws compiled by the United States Department of Labor. I enclose copies of excerpts taken from that compilation.

The first, titled "Table 5a" and attached to the U.S. Department of Labor's cover sheet, lists those states offering "full" medical benefits as well as those with restrictions. The second, titled "Appendix A," lists the 19 "essential recommendations" for a modern workers' compensation system proposed by the National Commission on State Workmen's Compensation Laws. In that appendix the last two recommendations (R4.2 and R4.4) state that there should be no time limits on total medical benefits and rights to medical benefits should not lapse due to the passage of time.

I have also included copies of "Table 4" showing how each state stands in regard to meeting recommendations R4.2 and R4.4 as well as "Table 1" that totals how many of the 19 recommendations are reflected in each state's statutes.

Sincerely,



Greg O'Claray,
Commissioner

State Workers' Compensation Laws



U.S. Department of Labor
Elaine L. Chao, Secretary

Employment Standards Administration
Victoria Lipnic, Assistant Secretary

Office of Workers' Compensation Programs
Shelby Hallmark, Director

January 2004

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AUG 23 2PM

(In effect as of January 1, 2004*)

TABLE 5a. MEDICAL BENEFITS PROVIDED BY WORKERS' COMPENSATION STATUTES

Full Medical Benefits**

Alabama	Indiana	Nebraska	South Carolina
Alaska	Iowa	Nevada	South Dakota
Arizona	Kansas	New Hampshire	Tennessee
Colorado	Kentucky	New Jersey	Texas
Connecticut	Louisiana	New Mexico	Utah
Delaware	Maine	New York	Vermont
District of Columbia	Maryland	North Carolina	Virginia
Georgia	Massachusetts	North Dakota	Virgin Islands
Idaho	Michigan	Oklahoma	Washington
Illinois	Minnesota	Oregon	West Virginia
	Mississippi	Pennsylvania	Wisconsin
	Missouri	Puerto Rico	Wyoming
		Rhode Island	United States***:
			FECA
			LHWCA

Special Provisions

Arkansas.....	Employer liability ceases six months after injury where no time is lost from work, or six months after a claimant returns to work, or a maximum of \$10,000 has been paid, unless the employer waives rights or the Commission extends time and dollar limits.
California.....	Chiropractic physical therapy and occupational therapy visits limited to 24 per specialty. Insurer may authorize additional visits.

*See Introduction page.

**No time or monetary limitations.

***Federal Employees' Compensation Act;
Longshore and Harbor Workers' Compensation Act.

TABLE 5a MEDICAL BENEFITS PROVIDED BY WORKERS' COMPENSATION STATUTES (cont.)

Special Provisions (cont.)

Florida.....	After maximum medical improvement is reached, a \$10 patient co-payment is required for all medical services. If injured worker fails to show for a scheduled independent medical examination, injured worker is liable for 50% of the <u>no show</u> fee charged by provider. If an injured worker requests an independent medical examination, he/she must pay for the examination unless the employee prevails in the medical dispute.
Hawaii.....	The frequency and extent of treatment cannot exceed the nature of injury and the process required for recovery. Authorization is not required for the initial 15 treatments of the injury during the first 60 calendar days.
Ohio.....	After the employee has received temporary total disability compensation for 90 days, the employee must be examined by the Bureau of Workers' Compensation Medical Section to determine eligibility for continuation of compensation and the appropriateness of medical treatment being provided.
Montana.....	A claimant copayment of \$25 for each subsequent visit to a hospital emergency department for treatment is required, unless the visit is for treatment requested by an insurer.
Tennessee	Medical benefits include psychological treatment if rendered by a psychologist and upon the referral by a physician. Medical treatment required for a back injury shall include a chiropractor.

APPENDIX A

ESSENTIAL RECOMMENDATIONS OF THE NATIONAL COMMISSION ON STATE WORKMEN'S
COMPENSATION LAWS

- R2.1 Coverage by workmen's compensation laws be compulsory and that no waivers be permitted.
R2.1(a) Coverage is compulsory for private employments generally.
R2.1(b) No waivers are permitted.
- R2.2 Employers not be exempted from workmen's compensation coverage because of the number of their employees.
- R2.4 A two-stage approach to the coverage of farmworkers. First, as of July 1, 1973, each agriculture employer who has an annual payroll that in total exceeds \$1,000 be required to provide workmen's compensation coverage to all of his employees. As a second stage, as of July 1, 1975, farmworkers be covered on the same basis as all other employees.
- R2.5 As of July 1, 1975, household workers and all casual workers be covered under workmen's compensation at least to the extent they are covered by Social Security.
- R2.6 Workmen's compensation coverage be mandatory for all government employees.
- R2.7 There be no exemptions for any class of employees, such as professional athletes or employees of charitable organizations.
- R2.11 An employer or his survivor be given the choice of filing a workmen's compensation claim in the State where the injury or death occurred, or where the employment was principally localized, or where the employee was hired.
- R2.13 All States provide full coverage for work-related diseases.
- R3.7 Subject to the State's maximum weekly benefit, temporary total disability benefits be at least 66 2/3 percent of the worker's gross weekly wage.
- R3.8 As of July 1, 1973, the maximum weekly benefit for temporary total disability be at least 66 2/3 percent of the State's average weekly wage, and that as of July 1, 1975, the maximum be at least 100 percent of the State's average weekly wage.
- R3.11 The definition of permanent total disability used in most States be retained. However, in those few States which permit the payment of permanent total disability benefits to workers who retain substantial earning capacity, the benefit proposals are applicable only to those cases which meet the test of permanent total disability used in most States.
- R3.12 Subject to the State's maximum weekly benefit, permanent total disability benefits be at least 66 2/3 percent of the worker's gross weekly wage.
- R3.15 As of July 1, 1973, the maximum weekly benefit for permanent total disability be at least 66 2/3 percent of the State's average weekly wage, and that as of July 1, 1975, the maximum be at least 100 percent of the State's average weekly wage.
- R3.17 Total disability benefits be paid for the duration of the worker's disability, or for life, without any limitations as to dollar amount or time.
- R3.21 Subject to the State's maximum weekly benefit, death benefits be at least 66 2/3 percent of the worker's gross weekly wage.
- R3.23 As of July 1, 1973, the maximum weekly death benefit be at least 66 2/3 percent of the State's average weekly wage, and that as of July 1, 1975, the maximum be at least 100 percent of the State's average weekly wage.
- R3.25 (a) Death benefits be paid to a widow or widower for life or until remarriage, and (b) in the event of remarriage, two years' benefits be paid in a lump sum to the widow or widower. (c) Benefits for a dependent child be continued at least until the child reaches 18, or beyond such age if actually dependent, or (d) at least until age 25 if enrolled as a full-time student in any accredited educational institution.
- R4.2 There be no statutory limits of time or dollar amount for medical care or physical rehabilitation

services for any work-related impairment.

R4.4

The right to medical and physical rehabilitation benefits not terminate by the mere passage of time.

SOURCE:

Report of the National Commission on State Workmen's Compensation Laws, U.S. Government Printing Office, 1972.

TABLE 4 - TWO RECOMMENDATIONS RELATING TO MEDICAL BENEFITS

RECOMMENDATION NUMBER	4.2	4.4
TOTAL STATES MEETING	46	45
Alabama	X	X
Alaska	X	X
Am Samoa	NA	NA
Arizona	X	X
Arkansas	-	X
California	X	-
Colorado	X	X
Connecticut	X	X
Delaware	X	X
District of Columbia	X	X
Florida	-	-
Georgia	X	X
Guam	NA	NA
Hawaii	-	X
Idaho	X	X
Illinois	X	X
Indiana	X	X
Iowa	X	X
Kansas	X	-
Kentucky	X	X
Louisiana	X	X
Maine	X	-
Maryland	X	X
Massachusetts	X	X
Michigan	X	X
Minnesota	X	X
Mississippi	X	X
Missouri	X	-
Montana	-	-
Nebraska	X	X
Nevada	X	X
New Hampshire	X	X
New Jersey	-	-
New Mexico	X	X
New York	X	X
North Carolina	X	X

North Dakota	X	X
Ohio	-	X
Oklahoma	X	X
Oregon	X	X
Pennsylvania	X	X
Puerto Rico	X	X
Rhode Island	X	X
South Carolina	X	X
South Dakota	X	X
Tennessee	X	X
Texas	X	X
Utah	X	X
Vermont	X	X
Virginia	X	X
Virgin Islands	NA	NA
Washington	X	X
West Virginia	X	X
Wisconsin	X	X
Wyoming	X	X

TABLE 1 - SUMMARY OF STATE TOTALS

NOTE: The possible total score is 988, or 19 recommendations multiplied by 52 jurisdictions for which data were available. The current total of 671.00 represents 67.91% of the possible total.)

STATE	TOTAL	COVERAGE	BENEFITS	MEDICAL
TOTAL 670.00				
AVERAGE 12.90				
Alabama	13.00	4.00	7.00	2.00
Alaska	14.25	3.50	8.75	2.00
Am Samoa	NA	NA	NA	NA
Arizona	13.00	5.50	5.50	2.00
Arkansas	8.50	2.50	5.00	1.00
California	12.00	6.00	5.00	1.00
Colorado	13.25	5.50	5.75	2.00
Connecticut	14.00	3.50	8.50	2.00
Delaware	12.00	4.00	6.00	2.00
Dist. of Columbia	15.75	6.00	7.75	2.00
Florida	11.00	3.50	7.50	-0-
Georgia	9.75	2.50	5.25	2.00
Guam	NA	NA	NA	NA
Hawaii	14.75	6.00	7.75	1.00
Idaho	12.00	6.00	4.00	2.00
Illinois	15.00	4.00	9.00	2.00
Indiana	11.50	5.00	4.50	2.00
Iowa	15.50	4.50	9.00	2.00
Kansas	12.00	5.50	5.50	1.00
Kentucky	14.25	5.50	6.75	2.00
Louisiana	10.25	3.50	4.75	2.00
Maine	10.75	4.50	5.25	1.00
Maryland	14.25	3.50	8.75	2.00
Massachusetts	12.75	4.00	7.75	2.00
Michigan	9.75	2.50	5.25	2.00
Minnesota	9.50	4.00	3.50	2.00
Mississippi	7.25	2.00	3.25	2.00
Missouri	14.75	5.00	8.75	1.00
Montana	12.75	4.50	8.25	-0-
Nebraska	16.50	5.50	9.00	2.00

Nevada	14.75	4.00	8.75	2.00
New Hampshire	15.75	8.00	5.75	2.00
New Jersey	10.50	7.00	3.50	-0-
New Mexico	14.00	3.50	8.50	2.00
New York	10.75	3.00	5.75	2.00
North Carolina	13.75	3.50	8.25	2.00
North Dakota	14.50	4.00	8.50	2.00
Ohio	14.50	4.50	9.00	1.00
Oklahoma	14.75	4.00	8.75	2.00
Oregon	15.75	5.00	8.75	2.00
Pennsylvania	13.75	4.00	7.75	2.00
Puerto Rico	12.75	6.00	4.75	2.00
Rhode Island	13.00	2.50	8.50	2.00
South Carolina	13.00	3.50	7.50	2.00
South Dakota	13.25	2.50	8.75	2.00
Tennessee	12.00	3.50	6.50	2.00
Texas	12.50	2.50	8.00	2.00
Utah	12.00	5.00	5.00	2.00
Vermont	15.00	4.50	8.50	2.00
Virginia	11.75	1.50	8.25	2.00
Virgin Islands	NA	NA	NA	NA
Washington	13.50	6.00	5.50	2.00
West Virginia	14.75	4.00	8.75	2.00
Wisconsin	15.00	5.00	8.00	2.00
Wyoming	8.25	3.00	3.25	2.00

STATE OF ALASKA

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL

FRANK H. MURKOWSKI, GOVERNOR

1031 WEST 4TH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501-5903
PHONE: (907) 269-5190
FAX: (907) 258-0760

April 4, 2005

MEMORANDUM

TO: The Honorable Greg S. O'Claray, Commissioner
Department of Labor and Workforce Development

FROM: David W. Márquez
Attorney General
By: Kristin S. Knudsen *KSK*
Assistant Attorney General

RE: Attached Section by Section Analysis of CSSB 130 (L&C)
Our file: 773-05-0112

Attached is a section by section analysis of CSSB 130 (L&C), concerning workers' compensation reform.

KSK:ksk

cc w/enc.: Hon. Ray Matiashowski, Comm'r, Dept. of Administration
Hon. Edgar Blatchford, Comm'r, Dept. of Commerce, Comm., and Econ. Dev.
Scott J. Nordstrand, Deputy Attorney General, Civil Division
Randy Ruaro, Legislative Contact, Department of Law
Deborah Behr, Supervisor, Legislation and Regulations
Stephanie J. Cole, Administrative Dir., Alaska Court System
Kevin Jardell, Legislative Director, Office of the Governor
Cheryl Frasca, Dir., OMB, Office of the Governor

Section by Section Analysis of CSSB 130 (L&C)¹

This committee substitute introduces new protections and a new benefit for injured employees, revises the timing for vocational reemployment (rehabilitation) eligibility, requires additional reporting in vocational reemployment, limits certain workers' compensation payments, and restricts medical cost liability. The committee substitute differs from SB 130 in absence of substantial change to the adjudication system, (although there remain some provisions that will impact the process of resolution of claims), providing additional oversight and reporting in vocational reemployment benefits, changes in the determination of reasonable and necessary medical treatment, and changes in the fraud provisions.

The committee substitute makes no sweeping changes to the Alaska Workers' Compensation Board and system of workers' compensation administration. The Alaska Workers' Compensation Board (board) retains responsibility for regulation and initial adjudication of claims and petitions arising under the act. There are some transfers of function included in the committee substitute, but, in place of many statutory changes transferring administrative functions, this committee substitute gives the board general power to delegate executive functions of administration and enforcement to the director of the Division of Workers' Compensation (division). The roles of the commissioner of the Department of Labor and Workforce Development and commissioner's designees are clarified: the commissioner's designee on a hearing panel is a hearing officer, but the commissioner, who serves as chair and voting member of the full board in its executive functions, is permitted to designate any representative to serve in the commissioner's place.

This committee substitute contains systemic improvements intended to promote settlement and speed the process of resolving cases. The committee substitute permits settlement of cases without a hearing and board approval if all parties are represented by counsel admitted to practice in Alaska, permits the Department of Labor and Workforce Development (department) to contract with a non-profit organization to represent employees otherwise unable to secure counsel, and provides for a consultation fee payable to attorneys without board approval.

This committee substitute does not eliminate or reduce the reemployment benefit² but it does make changes intended to reduce costs associated with delays in the reemployment process. This committee substitute allows parties to agree that an

¹ This document was prepared using the text offered April 1, 2005 and denominated as 24-GH1112\G.

² These benefits are often called vocational rehabilitation or retraining benefits.

employee is eligible for vocational rehabilitation, thus saving the cost of an eligibility evaluation and associated delay while an eligibility evaluation is done. This committee substitute eliminates the deadline for requests for eligibility evaluations from 90 days from the date of injury. Instead the right to request an eligibility evaluation is triggered by periods of consecutive days of absence from employment. In addition, an eligibility evaluation is mandated for employees who are absent due to injury for 90 consecutive days from their employment. These changes are intended to bring the process of vocational rehabilitation planning closer to the point that the employee has experienced significant absence from work. Finally, for those employees who have been found eligible for reemployment benefits, but who do not wish to undertake retraining as directed by the workers' compensation act, this committee substitute provides a job dislocation cash benefit if the employee elects not to undertake reemployment planning.

Another significant cost to the system is addressed by a series of changes designed to lower medical costs. Generic drugs are required unless medical necessity justification is provided in writing. The department is directed to create a "preferred drug" list or formulary, a common feature of group health insurance plans. Again, off-list drugs may be dispensed if medical necessity justification is provided. Employers are given permission to form groups to negotiate "preferred provider" lists – but use of the listed physicians by workers is voluntary. Fees for medical treatment and services, which are subject to regulation, are capped at the usual, customary, and reasonable rates in effect in December 2003.³ The original SB 130 provided presumptively correct guidance in determining what is "reasonable and necessary" medical care and treatment through adoption of one, and possibly more, national guidelines. The committee substitute changes the quantum and type of evidence required to rebut the presumption of what is "reasonable and necessary." Finally, in order to address the subject of medical costs in the future, the Commissioner is empowered to appoint a committee, which is directed to study the subject and to make a report to the commissioner and governor by March 1, 2007.

³ Rates are determined by the board by regulation, defining what is "usual, customary and reasonable". The board set the "usual, customary, and reasonable" rate at the "90th percentile of the range of charges" (8 AAC 45.082(i)).

The 90th percentile of range of charges means that in a community for which charges in a given period vary between \$50 and \$150 for a service, with two providers charging less than \$90, seven providers charging \$90 to \$120, and only one provider charging \$150, the "90th percentile" does not refer 90 percent of the difference between the highest and lowest, nor the number of providers charging any amount, nor 90 percent of any charge. It is an artificial number to which 90 percent of all charges in the community will be equal or less. In this community example, the 90th percentile could be any number below \$150. The result of this method is that the 90th percentile rises as charges increase.

Other deficiencies in the current system are addressed. The director of the workers' compensation division is given stronger enforcement tools, including power to issue stop orders against uninsured employers without hearing, provided an investigation has revealed substantial evidence that the employer is uninsured. The stop order may be followed by a hearing before the board to assess substantial civil penalties against uninsured employers. The director may also petition the board for a stop order. The civil penalties will be paid to a fund used to pay claims of injured workers employed by uninsured employers.

The director is also given substantial powers to investigate fraud. Persons who report fraud are granted immunity, and other persons are required to report known fraud. This committee substitute deletes changes to the current AS 23.30.250(a) proposed by SB 130, (the addition of definitions and rewording without change in meaning), relating to the criminal and civil fraud provisions.⁴ In its place, this committee substitute retains the former AS 23.30.250, adds language that provides examples of the "person" who may be liable for civil or criminal fraud under AS 23.30.250(a) or administrative restitution orders under AS 23.30.250(b). It also adds a new subsec. (c) permitting the court to award compensatory and punitive damages.⁵

Two changes to compensation benefits are included in the bill, which will not apply to most employees. First, compensation paid to non-residents is capped at the rate that would be paid if the recipient resided in Alaska. Second, for workers whose employers belong to the Public Employees Retirement System (PERS) or Teachers Retirement System (TRS), an offset for PERS or TRS disability benefits is allowed against workers' compensation total disability payments, so that the combined benefits do not exceed 100 percent of the employee's spendable (after tax) wages. The cap on combined offset benefits is reduced to 80 percent of the employee's spendable wages when the employee is receiving reemployment benefits instead of compensation. Permanent partial impairment compensation is not reduced or offset, unless the employee is in a reemployment process receiving weekly payments of permanent partial impairment compensation at the temporary total disability rate under AS 23.30.041(k).

⁴ This change appears to have been prompted in part by an understanding that SB 130 eliminated civil fraud actions. It did not do so; however, there were changes in the wording that were intended to strengthen criminal fraud proceedings and that was the focus of the changes proposed by SB 130 to the bill. The *administrative* fraud remedies were moved to a new subsection, which remains in the committee substitute.

⁵ This provision, at sec. 40, contains a reference to a civil action under "(a) or (b) of this section." AS 23.30.250(b) provides an administrative remedy before the Board, which may be reduced to a judgment and execution by the court, but there is no initial civil action permitted under (b). This appears to represent a typographic error, which should be corrected to prevent confusion.

In that case, the weekly permanent partial impairment compensation would be paid at the offset temporary total disability compensation rate. A similar off-set is permitted for workers who receive a disability benefit through an ERISA trust or employer contribution funded plan, if the trust or plan does not already take an offset for workers' compensation. This eliminates "double dipping" by employees whose combined benefits, tax free, exceed their wages.

Another feature of this committee substitute, as in the original SB 130, is the elimination of the second injury fund – a pre-statehood mechanism intended to encourage hiring workers with certain listed conditions.⁶ The list, which includes conditions as varied as polio, varicose veins, and the bends, has not been altered since its inception. The fund will be phased out, with delayed amendments eliminating the fund once all liabilities incurred by the deadline established in this committee substitute are satisfied.

The committee substitute eliminates the changes to the process of appellate review proposed by SB 130.

Finally, the committee substitute does not alter changes made in the insurance statutes to exempt joint insurance arrangements from participation in the assigned risk pool, require special deposits of insurers, and permit the director to seize and release the deposits to the Alaska Insurance Guaranty Association for claims payment in the event of insurer insolvency.

The workers' compensation act is lengthy and complex and this committee substitute addresses a number of subject areas. This sectional analysis provides cross-references other parts of the committee substitute as required, with additional references to unamended portions of the workers compensation act. This committee substitute also contains a number of what are essentially conforming amendments, delayed amendments, or transitional provisions.

Section 1 is a declaration of legislative intent to reform the workers' compensation insurance system to ensure payment of benefits when an insurer becomes

⁶ The fund was intended to encourage hiring employees with certain conditions by mitigating, to a limited extent, a potential employer's concern that hiring an employee with a listed condition would result in a greater liability if the employee were injured. The fund reimburses an employer for compensation payments made after two years of disability benefits have been paid, if the employee suffers a "second" injury that "aggravates, accelerates, or combines with" the listed condition to bring about a greater disability. The fund does not reimburse medical or other benefits. The fund also requires the employer to have written knowledge of the condition before hiring or retaining the employee.

insolvent and reduce the costs of workers' compensation premiums to employers. This expression of intent applies only to secs. 2 through 4 of the bill.

- Section 2** creates new statutory provisions, AS 21.09.090(e) and (f), which provide additional financial protection for Alaskan workers in the event that a workers' compensation insurer becomes insolvent and unable to pay claims. Under these new provisions, insurers who are authorized to transact workers' compensation insurance in this state must maintain in the state a separate deposit for the protection of persons covered by workers' compensation insurance issued by the insurers that is in addition to the deposit required of insurers under AS 21.09.090(b). This new deposit will be based on collateralization of an insurer's loss reserves, but will not be less than \$100,000.
- Section 3** creates a new statutory provision, AS 21.24.130(f), which provides that if an insurer becomes insolvent in any state, the insurer's deposit in Alaska, provided in sec. 2 of the bill, will be immediately available to the director of the division of insurance for release to the Alaska Insurance Guaranty Association to pay workers' compensation claims of eligible employees covered under policies issued by the insolvent insurer. No part of the deposit may be paid to an insolvent insurer's receiver until all workers' compensation claims under the insolvent insurer's policies have been paid. This revision provides additional financial protection for Alaskan workers in the event that workers' compensation insurer becomes insolvent and unable to pay claims.
- Section 4** amends AS 21.39.155(a) to exempt all reciprocal insurers from the requirement of participating in the assigned risk pool, not just reciprocal insurers formed by a group of municipalities or non-profit public utilities. This change will mean that reciprocal insurers formed by certain industry groups will not be required, like other insurers, to insure employers in the assigned risk pool.
- Section 5** amends AS 23.30.05.067(a)(1)(B) to remove a reference to the second injury fund. This amendment conforms to the repeal of AS 23.30.205 at sec. 46 of the bill. This amendment will not be effective until the commissioner of the Department of Labor and Workforce Development certifies that all fund obligations are satisfied. See sec. 54 of the bill.
- Section 6** codifies a statement of legislative intent relating to the workers' compensation system. Subsections 1 through 3 replicate earlier statements of legislative intent that the workers' compensation laws ensure a quick, efficient, fair and predictable delivery of benefits to injured workers, at reasonable cost to employers, that cases be decided on their merits, and that the chapter not be construed to favor either party. Subsection 4 emphasizes the intent that proceedings be impartial and fair and that all parties be afforded due process.

Section 7 amends AS 23.30.005(a) to require that a hearing officer [instead of any person] be designated by the commissioner to sit as the commissioner's representative on a hearing panel when the commissioner does not sit on the panel. The section is also amended to provide that the board shall by regulation provide procedures to avoid conflicts and the appearance of impropriety in hearings. This change directs the board to expand the scope of its regulations beyond the provisions of the Executive Ethics Act, AS 39.52, applicable to members of boards and commissions, to address avoiding "the appearance of impropriety" as well as conflicts of interest.

Section 8 amends AS 23.30.005(b) to again clarify who may be appointed to represent the commissioner on a hearing panel (a hearing officer) while retaining the commissioner's broad discretion to designate a person to represent him as chairman and executive officer of the full board. The amendment also clarifies that hearing officers are not members of the full board.

Section 9 adds two new statutory provisions to AS 23.30.005. New subsection (m) authorizes the department to contract with a non-profit organization to provide employees information regarding workers' compensation proceedings and legal representation in proceedings before the board and commission. The intent is to provide some legal services to those persons unable to secure representation from attorneys practicing in the field.

Section 10 amends AS 23.30.012 relating to settlement of claims. It divides the current statute into two subsections. It transfers from the board to the director the power to approve the form of settlements. New provisions require that settlements be filed in the division, and, upon filing with the division, makes the settlement effective and enforceable as an order of the board. This is a change from current law, which requires all workers, regardless of representation or circumstances, to obtain board permission to settle their claims and approval of the negotiated terms.

However, a new provision requires that in cases where workers are not represented by an attorney licensed to practice in this state, or where a beneficiary is a minor or incompetent, the settlement must be reviewed by a hearing panel and may be approved when it is in the best interests of the worker or beneficiary. The hearing panel may hold a hearing and require an impartial medical examination before deciding whether to approve a settlement. This amendment parallels court practice in requiring review of minor or incompetent settlements.

Section 11 amends AS 23.30.015(e) to eliminate a reference to payments to the second injury fund and modernize language. As provided by sec. 54 of this bill, this amendment is not effective until the liabilities of the fund have been fully satisfied.

Section 12 amends AS 23.30.041(a) to reassign from the board to the director power to employ the reemployment benefits administrator and to authorize the administrator to employ a staff. This transfers hiring and oversight of the administrator and staff to the director of the division of workers' compensation.

Section 13 amends AS 23.30.041(b) to add new, additional reporting requirements to those currently imposed upon the administrator. The intent is to provide greater accountability for reemployment benefits planning, costs, and results on an individualized basis. A specific focus is required on the employment status of the retrained employee at certain time intervals after plan completion.

Section 14 repeals and reenacts AS 23.30.041(c) to substantially change the timing of eligibility evaluations. As unamended, current law requires an injured employee to request an evaluation to determine eligibility for re-employment benefits within 90 days of injury. This deadline may be forgiven if the employee shows "unusual and extenuating circumstances". In practice, such circumstances are frequently found to exist, as where the employee's physician did not tell him or her that a return to work may not be possible or did not predict the employee will have a permanent impairment. As a result, there are lengthy delays in the return to work process. As changed, this section contains a new provision allowing employers and employees to agree that the employee is eligible for retraining, without incurring the cost of an evaluation or waiting for a permanent impairment prediction. Also a new provision, the administrator is required to notify injured employees of the right to an evaluation if the employee sustains 45 consecutive days of total disability. There is currently no requirement that employees be notified of their right to an evaluation before the deadline expires. Without regard to time after the date of injury, a right of the employer or employee to request an evaluation is triggered by 60 days of consecutive total disability and, if an employee is totally disabled by the injury for 90 consecutive days, an eligibility evaluation is required. The standards for eligibility are not changed. The intent of this section is to reduce costs by encouraging appropriate agreements; promoting early attention to the issue of potential need for retraining by employees, employers, and physicians; and assuring that employees with serious, disabling injuries are provided evaluations as soon as possible.

Section 15 amends AS 23.30.041(f) to add an additional disqualification for reemployment benefits. This section provides that if an employee is found eligible for reemployment benefits, (which necessarily includes a physician's prediction of inability to return to the employment at the time of injury), and the employee declines reemployment benefits in favor of a job dislocation benefit (see sec. 16), the employee will be ineligible for reemployment benefits in the future if the employee returns to work in the same or similarly

demanding occupation as when previously injured and is injured again. This subsection parallels the current disqualification of an employee who receives reemployment benefits but who returns to work in the same or similarly demanding occupation as when previously injured and is injured again.

Section 16 amends AS 23.30.041(g) to provide that an employee who is eligible for reemployment benefits but elects not to use the benefits may take a job dislocation benefit instead. The intent of this section is to encourage employees who are eligible for retraining to seriously consider their options and encourage prompt entry into plan development, and, by making the alternative to retraining less attractive, to provide a disincentive to the practice of delaying plan development in hopes of increasing the settlement value of reemployment benefits, or of beginning plans the employee has no real interest or inclination to pursue in order to continue receiving payments. Finally, it provides a small benefit not previously available to those employees who genuinely desire to retire from the active labor market or to pursue plans of their own without direction from the workers' compensation system.

Section 17 amends AS 23.30.041(j) to modernize the language.

Section 18 amends AS 23.30.041(p) to replace the board with the director as the holder of a public meeting to select a proposed date on which a new edition of the U.S. Department of Labor's Dictionary of Occupational Titles shall be implemented. The department replaces the board as the agency selecting the date proposed and the director replaces the board as the person giving notice of the selected date.

Section 19 amends AS 23.30.041(q) to replace the board with the division as the agency receiving filed waivers of rehabilitation benefits and serving notices of the waivers. The amendment also replaces the board with the director as the agency proscribing or approving the form of such waivers.

Section 20 amends AS 23.30.080(d) regarding proceedings to obtain stop work orders against uninsured employers. The amendment provides that the board may issue a stop work order at the request of the director. The amendment clarifies the role of the director. Unlike the original SB 130 language, it does not distinguish the procedure for the director's request as being pursuant to the board's petition process (provided by regulation at 8 AAC 45.050) instead of one based on a notice of accusation under the Administrative Procedure Act.

Section 21 creates three new statutory provisions relating to penalties against uninsured employers and stop orders. New subsec. (e) authorizes the director to issue a stop order after an investigation by a department officer reveals substantial evidence that the employer is not insured or has no self-insurance certificate. The director must dissolve the stop order on receipt of proof of insurance or a

self-insurance certificate. In addition, the director may petition the board to assess a civil penalty if the employer fails to obey the stop order.

New subsec. (f) authorizes the division to petition the board for a civil penalty of up to \$1,000 per day of employment per uninsured employee. New subsec. (g) permits the director to declare an employer in default if the employer fails to pay a civil penalty under subsec. (d) (failing to comply with a board stop work order, \$1000 per day), subsec. (e) (failing to comply with a director stop work order, \$1000 per day), or subsec. (f) (failing to insure employee, \$1,000 per employee per day), within seven days of the date ordered. Upon filing a certified copy of the penalty order and a declaration of default with the clerk of the superior court, the court shall enter judgment for default. The attorney general, as requested by the director, shall take appropriate action to collect on the default judgment, and a writ of execution may be issued on the judgment. The person against whom the judgment is issued may seek court review of the judgment as allowed by the civil rules.

Section 22 creates a new section, AS 23.30.082, establishing a workers compensation benefits guaranty fund to assist injured employees of uninsured employers. The fund is established in the general fund, comprised of the civil penalties paid under AS 23.30.080, income earned by investment, money deposited in the fund by the department, and appropriations to the fund. The fund may be used to pay claims, expenses of the fund, and legal expenses. The Department of Revenue shall inform the division of the fund balance and interest income. Subsec. (c) provides for injured employees to file a claim against the fund and preserves the rights of the fund to defend claims. Subsec. (d) provides that the fund is subrogated to all rights of the employee, and is assigned all rights of the employee against the uninsured employer to the extent of payment by the fund. Money collected shall be paid to the fund. Claims will be paid in the order made against the fund. Finally, the division is authorized to contract for adjustment of claims against the fund.

Section 23 amends AS 23.30.095(j) to reassign from board to the commissioner authority to appoint a medical services review committee or contract with organizations to assist and advise the department and the board in matters respecting medical care under the workers' compensation act.

Section 24 amends AS 23.30.095 to add three new subsections. The first, subsec. (n) requires pharmacists to dispense generic medication where a generic is available and the prescriber does not provide written justification of medical necessity for the brand name product. This subsection also requires the department to establish a preferred drug list for use under this subsection, but also allowing prescribers to depart from the list when medical necessity justifies departure. The department shall make a regulation for the process to establish medical necessity.

The second new subsection, (o), for purposes of determining what medical treatment or services the employer is liable for under AS 23.30.095(a), establishes a rebuttable presumption of correctness of the recommended treatment guidelines of the American College of Occupational and Environmental Medicine in effect at the time treatment is provided. For injuries not covered by the guidelines, the board may adopt other scientific, evidence-based guidelines generally recognized by the national medical community. The requirement in the original SB 130 that the presumption be rebutted by "a preponderance of scientific evidence" is deleted.

The third new subsection (p) was added in the committee substitute. This subsection allows the presumption created in subsec. (o) to be rebutted by a certified (i.e., upon oath) written statement by the employee's physician describing the variance in treatment and setting out the basis for the physician's conclusion that the variance is reasonably required by the nature of the injury or the process of recovery. This statement would eliminate the "presumption of correctness" of the national guidelines and probably raise the presumption in AS 23.30.120(a) that a claim for the disputed treatment is compensable. In resolving any continuing dispute, the board would be required to address the matter on the evidence, in the same process it presently uses.

Section 25 creates a new statutory section, AS 23.30.097, dealing with payment of medical benefits. This section provides that all fees and charges for medical treatment or services under the act are subject to board regulation and that an employee may not be required to pay a fee or charge covered by the workers' compensation act. The fee or charge may not exceed the lesser of the usual, customary, and reasonable fee published on December 15, 2003, or the payment negotiated by an employer under the preferred provider process. [The reasonable fee *in effect* on December 15, 2003 was published in July 2003. This error should be corrected.] Provision is made to allow employers or groups of employers to negotiate with physicians to establish preferred provider lists and fees for services, but the selection of a physician on the list is voluntary and an employee must be so advised. No attempt to influence treatment or rating decisions can be made in negotiating the list. Selection of a physician for inclusion on the list does not affect the employer's right to choose an independent medical examiner. Subsec. (d) of this provision parallels former AS 23.30.095(l), repealed in sec. 45 of this bill, and provides that payment of bills for medical treatment must be made within 30 days after the date that the employer receives the bill or a completed report as required by AS 23.30.095(c), whichever is later. Subsec. (e) of this provision duplicates former AS 23.30.095(m), repealed in sec. 45, relating to payment of pharmacy

and travel charges, and reimbursement of third party payers such as health insurers.

Section 26 amends AS 23.30.100(b) to require that the notice of an injury or death given under the workers' compensation act contain a consent by the employee to release medical records of treatment of the injury or death to the employer's adjuster and the board. This "release" is limited solely to records of treatment of the reported injury or medical records of the death, and does not replace the consent to release information contained in AS 23.30.107. The intent of this amendment is to speed the process of payment of medical expenses by allowing adjusters to immediately request treatment records for the reported injury and encourage physicians to comply with AS 23.30.095(c) by making reports of treatment to the employer and the board.

Section 27 amends AS 23.30.107(b) to add the division as the agency where workers' compensation files are maintained. The amendment also adds the division as an agency that may release records as provided by the statute.

Section 28 amends AS 23.30.107 by adding a new subsection that prohibits the division from assembling or providing information contained in individual workers' compensation files for commercial purposes outside the scope of the workers' compensation act. The intent of this provision is to prevent "mining" of division records for commercial purposes, such as investment solicitations, credit agencies, and the like. Currently the act makes it a misdemeanor to solicit employment for a lawyer or oneself in respect to a compensation claim. *See* AS 23.30.260(2). Although that statute prohibits certain solicitation activities, it does not clearly provide the division authority to decline to produce information for commercial endeavors. This new section clarifies the division's ability refuse to assist in illegal conduct and provides guidance to division conduct. This section is not intended to prohibit disclosure of, for example, public record information regarding a specific claim to a newspaper reporter, an insurer seeking the names of employers who are uninsured for purposes of soliciting contracts to provide workers' compensation insurance (as these employer coverage status is not in respect of a claim), or an investigator for a law firm representing an injured worker asking, pursuant to a valid discovery order or other authorized discovery process, for information regarding other claims that are relevant to an on-going claim for compensation. This provision does not alter other subsections providing that medical and vocational reemployment records in a claim are not public records.

Section 29 repeals and reenacts AS 23.30.122, relating to determinations of the credibility of witnesses. As provided by the former statute, the board has the sole power to determine credibility of witnesses, but the amendment removes language relating to the conclusiveness of the board's findings regarding the

weight of the evidence. The amendment coordinated with the commission's role as appellate reviewer as proposed in SB 130. However, the text of the amendment was not changed in this committee substitute.

- Section 30** creates a new statutory provision, AS 23.30.175(b)(5), which "caps" compensation paid to non-resident recipients at the compensation rate the recipient would receive if residing in Alaska. The effect of the amendment is to allow compensation rates paid to a non-resident to decrease by cost of living adjustments for the recipient's area of residence, but caps any increase due to a cost of living adjustment in the recipient's area of residence so that the recipient's compensation rate does not exceed what the recipient would receive in Alaska.
- Section 31** amends AS 23.30.175(c) to transfer the authority to provide cost of living comparisons from the board to the department and to replace annual redeterminations of cost of living comparisons with redeterminations every three years.
- Section 32** amends AS 23.30.205(e) to replace the commissioner with the director for receipt of notice of award or adjudication respecting the second injury fund.
- Section 33** adds a new subsection (g) to AS 23.30.205 setting a final deadline for filing of claims for reimbursement against the second injury fund, thus limiting the fund's liabilities and phasing out the fund. The fund is granted a period in which to accept or claims filed, and pending claims may be included by decision by the board.
- Section 34** adds a new section providing for coordination of certain disability benefits and workers' compensation payments. For employees benefiting under AS 39.35 or AS 14.25, the employer's liability for total disability compensation under AS 23.30.180 or AS 23.30.185 is limited to the lesser of the difference between the employee's spendable weekly wages and the disability benefits the employee payable to the employee under AS 14.25.130, or AS 39.35.400 or 39.35.410 or the maximum compensation rate. The intent is that the combined workers' compensation and disability benefit should not exceed the employee's after tax wages, and that an "off-set" is allowed for disability benefits against workers' compensation payments. The employee whose workers' compensation and disability benefit, combined, do not exceed his or her spendable weekly wages should continue to receive the workers' compensation to which the employee is otherwise entitled. For employees who are not receiving total disability compensation, but who are receiving benefits under AS 23.30.041(k), the employer's liability is limited to the lesser of the combination of the AS 23.30.041(k) benefit and disability benefits up to 80 percent of the employee's spendable wages or 105 percent of the state average weekly wage (i.e. AS 23.30.041(k) benefit). Thus, the disability

benefit is off-set against the employer's liability for AS 23.30.041(k) benefits. Similar provisions are also included for employees who are eligible for disability benefits from an employer-contributed union or group insurance plan or welfare trust, if the benefit from the plan or trust does not make an off-set for workers' compensation benefits paid to the employee. The purpose of this provision is to eliminate the circumstance of employees receiving employer-funded disability benefits and workers' compensation, tax free, that together exceed what they would have received, after taxes, had they not been injured. This section does not limit the employee's benefits on account of private disability insurance or group disability insurance procured through other means (such as membership in trade or professional organizations) than those specified in this provision.

Section 35 amends AS 23.30.240 to include members of limited liability companies in the catch line and replace the director of the division of workers' compensation for the commissioner as the person approving executive officer waivers.

Section 36 amends AS 23.30.240 to add a new subsection providing that members of limited liability companies are not employees, except at the affirmative election of the company, which must specify the member for the period of coverage. When the coverage lapses, the specified member's inclusion as an employee also lapses and must be affirmatively renewed by the company to continue.

Section 37 amends AS 23.30.247(c) to eliminate a reference to the second injury fund. As provided in sec. 54, this amendment does not take effect until the liabilities of the fund are fully satisfied.

Section 38 creates a new section relating to fraudulent acts or false or misleading statements in workers' compensation. Provisions for administrative reimbursement for benefits obtained through fraudulent acts or false or misleading statements, currently in AS 23.30.250(b), are moved to this section, and the standard of proof of fraudulent acts or false or misleading statements is clarified. The form of the statute conforms to modern usage, without other change in meaning.

This section also provides civil immunity for a person who furnishes information regarding fraud in good faith to law enforcement officials, the division, the division of insurance in the Department of Commerce, Community and Economic Development, or an insurer or risk manager of a self-insured employer. The immunity is not extended to those whose liability is the result of reckless, willful or intentional misconduct. In addition, an insurer, adjuster, or risk manager is required to report information about suspected fraud to the director, and is immune from civil liability for making such a report. The provision grants the director authority to investigate reports

of fraud, and, if the director finds credible evidence of fraud, to refer the facts to a prosecutor and to the affected insurer. If the fraud was perpetrated against the division, the director may seek an order of forfeiture against the person, precluding the person from future benefits. The director's investigations are made confidential, unless a court directs public inspection. The director is given power to obtain information outside the state, through other state's officials, and to cooperate with officials outside the state. Definitions are provided of "fraudulent acts", which include actions by persons other than an employee.

Section 39 amends AS 23.30.250, relating to criminal and civil penalties for fraudulent acts or false or misleading statements, and administrative restitution. The committee substitute deletes the improvements provided by adding definitions and modernizing the language of subsec. (a) provided in the original SB 130 text. Because subsec. (a) of sec. 38 duplicates subsec. (b) of AS 23.30.250, amended by this section, albeit sec. 38 includes some rewording and addition of the standard of proof for administrative proceedings, there is a potential for considerable confusion by the retaining subsec. (b) in this section. The amendments in this section provide additional clarification as to the persons subject to the civil and criminal actions in subsec. (a), and to administrative reimbursement orders under subsec. (b).

Section 40 amends AS 23.30.250 to add a new subsection providing that a court may award compensatory and punitive damages. As noted in footnote 5, AS 23.30.250(b) as amended in sec. 39, provides an administrative remedy before the Board, which may be reduced to a judgment and execution by the court. However, there is no initial civil action permitted under (b). The language referring to a civil action under "(b) of this section" appears to be a typographic error, which should be corrected to prevent confusion.

Section 41 amends AS 23.30.260 to add a new subsec. (b) that provides that an attorney may charge up to \$300 for one-time only consultation with a claimant. This provision gives statutory authority for a regulation that presently exists allowing such fees.

Section 42 amends AS 23.30.395 to add new subsections defining the director, department, commissioner, and division.

Section 43 amends AS 37.05.146(c) to include the workers' compensation benefit guaranty fund in the list of accounts within the general fund.

Section 44 amends AS 39.25.120(c)(14) to remove a reference to the board and substitute the division as the employer of the rehabilitation administrator.

Section 45 repeals AS 23.30.095(f), 23.30.095(l) and 23.30.095(m). The complete provisions of AS 23.30.095(l) and 23.30.095(m), and portions of

AS 23.30.095(f), are now contained in new statutory section AS 23.30.097 (see sec. 25).

Section 46 repeals sections creating, operating, or relating to the second injury fund: AS 23.30.015(c), 23.30.040, 23.30.205, 23.30.395(27), and AS 37.05.147(c)(12). The intent is that upon the effective date of this section (see sec. 54), the second injury fund is fully disestablished.

Section 47 creates a new provision of uncodified law that provides that the cap on rates paid to out of state claimants shall apply only to injuries occurring after the effective date of the provision establishing the cap.

Section 48 creates a new provision of uncodified law that provides for continuation of effect notwithstanding a transfer of function from the board to the director or the institution of the commission as an appellate body for workers' compensation appeals. This provision also continues in force all regulations, orders, decisions, or certificates issued by the board until revoked, modified or vacated under the provisions of this bill; and continues in effect all contracts, rights, liabilities or obligations.

Section 49 creates a new provision of uncodified law permitting the director of insurance in the Department of Community and Economic Development and Department of Labor and Workforce Development to proceed to adopt necessary regulations to implement this bill, but not before the effective date of the bill.

Section 50 creates a new provision of uncodified law directing that any money remaining in the second injury fund shall be transferred to the general fund. The effective date of this section is delayed until the full satisfaction of the fund's liabilities. See sec. 54 of the bill.

Section 51 creates a new provision of uncodified law directing the commissioner to appoint a medical services review committee pursuant to AS 23.30.095(j), as amended by this act, to make a study of provision of medical treatment and services, and the cost of such benefits, and to report its findings to the commissioner by March 1, 2007.

Section 52 provides that the "cap" on compensation paid to out-of-state recipients applies only to persons injured after the effective date of the section establishing the cap.

Section 53 provides an effective date of September 1, 2005, for the insurance provisions (secs. 1-4 of the bill), the cap on benefits paid out-of-state recipients, and the directive to appoint the medical services review committee.

Section 54 provides a delayed effective date for the repeal of the second injury fund (see sec. 46 of the bill) and amendments to delete references to the second injury

fund. The delayed effective date is the date the commissioner certifies that all remaining liabilities of the fund are satisfied.

Section 55 provides an effective date of August 1, 2005 for all other provisions of the act.

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Summary of CSSB 130 Prepared for Senate Judiciary Committee

This legislation's reforms are aimed at lessening the threat to jobs and benefits caused by insurance premiums increasing at intolerable rates. The reforms are consistent with the oft-stated legislative intent of ensuring the quick, efficient, fair, and predictable delivery of indemnity and medical benefits to injured workers at a reasonable cost to their employers. The reforms address five major areas:

Protecting Workers' Benefits and Jobs

- Sec. 21 Empower the Division Director to immediately shut down an employer upon completion of an investigation confirming lack of required insurance. (Page 12-13)
- Sec. 21 Empower the Board to fine uninsured employers up to \$1,000/day/employee. (Page 13)
- Sec. 22 Establish a Benefits Guaranty Fund to receive fines assessed against uninsured employers. Permit the Fund to use those fines to pay benefits to injured workers whose employers were uninsured and fail to pay. Authorize the Fund to pursue reimbursement from the uninsured employer. (Pages 14-15)
- Sec. 2 Protect benefits payments from an insurer's insolvency by requiring in-state deposits to back the insurer's loss reserves. (Pages 2-3)
- Sec. 3 Release the deposits to the Alaska Insurance Guaranty Association, upon the insurer's insolvency, for payment of benefits to injured workers. (Pages 3-4)

1 director [BOARD] shall issue a public notice announcing the date selected by the
2 department. The requirements of AS 44.62.010 - 44.62.300 do not apply to the
3 selection or announcement of the date under this subsection.

4 * **Sec. 19.** AS 23.30.041(q) is amended to read:

5 (q) Notwithstanding AS 23.30.012, after medical stability has been determined
6 and a physician has predicted that the employee may have a permanent impairment
7 that may cause the employee to have permanent physical capacities that are less than
8 the physical demands of the employee's job at the time of injury, an employee may
9 waive any benefits or rights under this section, including an eligibility evaluation and
10 benefits related to a reemployment plan. To waive any benefits or rights under this
11 section, an employee must file a statement under oath with the division [BOARD] to
12 notify the parties of the waiver and to specify the scope of benefits or rights that the
13 employee seeks to waive. The statement must be on a form prescribed or approved by
14 the director [BOARD]. The division [BOARD] shall serve the notice of waiver on
15 all parties to the claim within 10 days after filing. The waiver is effective upon service
16 to the party. A waiver effective under this subsection discharges the liability of the
17 employer for the benefits or rights contained in this section. The waiver may not be
18 modified under AS 23.30.130.

19 * **Sec. 20.** AS 23.30.080(d) is amended to read:

20 (d) If an employer fails to insure or provide security as required by
21 AS 23.30.075, the board may issue a stop order at the request of the division
22 prohibiting the use of employee labor by the employer until the employer insures or
23 provides security as required by AS 23.30.075. The failure of an employer to file
24 evidence of compliance as required by AS 23.30.085 creates a rebuttable presumption
25 that the employer has failed to insure or provide security as required by AS 23.30.075.
26 If an employer fails to comply with a stop order issued under this section, the board
27 shall assess a civil penalty of \$1,000 a [PER] day. The employer may not obtain a
28 public contract with the state or a political subdivision of the state for three years
29 following the violation of the stop order.

30 * **Sec. 21.** AS 23.30.080 is amended by adding new subsections to read:

31 (e) If a representative of the department investigates an employer's failure to

1 file the evidence of compliance required by AS 23.30.085 and, after investigation,
2 there is substantial evidence that the employer failed to insure or provide security as
3 required by AS 23.30.075, the representative shall inform the employer. The
4 representative may request the director to issue a stop order prohibiting the use of
5 employee labor by the employer until the employer insures or provides security as
6 required by AS 23.30.075. The director may issue a stop order, without a hearing,
7 based on the representative's investigation. The director shall dissolve a stop order
8 issued under this subsection upon receipt of substantial evidence that the employer is
9 insured or has provided security as required by AS 23.30.075(a). If an employer fails
10 to comply with a stop order issued under this subsection, the division may petition the
11 board to assess a civil penalty. The board may assess a civil penalty of \$1,000 per
12 day. An employer who is assessed a penalty under this subsection may not obtain a
13 public contract with the state or a political subdivision of the state for the three years
14 following violation of the stop order.

15 (f) If an employer fails to insure or provide security as required by
16 AS 23.30.075, the division may petition the board to assess a civil penalty of up to
17 \$1,000 for each employee for each day an employee is employed while the employer
18 failed to insure or provide the security required by AS 23.30.075. The failure of an
19 employer to file evidence of compliance as required by AS 23.30.085 creates a
20 rebuttable presumption that the employer failed to insure or provide security as
21 required by AS 23.30.075.

22 (g) If an employer fails to pay a civil penalty order issued under (d), (e), or (f)
23 of this section within seven days after the date of service of the order upon the
24 employer, the director may declare the employer in default. The director shall file a
25 certified copy of the penalty order and declaration of default with the clerk of the
26 superior court. The court shall, upon the filing of the copy of the order and
27 declaration, enter judgment for the amount declared in default if it is in accordance
28 with law. Anytime after a declaration of default, the attorney general shall, when
29 requested to do so by the director, take appropriate action to ensure collection of the
30 defaulted payment. Review of the judgment may be had as provided under the Alaska
31 Rules of Civil Procedure. Final proceedings to execute the judgment may be had by

1 writ of execution.

2 * Sec. 22. AS 23.30 is amended by adding a new section to read:

3 **Sec. 23.30.082. Workers' compensation benefits guaranty fund.** (a) The
4 workers' compensation benefits guaranty fund is established in the general fund to
5 carry out the purposes of this section. The fund is composed of civil penalty payments
6 made by employers under AS 23.30.080, income earned on investment of the money
7 in the fund, money deposited in the fund by the department, and appropriations to the
8 fund. Money appropriated to the fund does not lapse. Amounts in the fund may be
9 appropriated for claims against the fund, for expenses directly related to fund
10 operations and claims, and for legal expenses.

11 (b) Every three months, the Department of Revenue shall provide the division
12 with a statement of the activities of, balances in, interest earned on, and interest
13 returned to the fund.

14 (c) Subject to the provisions of this section, an employee employed by an
15 employer who fails to meet the requirements of AS 23.30.075 and who fails to pay
16 compensation and benefits due to the employee under this chapter, may file a claim for
17 payment by the fund. In order to be eligible for payment, the claim form must be filed
18 within the same time, and in the same manner, as a workers' compensation claim. The
19 fund may assert the same defenses as an insured employer under this chapter.

20 (d) If the fund pays benefits to an employee under this section, the fund shall
21 be subrogated to all of the rights of the employee to the amount paid, and the
22 employee shall assign all right, title, and interest in that portion of the employee's
23 workers' compensation claim and any recovery under AS 23.30.015 to the fund.
24 Money collected by the division on the claim or recovery shall be deposited in the
25 fund.

26 (e) If the money deposited in the fund is insufficient at a given time to satisfy
27 a duly authorized claim against the fund, the fund shall, when sufficient money has
28 been deposited in the fund and appropriated, satisfy unpaid claims in the order in
29 which the claims were originally filed, without interest.

30 (f) The division may contract under AS 36.30 (State Procurement Code) with
31 a person for the person to adjust claims against the fund. The contract may cover one

1 or more claims.

2 (g) In this section, "fund" means the workers' compensation benefits guaranty
3 fund.

4 * Sec. 23. AS 23.30.095(j) is amended to read:

5 (j) The commissioner shall [BOARD MAY] appoint a medical services
6 review committee, or contract with an existing organization in the state or another
7 state, to assist and advise the department and the board in matters involving the
8 appropriateness, necessity, and cost of medical and related services provided under
9 this chapter.

10 * Sec. 24. AS 23.30.095 is amended by adding new subsections to read:

11 (n) A generic drug product must be used when dispensing a drug product to an
12 employee under this chapter unless the prescribing physician provides justification in
13 writing explaining the medical necessity for the name-brand drug product. The
14 department, by regulation, shall establish a preferred drug list and a procedure for
15 establishing medical necessity to depart from the list and to use a name-brand drug
16 product. In this subsection, "generic drug product" has the meaning given the term
17 "equivalent drug product" in AS 08.80.480.

18 (o) For purposes of this chapter, the medical treatment or service that the
19 nature of the injury or the process of recovery requires under (a) of this section means
20 treatment or service that is within the recommended guidelines set out in the American
21 College of Occupational and Environmental Medicine's Occupational Medicine
22 Practice Guidelines in effect at the time the treatment or service is provided. The
23 American College of Occupational and Environmental Medicine's Occupational
24 Medicine Practice Guidelines shall be presumed correct on the issue of the nature
25 extent, and scope of medical treatment or services. For an injury not covered by the
26 American College of Occupational and Environmental Medicine's Occupational
27 Medicine Practice Guidelines, the treatment or service shall be in accordance with
28 standards based on other scientific, evidence-based medical treatment guidelines
29 generally recognized by the national medical community and adopted by the board by
30 regulation, and those standards shall also be presumed correct on the issue of the
31 nature, extent, and scope of medical treatment or services.

1 reemployment benefits and job dislocation benefits; relating to coordination of workers'
2 compensation and certain disability benefits; relating to division of workers'
3 compensation records; relating to release of treatment records; relating to an employer's
4 failure to insure and keep insured or provide security; relating to workers'
5 compensation proceedings; providing for a maximum amount for the cost-of-living
6 adjustment for workers' compensation benefits; relating to attorney fees with respect to
7 workers' compensation; providing for the department to enter into contracts with
8 nonprofit organizations to provide information services and legal representation to
9 injured employees; providing for administrative penalties for employers uninsured or
10 without adequate security for workers' compensation; relating to fraudulent acts or
11 false or misleading statements in workers' compensation and penalties for the acts or
12 statements; providing for members of a limited liability company to be included as an
13 employee for purposes of workers' compensation; establishing a workers' compensation
14 benefits guaranty fund; relating to the second injury fund; making conforming
15 amendments; providing for a study and report by the medical services review
16 committee; and providing for an effective date."

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

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

20 LEGISLATIVE INTENT. It is the intent of the legislature by secs. 2 - 4 of this Act

21 (1) to reform the workers' compensation system in Alaska to ensure the
22 continued payment of benefits in the event of an insurer insolvency; and

23 (2) to reduce the overall costs of workers' compensation premiums to
24 employers.

25 * Sec. 2. AS 21.09.090 is amended by adding new subsections to read:

1 (e) In addition to and separate from the deposit required under (b) of this
2 section, an insurer that is authorized to transact workers' compensation and employer's
3 liability insurance as defined in AS 21.12.070(a)(3) shall deposit in this state, through
4 the director, for the protection of persons in this state covered by workers'
5 compensation insurance issued by the insurer, an amount not less than the greater of

6 (1) \$100,000; or

7 (2) an amount equal to the sum of the following less any credit for
8 reinsurance that the insurer may take under (f) of this section:

9 (A) the aggregate of the present value at four percent interest of
10 the total determined and estimated future loss and loss expense payment upon
11 each claim incurred under a policy written in this state more than three years
12 before the date of computation; and

13 (B) for each of the three years before the date of computation,
14 65 percent of the earned premium for the year less each loss and loss expense
15 payment made upon a claim incurred in the corresponding year, except that the
16 amount for any year may not be less than the present value at four percent
17 interest of the total determined and estimated future loss and loss expense
18 payment upon each claim incurred under a policy written in this state that year.

19 (f) In calculating the deposit amount required under (e)(2) of this section, an
20 insurer may take a credit for reinsurance if the reinsurer has deposited in trust in this
21 state, through the director, an amount at least equal to the credit to be taken, and not
22 less than the aggregate of all credits taken by each insurer under this subsection.

23 * Sec. 3. AS 21.24.130 is amended by adding a new subsection to read:

24 (f) If an insurer is found to be insolvent by a proceeding under AS 21.78 or by
25 a court of competent jurisdiction in another state, the director shall take control of the
26 insurer's deposit made under AS 21.09.090(e). The deposit assets shall be released, at
27 the discretion of the director, to the Alaska Insurance Guaranty Association
28 (AS 21.80) to reimburse for a valid loss and loss expense claim payment made by the
29 association that is within the purpose of the deposit. The director shall pay the
30 remaining deposit assets to the receiver, conservator, rehabilitator, or liquidator of the
31 insurer, or to another properly designated official who succeeds to the management

1 and control of the insurer's assets, after the director determines that all loss and loss
 2 expense liabilities have been paid that were incurred on the insurer's policies written in
 3 this state for which the deposit was required.

4 * Sec. 4. AS 21.39.155(a) is amended to read:

5 (a) The director may require insurers, except a reciprocal insurer formed [BY
 6 AND INSURING ONLY A GROUP OF MUNICIPALITIES OR NONPROFIT
 7 PUBLIC UTILITIES] under AS 21.75 [OR A RECIPROCAL INSURER FORMED
 8 UNDER AS 21.75 TO PROVIDE MARINE INSURANCE], as a condition of writing
 9 a line of insurance dealing with medical malpractice or workers' compensation, to
 10 participate in an assigned risk pool if the director finds that mandatory carrier
 11 participation is in the public interest.

12 * Sec. 5. AS 23.05.067(a) is amended to read:

13 (a) Each insurer providing workers' compensation insurance and each
 14 employer who is self-insured or uninsured for purposes of AS 23.30 in this state shall
 15 pay an annual service fee to the department for the administrative expenses of the state
 16 for workers' safety programs under AS 18.60 and the workers' compensation program
 17 under AS 23.30 as follows:

18 (1) for each employer,

19 (A) except as provided in (b) of this section, the service fee
 20 shall be paid each year to the department at the time that the annual report is
 21 required to be filed under AS 23.30.155(m) or (n); and

22 (B) the service fee is 2.9 percent of all payments reported to the
 23 Alaska Workers' Compensation Board under AS 23.30.155(m) or (n) [,
 24 EXCEPT SECOND INJURY FUND PAYMENTS]; and

25 (2) for each insurer, the director of the division of insurance shall,
 26 under (c) of this section, deposit from funds received from the insurer under
 27 AS 21.09.210 a service fee of 1.82 percent of the direct premium income for workers'
 28 compensation insurance received by the insurer during the year ending on the
 29 preceding December 31, subject to all the deductions specified in AS 21.09.210(b).

30 * Sec. 6. AS 23.30 is amended by adding a new section to read:

31 **Sec. 23.30.001. Intent of the legislature and construction of chapter.** It is

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Summary of CSSB 130 Prepared for Senate Judiciary Committee

Quicker and More Efficient Resolution of Disputed Benefits Claims

- Sec. 41 Legalize private attorneys' receipt of a one-time consultation fee up to \$300 to advise injured workers about benefits matters. (Page 26)
- Sec. 9 Allow the Department of Labor & Workforce Development to contract with non-profit organizations to provide information and legal assistance to injured workers unable to obtain private counsel. (Page 6)
- Sec. 9 Permit Workers' Compensation Board to delegate authority to Workers' Compensation Division Director by regulation. (Page 6)
- Sec. 10 Allow injured workers represented by Alaska-licensed attorneys to settle their claims without review by the Workers' Compensation Board. Focus Board review on settlements of workers who are minors, incompetent, or unrepresented by counsel. (Page 6)
- Sec. 7 Formally require use of hearing officers and Board adoption of conflict of interest regulations. (Page 5)

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1 conduct, is guilty of theft by deception as defined in AS 11.46.180, and may be
2 punished as provided by AS 11.46.120 - 11.46.150.

3 (b) If the board, after a hearing, finds that a person has obtained compensation,
4 medical treatment, or another benefit provided under this chapter, or that a provider
5 has received a payment, by knowingly making a false or misleading statement or
6 representation for the purpose of obtaining that benefit or payment, the board shall
7 order that person to make full reimbursement of the cost of all benefits and payments
8 obtained. Upon entry of an order authorized under this subsection, the board shall also
9 order that person to pay all reasonable costs and attorney fees incurred by the
10 employer and the employer's carrier in obtaining an order under this section and in
11 defending any claim made for benefits under this chapter. If a person fails to comply
12 with an order of the board requiring reimbursement of compensation and payment of
13 costs and attorney fees, the employer may declare the person in default and proceed to
14 collect any sum due as provided under AS 23.30.170(b) and (c).

15 * Sec. 40. AS 23.30.250 is amended by adding a new subsection to read:

16 (c) A court may provide compensatory and punitive damages and attorney
17 fees to a prevailing party in a civil action under (a) or (b) of this section.

18 * Sec. 41. AS 23.30.260 is amended by adding a new subsection to read:

19 (b) Notwithstanding AS 23.30.145 and (a) of this section, approval of a fee is
20 not required if the fee does not exceed \$300 and is a one-time-only charge to an
21 employee by an attorney licensed in this state who performed legal services with
22 respect to the employee's claim but did not enter an appearance.

23 * Sec. 42. AS 23.30.395 is amended by adding new paragraphs to read:

24 (35) "commissioner" means the commissioner of labor and workforce
25 development;

26 (36) "department" means the Department of Labor and Workforce
27 Development;

28 (37) "director" means the director of the division of workers'
29 compensation in the department;

30 (38) "division" means the division of workers' compensation in the
31 department.

1 * Sec. 9. AS 23.30.005 is amended by adding new subsections to read:

2 (m) The department may, in its discretion, contract with a nonprofit
3 organization to provide information services and legal representation to employees in
4 proceedings under this chapter.

5 (n) The board may by regulation delegate authority to the director to assist the
6 board in administering and enforcing this chapter.

7 * Sec. 10. AS 23.30.012 is amended to read:

8 Sec. 23.30.012. Agreements in regard to claims. (a) At any time after
9 death, or after 30 days subsequent to the date of the injury, the employer and the
10 employee or the beneficiary or beneficiaries, as the case may be, have the right to
11 reach an agreement in regard to a claim for injury or death under this chapter [IN
12 ACCORDANCE WITH THE APPLICABLE SCHEDULE IN THIS CHAPTER], but
13 a memorandum of the agreement in a form prescribed by the director [BOARD] shall
14 be filed with the division [BOARD]. Otherwise, the agreement is void for any
15 purpose. Except as provided in (b) of this section, an agreement filed with the
16 division discharges the liability of the employer for the compensation,
17 notwithstanding the provisions of AS 23.30.130, 23.30.160, and 23.30.245, and is
18 enforceable as a compensation order.

19 (b) If the claimant or beneficiary is not represented by an attorney
20 licensed to practice in this state or the beneficiary is a minor or incompetent, the
21 agreement shall be reviewed by a panel of the board. If approved by the board, the
22 agreement is enforceable the same as an order or award of the board and discharges
23 the liability of the employer for the compensation notwithstanding the provisions of
24 AS 23.30.130, 23.30.160, and 23.30.245. The agreement shall be approved by the
25 board only when the terms conform to the provisions of this chapter, and, if it involves
26 or is likely to involve permanent disability, the board may require an impartial medical
27 examination and a hearing in order to determine whether or not to approve the
28 agreement. A [THE BOARD MAY APPROVE] lump-sum settlement may be
29 approved [SETTLEMENTS] when it appears to be to the best interest of the
30 employee or beneficiary or beneficiaries.

31 * Sec. 11. AS 23.30.015(c) is amended to read:

1 the intent of the legislature that

2 (1) this chapter be interpreted so as to ensure the quick, efficient, fair,
3 and predictable delivery of indemnity and medical benefits to injured workers at a
4 reasonable cost to the employers who are subject to the provisions of this chapter;

5 (2) workers' compensation cases shall be decided on their merits
6 except where otherwise provided by statute;

7 (3) this chapter may not be construed by the courts in favor of a party;

8 (4) hearings in workers' compensation cases shall be impartial and fair
9 to all parties and that all parties shall be afforded due process and an opportunity to be
10 heard and for their arguments and evidence to be fairly considered.

11 * Sec. 7. AS 23.30.005(a) is amended to read:

12 (a) The Alaska Workers' Compensation Board consists of a southern panel of
13 three members sitting for the first judicial district, a northern panel of three members
14 sitting for the second and fourth judicial districts, four southcentral panels of three
15 members each sitting for the third judicial district, and one panel of three members
16 that may sit in any judicial district. Each panel must include the commissioner of
17 labor and workforce development or a hearing officer designated to represent [THE
18 DESIGNATED REPRESENTATIVE OF] the commissioner, a representative of
19 industry, and a representative of labor. The latter two members of each panel shall be
20 appointed by the governor and are subject to confirmation by a majority of the
21 members of the legislature in joint session. The board shall by regulation provide
22 procedures to avoid conflicts and the appearance of impropriety in hearings.

23 * Sec. 8. AS 23.30.005(b) is amended to read:

24 (b) The commissioner shall act as chair [CHAIRMAN] and executive officer
25 of the board and chair [CHAIRMAN] of each panel. The commissioner may
26 designate a representative to act for the commissioner as chair and executive
27 officer of the board. The commissioner may designate hearing officers to serve as
28 chairs of panels for hearing claims [IF THE COMMISSIONER DESIGNATES A
29 REPRESENTATIVE TO ACT FOR THE COMMISSIONER, THE
30 REPRESENTATIVE SHALL SERVE IN THAT CAPACITY ON THE BOARD
31 AND ON EACH PANEL].

3

Summary of CSSB 130 Prepared for Senate Judiciary Committee

Fair Benefits at Reasonable Employer Cost

- Sec. 30 Cap non-resident compensation rates at those paid to Alaskan residents. (Pages 18-19)
- Sec. 34 Coordinate payments of workers' compensation benefits, and disability benefits under a plan to which an employer also contributed, so combined benefits do not exceed the injured worker's take home pay. (Pages 19-21)
- Sec. 38 Broaden and strengthen anti-fraud provisions enforced by the Board. (Pages 22-25)
- Sec. 39 Improve criminal anti-fraud provisions to facilitate effective prosecution. (Pages 25-26)
- Sec. 40 Adopts "Ad Hoc Committee" recommendations authorizing the courts to award punitive damages, compensatory damages, and attorney's fees for violations of fraud provisions. (Page 26)
- Sec. 36 Confirm that Limited Liability Company members need not have workers' compensation coverage but allow Company to add them to its insurance policy if desired. (Page 22)
- Sec. 26 Speed processing of medical bills by requiring injury report to include release of medical records for treatment of the injury. (Pages 17-18)
- Sec. 27 Maintain confidentiality of worker's medical and rehabilitation records held by Division or Board. (Page 18)
- Sec. 28 Ban the Division from assembling or providing individual records for commercial purposes. (Page 18)

1 death, and be signed by the employee or by a person on behalf of the employee, or, in
 2 case of death, by a person claiming to be entitled to compensation for the death or by a
 3 person on behalf of that person.

4 * Sec. 27. AS 23.30.107(b) is amended to read:

5 (b) Medical or rehabilitation records in an employee's file maintained by the
 6 division or held by the board are not public records subject to public inspection and
 7 copying under AS 40.25. This subsection does not prohibit

8 (1) the reemployment benefits administrator, the division, the board,
 9 or the department from releasing medical or rehabilitation records in an employee's
 10 file, without the employee's consent, to a physician providing medical services under
 11 AS 23.30.095(k) or 23.30.110(g), a party to a claim filed by the employee, or a
 12 governmental agency; or

13 (2) the quoting or discussing of medical or rehabilitation records
 14 contained in an employee's file during a hearing on a claim for compensation [.] or in
 15 a decision and order of the board.

16 * Sec. 28. AS 23.30.107 is amended by adding a new subsection to read:

17 (c) The division may not assemble, or provide information respecting,
 18 individual records for commercial purposes that are outside the scope of this chapter.

19 * Sec. 29. AS 23.30.122 is repealed and reenacted to read:

20 **Sec. 23.30.122. Credibility of witnesses.** The board has the sole power to
 21 determine the credibility of testimony presented by a witness. When credibility is
 22 disputed in a proceeding before the board, the board's determination of credibility
 23 must be supported by specific findings.

24 * Sec. 30. AS 23.30.175(b) is amended to read:

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

27 (1) the weekly rate of compensation shall be calculated by multiplying
 28 the recipient's weekly compensation rate calculated under AS 23.30.180, 23.30.185,
 29 23.30.190, 23.30.200, or 23.30.215 [.] by the ratio of the cost of living of the area in
 30 which the recipient resides to the cost of living in this state;

31 (2) the calculation required by (1) of this subsection does not apply if

1 the recipient is absent from the state for medical or rehabilitation services not
2 reasonably available in the state;

3 (3) if the gross weekly earnings of the recipient and the resulting
4 compensation rate are determined under AS 23.30.220(a)(6), (7), or (10), the
5 calculation required by this subsection applies only to the portion of the recipient's
6 weekly compensation rate attributable to wages earned in the state;

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

9 (5) application of (1) - (4) of this subsection may not result in
10 raising a recipient's weekly compensation rate to an amount that exceeds the
11 weekly compensation rate that the recipient would have received if the recipient
12 had been residing in the state.

13 * Sec. 31. AS 23.30.175(c) is amended to read:

14 (c) The department [BOARD] shall provide by regulation for the
15 determination and comparison of living costs for this state and the other areas in which
16 recipients reside and for the [ANNUAL] redetermination and comparison of these
17 costs every three years.

18 * Sec. 32. AS 23.30.205(e) is amended to read:

19 (e) The second injury fund may not be bound as to any question of law or fact
20 by reason of an award or an adjudication to which it was not a party or in relation to
21 which the director [COMMISSIONER] was not notified at least three weeks before
22 the award or adjudication [,] that the fund might be subject to liability for the injury or
23 death.

24 * Sec. 33. AS 23.30.205 is amended by adding a new subsection to read:

25 (g) Claims for reimbursement may not be submitted to the fund after
26 September 1, 2005. The fund shall continue to make reimbursement payments on
27 claims accepted before July 1, 2006, or ordered by the board, until the fund's liabilities
28 for the claim are extinguished.

29 * Sec. 34. AS 23.30 is amended by adding a new section to read:

30 **Sec. 23.30.224. Coordination of benefits.** (a) Notwithstanding other
31 provisions of this chapter, an employer's liability for payment of weekly compensation

1 under AS 23.30.180 or 23.30.185 to an employee eligible for a disability benefit under
2 AS 14.25.130, AS 39.35.400, or 39.35.410 may not exceed the lesser of

3 (1) the difference between the disability benefit payable to the
4 employee under AS 14.25.130, AS 39.35.400, or 39.35.410, converted to a weekly
5 basis, and 100 percent of the employee's spendable weekly wage as calculated under
6 AS 23.30.220; or

7 (2) the maximum compensation rate calculated under AS 23.30.175.

8 (b) An employer's liability for payment of compensation under
9 AS 23.30.041(k) to an employee eligible for a disability benefit payable under
10 AS 14.25.130, AS 39.35.400, or 39.35.410 may not exceed the lesser of

11 (1) the difference between the disability benefit payable to the
12 employee under AS 14.25.130, AS 39.35.400, or 39.35.410, converted to a weekly
13 basis, and 80 percent of the employee's spendable weekly wage as calculated under
14 AS 23.30.220; or

15 (2) 105 percent of the average weekly wage calculated under
16 AS 23.30.175(d).

17 (c) Notwithstanding other provisions of this chapter, the liability of an
18 employer for payment of compensation for an injury or illness under AS 23.30.180 or
19 23.30.185 to an employee who is covered by a union or group retirement system to
20 which the employer makes contributions under a collective bargaining agreement or
21 by membership in a welfare or pension plan or trust may not exceed the lesser of

22 (1) the difference between 100 percent of the employee's spendable
23 weekly wage and an amount equal to the disability benefit, disability pension, or
24 medical retirement benefit that the employee is eligible to receive as a result of the
25 injury or illness, as calculated on a weekly basis, under the retirement system or
26 welfare or pension plan or trust; or

27 (2) the maximum compensation rate calculated under AS 23.30.175.

28 (d) If the union or group retirement system, pension plan, or trust referred to in
29 (c) of this section provides by its terms that its benefits are precluded or reduced if
30 benefits are awarded under this chapter, the limitation provided in (c)(1) of this section
31 is not applicable to the extent of the amount precluded or reduced.

1 (c) Notwithstanding other provisions of this chapter, the liability of an
 2 employer for payment of compensation for an injury or illness under AS 23.30.041(k)
 3 to an employee who is covered by a union or group retirement system to which the
 4 employer makes contributions under a collective bargaining agreement or by
 5 membership in a welfare or pension plan or trust may not exceed the lesser of

6 (1) the difference between 80 percent of the employee's spendable
 7 weekly wage and an amount equal to the disability benefit, disability pension, or
 8 medical retirement benefit that the employee is eligible to receive as a result of the
 9 injury or illness, calculated on a weekly basis, under the retirement system or welfare
 10 or pension plan or trust; or

11 (2) 105 percent of the average weekly wage calculated under
 12 AS 23.30.175(d).

13 (f) If the union or group retirement system, pension plan, or trust referred to in
 14 (e) of this section provides by its terms that its benefits are precluded or reduced if
 15 benefits are awarded under this chapter, the limitation provided in (c)(1) of this section
 16 is not applicable to the extent of the amount precluded or reduced.

17 (g) If the employee receives a lump sum distribution of disability benefits,
 18 disability pension, or medical retirement benefits, the combined workers'
 19 compensation and weekly disability or medical retirement benefit specified in this
 20 section shall be calculated by assuming that the employee received weekly disability
 21 or medical retirement payments under the applicable plan from the date of eligibility
 22 for the disability benefit or medical retirement until the total of the weekly payments
 23 equals the amount of the lump sum, exclusive of that portion of the lump sum
 24 specifically set aside under the applicable plan for retraining expenses, medical and
 25 transportation expenses, and attorney fees or other legal costs.

26 * Sec. 35. AS 23.30.240 is amended to read:

27 **Sec. 23.30.240. Officers of corporations, municipal corporations and**
 28 **nonprofit corporations and members of limited liability companies as employees.**
 29 An executive officer elected or appointed and empowered in accordance with the
 30 charter and bylaws of a corporation, other than an official of a municipal corporation
 31 or a charitable, religious, educational, or other nonprofit corporation, is an employee

1 of the corporation under this chapter. However, an executive officer of a corporation
 2 may waive coverage under this chapter, subject to the approval of the director
 3 [COMMISSIONER OF LABOR AND WORKFORCE DEVELOPMENT],
 4 notwithstanding AS 23.30.245(b). Notwithstanding any other provision of this
 5 chapter, an executive officer of a municipal corporation or of a charitable, religious,
 6 educational, or other nonprofit corporation may be brought within the coverage of its
 7 insurance contract by the corporation by specifically including the officer in the
 8 contract of insurance. The election to bring an executive officer within the coverage
 9 continues in force for the period the contract of insurance is in effect. During that
 10 period, an executive officer brought within the coverage of the insurance contract is an
 11 employee of the corporation under this chapter.

12 * Sec. 36. AS 23.30.240 is amended by adding a new subsection to read:

13 (b) Except as provided in this subsection, a member of a limited liability
 14 company organized under AS 10.50 is not an employee of the company under this
 15 chapter. Notwithstanding any other provision of this chapter, a limited liability
 16 company may bring a member of the company within the coverage of the company's
 17 insurance contract by specifically including the member in the contract of insurance.
 18 The election to bring the member within the company's coverage continues in force
 19 for the period the contract of insurance is in effect. During that period, a member
 20 brought within the coverage of the insurance contract is an employee of the company
 21 under this chapter.

22 * Sec. 37. AS 23.30.247(c) is amended to read:

23 (c) This section may not be construed to prohibit an employer from requiring a
 24 prospective employee to fill out a preemployment questionnaire or application
 25 regarding the person's prior health or disability history as long as it is meant to
 26 [EITHER DOCUMENT WRITTEN NOTICE FOR SECOND INJURY FUND
 27 REIMBURSEMENT UNDER AS 23.30.205(c) OR] determine whether the employee
 28 has the physical or mental capacity to meet the documented physical or mental
 29 demands of the work.

30 * Sec. 38. AS 23.30 is amended by adding a new section to read:

31 **Sec. 23.30.249. Fraudulent acts and false or misleading statements. (a)**

1 An employer, insurer, or other person may petition for an order to reimburse a
2 payment and the cost of compensation, medical treatment, or other benefit provided
3 under this chapter obtained by a fraudulent act or false or misleading statement or
4 representation. If the board, after a hearing as provided by AS 23.30.110, finds by a
5 preponderance of the evidence that a person has obtained a payment, compensation,
6 medical treatment, or another benefit provided under this chapter by a fraudulent act
7 or by knowingly making a false or misleading statement or representation for the
8 purpose of obtaining that benefit or payment, the board shall order that person to make
9 full reimbursement of the payment or cost of all benefits obtained. Upon entry of an
10 order authorized under this subsection, the board shall also order that person to pay all
11 reasonable costs and attorney fees incurred in obtaining an order under this section and
12 in defending a fraudulent claim made for benefits under this chapter. If a person fails
13 to comply with an order requiring reimbursement of payment or cost of benefits and
14 payment of costs and attorney fees, the employer, insurer, or other party may declare
15 the person in default and proceed to collect any sum due in the same manner as
16 provided under AS 23.30.170(b) and (c)

17 (b) Except as provided in (c) of this section, a person is not liable for civil
18 damages for filing a report concerning a suspected, anticipated, or completed
19 fraudulent act or a false or misleading statement or representation with, or for
20 furnishing other information, whether written or oral, concerning a suspected,
21 anticipated, or completed fraudulent act or false or misleading statements or
22 representation to

23 (1) law enforcement officials or their agents and employees;

24 (2) the division of workers' compensation, the division of insurance in
25 the Department of Commerce, Community, and Economic Development, or an agency
26 in another state that regulates insurance or workers' compensation;

27 (3) an insurer or adjuster or its agents, employees, or designees, or the
28 risk manager of a self-insured employer under this chapter.

29 (c) The provisions of (b) of this section do not preclude liability for civil
30 damages as described in (b) of this section if the liability arose as a result of reckless,
31 wilful, or intentional misconduct.

1 (d) An insurer, an adjuster, or a risk manager of a self-insured employer that
2 has reason to believe that a fraudulent workers' compensation demand or claim has
3 been made against it shall send the director a report disclosing information that the
4 director may require. An insurer or an adjuster or its employee or agent, or a risk
5 manager of a self-employed employer, or another person acting in good faith is not
6 civilly liable for damages resulting from the filing of the report or the furnishing of
7 information required by this section or by the director.

8 (e) The director may investigate facts reported under this section and may
9 refer facts indicating a possible violation of law to the appropriate prosecutor or
10 agency. If the director determines that there is credible evidence that a person
11 obtained a payment, compensation, medical treatment, or other benefit provided under
12 this chapter by a fraudulent act or false or misleading statement or representation as
13 provided in (a) of this section, the director shall notify the affected employer, insurer,
14 and adjuster upon conclusion of the investigation. If the fraudulent act or false or
15 misleading statement or representation was perpetrated against the division, the
16 director may file a petition as provided in AS 23.30.110 for an order of forfeiture
17 against the person, precluding, in whole or in part, the person from future payment,
18 compensation, medical treatment, or other benefit provided under this chapter.

19 (f) The papers, reports, documents, and evidence received under this section or
20 in an investigation arising from information received under this section are not subject
21 to public inspection for so long as the director considers confidentiality to be in the
22 public interest or reasonably necessary to complete an investigation or protect the
23 person investigated from unwarranted injury. Papers, reports, documents, and
24 evidence relative to an investigation under this section are confidential and not subject
25 to subpoena unless, after notice to the director and a hearing, a court determines that
26 the director would not be unduly hindered by public inspection.

27 (g) If the material that the director seeks to obtain is located outside the state,
28 the material may be made available to the director to examine at the place where the
29 material is located. The director may designate representatives, including officials of
30 the state in which the material is located, to inspect the material on behalf of the
31 director. The director may respond to a request from an official of another state for

1 similar material.

2 (h) In this section, "fraudulent act" includes

3 (1) to knowingly pretend injury or disability with intent to defraud or
4 obtain a benefit under this chapter;

5 (2) to knowingly conceal, suppress, destroy, remove, or alter records
6 with intent to defraud or obtain a benefit under this chapter;

7 (3) to knowingly assist or prepare another person to submit a false or
8 misleading statement in support of a claim for benefits under this chapter with reckless
9 disregard that the person is not entitled to benefits under this chapter;

10 (4) to use force against a person, damage the property of a person, or
11 threaten a person with intent to improperly influence the opinion of a witness, a
12 physician, or other health care provider;

13 (5) except as otherwise authorized under this chapter, to knowingly
14 confer, offer to confer, solicit, agree to accept, or accept property, services, or a
15 benefit

16 (A) to refer an employee to a physician or other health care
17 provider; or

18 (B) for providing medical treatment, services, medicines, or
19 supplies to an employee if the property, services, or benefit is in addition to
20 payment by the employer, insurer, or adjuster allowed under this chapter.

21 * Sec. 39. AS 23.30.250 is amended to read:

22 **Sec. 23.30.250. Penalties for fraudulent or misleading acts.** (a) A person,
23 including an employee, employer, physician, medical provider, or the
24 representative of a person who (1) knowingly makes a false or misleading statement,
25 representation, or submission related to a benefit under this chapter; (2) knowingly
26 assists, abets, solicits, or conspires in making a false or misleading submission
27 affecting the payment, coverage, or other benefit under this chapter; (3) knowingly
28 misclassifies employees or engages in deceptive leasing practices for the purpose of
29 evading full payment of workers' compensation insurance premiums; or (4) employs
30 or contracts with a person or firm to coerce or encourage an individual to file a
31 fraudulent compensation claim is civilly liable to a person adversely affected by the

1 AS 23.30.095.

2 (c) An employer or group of employers may negotiate with physicians and
 3 other treatment service providers under this chapter to obtain reduced fees and service
 4 charges and may take the fees and charges into account when forming a list of
 5 preferred physicians and providers. In no event may an employer or group of
 6 employers attempt to influence the treatment, medical decisions, or permanent
 7 impairment ratings by physicians in the course of the negotiations regarding a
 8 preferred physician and provider fee list.

9 (d) An employer shall pay an employee's bills for medical treatment under this
 10 chapter, excluding prescription charges or transportation for medical treatment, within
 11 30 days after the date that the employer receives the provider's bill or a completed
 12 report as required by AS 23.30.095(c), whichever is later.

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

26 (f) An employee may not be required to pay a fee or charge for medical
 27 treatment or service provided under this chapter.

28 * Sec. 26. AS 23.30.100(b) is amended to read:

29 (b) The notice must be in writing, contain the name and address of the
 30 employee, [AND] a statement of the time, place, nature, and cause of the injury or
 31 death, and authority to release records of medical treatment for the injury or

1 death, and be signed by the employee or by a person on behalf of the employee, or, in
 2 case of death, by a person claiming to be entitled to compensation for the death or by a
 3 person on behalf of that person.

4 * Sec. 27. AS 23.30.107(b) is amended to read:

5 (b) Medical or rehabilitation records in an employee's file maintained by the
 6 division or held by the board are not public records subject to public inspection and
 7 copying under AS 40.25. This subsection does not prohibit

8 (1) the reemployment benefits administrator, the division, the board,
 9 or the department from releasing medical or rehabilitation records in an employee's
 10 file, without the employee's consent, to a physician providing medical services under
 11 AS 23.30.095(k) or 23.30.110(g), a party to a claim filed by the employee, or a
 12 governmental agency; or

13 (2) the quoting or discussing of medical or rehabilitation records
 14 contained in an employee's file during a hearing on a claim for compensation [,] or in
 15 a decision and order of the board.

16 * Sec. 28. AS 23.30.107 is amended by adding a new subsection to read:

17 (c) The division may not assemble, or provide information respecting,
 18 individual records for commercial purposes that are outside the scope of this chapter.

19 * Sec. 29. AS 23.30.122 is repealed and reenacted to read:

20 **Sec. 23.30.122. Credibility of witnesses.** The board has the sole power to
 21 determine the credibility of testimony presented by a witness. When credibility is
 22 disputed in a proceeding before the board, the board's determination of credibility
 23 must be supported by specific findings.

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

27 (1) the weekly rate of compensation shall be calculated by multiplying
 28 the recipient's weekly compensation rate calculated under AS 23.30.180, 23.30.185,
 29 23.30.190, 23.30.200, or 23.30.215 [,] by the ratio of the cost of living of the area in
 30 which the recipient resides to the cost of living in this state;

31 (2) the calculation required by (1) of this subsection does not apply if

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Summary of CSSB 130 Prepared for Senate Judiciary Committee

Improving Return-to-Work Benefits While Reducing Costs

- Sec 33 Phase out limited, archaic Second Injury Fund, gradually reducing current 6% contribution rate to 0%. (Page 19)
- Sec. 13 Require improved reporting of reemployment benefits, including plan status and tracking of injured workers' employment status at intervals following retraining plan completion, in order to provide more accurate and detailed information about the functioning and effectiveness of the reemployment benefits system. (Pages 7-9)
- Sec. 14 Reduce delays in determining reemployment benefits eligibility, and resulting costs, by allowing workers and employers to stipulate to eligibility. Further reduce delays by simplifying standards for entitlement to evaluation. (Page 9)
- Sec. 16 Encourage utilization of reemployment benefits, and reduce costs, by requiring worker to either choose to begin the current retraining process within 15 days of eligibility determination or choose to accept new cash job dislocation benefits (\$5,000-13,500) based upon percentage of permanent partial impairment. (Pages 10-11)

1 the recipient is absent from the state for medical or rehabilitation services not
2 reasonably available in the state;

3 (3) if the gross weekly earnings of the recipient and the resulting
4 compensation rate are determined under AS 23.30.220(a)(6), (7), or (10), the
5 calculation required by this subsection applies only to the portion of the recipient's
6 weekly compensation rate attributable to wages earned in the state;

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

9 (5) application of (1) - (4) of this subsection may not result in
10 raising a recipient's weekly compensation rate to an amount that exceeds the
11 weekly compensation rate that the recipient would have received if the recipient
12 had been residing in the state.

13 * Sec. 31. AS 23.30.175(c) is amended to read:

14 (c) The department [BOARD] shall provide by regulation for the
15 determination and comparison of living costs for this state and the other areas in which
16 recipients reside and for the [ANNUAL] redetermination and comparison of these
17 costs every three years.

18 * Sec. 32. AS 23.30.205(e) is amended to read:

19 (e) The second injury fund may not be bound as to any question of law or fact
20 by reason of an award or an adjudication to which it was not a party or in relation to
21 which the director [COMMISSIONER] was not notified at least three weeks before
22 the award or adjudication [,] that the fund might be subject to liability for the injury or
23 death.

24 * Sec. 33. AS 23.30.205 is amended by adding a new subsection to read:

25 (g) Claims for reimbursement may not be submitted to the fund after
26 September 1, 2005. The fund shall continue to make reimbursement payments on
27 claims accepted before July 1, 2006, or ordered by the board, until the fund's liabilities
28 for the claim are extinguished.

29 * Sec. 34. AS 23.30 is amended by adding a new section to read:

30 **Sec. 23.30.224. Coordination of benefits.** (a) Notwithstanding other
31 provisions of this chapter, an employer's liability for payment of weekly compensation

1 (c) An amount recovered by the employer under an assignment, whether by
2 action or compromise, shall be distributed as follows:

3 (1) the employer shall retain an amount equal to

4 (A) the expenses incurred by the employer with respect to the
5 action or compromise, including a reasonable attorney fee determined by the
6 board;

7 (B) the cost of all benefits actually furnished by the employer
8 under this chapter;

9 (C) all amounts paid as compensation [AND SECOND-
10 INJURY FUND] payments [,] and, if the employer is self-insured or
11 uninsured, all service fees paid under AS 23.05.067;

12 (D) the present value of all amounts payable later as
13 compensation, computed from a schedule prepared by the board, [;] and the
14 present value of the cost of all benefits to be furnished later under
15 AS 23.30.095 as estimated by the board; the amounts so computed and
16 estimated shall [TO] be retained by the employer as a trust fund to pay
17 compensation and the cost of benefits as they become due and to pay any
18 finally remaining excess sum to the person entitled to compensation or to the
19 representative; and

20 (2) the employer shall pay any excess to the person entitled to
21 compensation or to the representative of that person.

22 * Sec. 12. AS 23.30.041(a) is amended to read:

23 (a) The director [BOARD] shall select and employ a reemployment benefits
24 administrator. The director [BOARD] may authorize the administrator to select and
25 employ additional staff. The administrator is in the partially exempt service under
26 AS 39.25.120.

27 * Sec. 13. AS 23.30.041(b) is amended to read:

28 (b) The administrator shall

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

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

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

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

5 (5) submit to the department, on or before May 1 of each year, a report
6 of reemployment benefits provided under this section for the previous calendar year;
7 the report must include a general section, sections related to each rehabilitation
8 specialist employed under this section, and a statistical summary of all rehabilitation
9 cases, including

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

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

13 (C) a status report on all individuals requesting, waiving,
14 beginning, completing, or terminating a reemployment benefits program
15 including

16 (i) reasons for denial, waiver, suspension, or
17 termination;

18 (ii) dates of completion and [A] return to work; and

19 (iii) other information required by the director

20 [DATE];

21 (D) the cost of reemployment benefits;

22 (E) status reports of all individuals who successfully
23 completed a reemployment plan that includes

24 (i) the plan's occupational goal and whether the
25 individual obtained work after completion in the planned or
26 another occupation; and

27 (ii) the individual's employment status six months,
28 one year, and two years after reemployment plan completion;

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

31 (7) promote awareness among physicians, adjusters, injured workers,

1 employers, employees, attorneys, training providers, and rehabilitation specialists of
 2 the reemployment program established in this subsection.

3 * Sec. 14. AS 23.30.041(c) is repealed and reenacted to read:

4 (c) An employee and an employer may stipulate to the employee's eligibility
 5 for reemployment benefits at any time. If an employee suffers a compensable injury
 6 and, as a result of the injury, the employee is totally unable, for 45 consecutive days,
 7 to return to the employee's employment at the time of injury, the administrator shall
 8 notify the employee of the employee's rights under this section within 14 days after the
 9 45th day. If the employee is totally unable to return to the employee's employment for
 10 60 consecutive days as a result of the injury, the employee or employer may request an
 11 eligibility evaluation. The administrator may approve the request if the employee's
 12 injury may permanently preclude the employee's return to the employee's occupation
 13 at the time of the injury. If the employee is totally unable to return to the employee's
 14 employment at the time of the injury for 90 consecutive days as a result of the injury,
 15 the administrator shall, without a request, order an eligibility evaluation unless a
 16 stipulation of eligibility was submitted. If the administrator approves a request or
 17 orders an evaluation, the administrator shall, on a rotating and geographic basis, select
 18 a rehabilitation specialist from the list maintained under (b)(6) of this section to
 19 perform the eligibility evaluation.

20 * Sec. 15. AS 23.30.041(f) is amended to read:

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

22 (1) the employer offers employment within the employee's predicted
 23 post-injury physical capacities at a wage equivalent to at least the state minimum wage
 24 under AS 23.10.065 or 75 percent of the worker's gross hourly wages at the time of
 25 injury, whichever is greater, and the employment prepares the employee to be
 26 employable in other jobs that exist in the labor market;

27 (2) the employee previously declined the development of a
 28 reemployment benefits plan under (g) of this section, received a job dislocation
 29 benefit under (g)(2) of this section, and returned to work in the same or similar
 30 occupation in terms of physical demands required of the employee at the time of
 31 the previous injury;

1 (3) the employee has been previously rehabilitated in a former
2 worker's compensation claim and returned to work in the same or similar occupation
3 in terms of physical demands required of the employee at the time of the previous
4 injury; or

5 (4) [(3)] at the time of medical stability, no permanent impairment is
6 identified or expected.

7 * Sec. 16. AS 23.30.041(g) is amended to read:

8 (g) Within 15 days after the employee receives the administrator's notification
9 of eligibility for benefits, an employee [WHO DESIRES TO USE THESE
10 BENEFITS] shall give written notice under oath, on a form provided by the
11 division, to the administrator and the employer of the employee's election to
12 either use the reemployment benefits or to accept a job dislocation benefit under
13 (2) of this subsection. The following apply to an election under this subsection:

14 (1) an employee who elects to use the reemployment benefits also
15 shall notify the employer of the employee's selection of a rehabilitation specialist who
16 shall provide a complete reemployment benefits plan; failure [. FAILURE] to give
17 notice of selection of a rehabilitation specialist required by this paragraph
18 [SUBSECTION] constitutes noncooperation under (n) of this section; if [. IF] the
19 employer disagrees with the employee's choice of rehabilitation specialist to develop
20 the plan and the disagreement cannot be resolved, then the administrator shall assign a
21 rehabilitation specialist; the [. THE] employer and employee each have one right of
22 refusal of a rehabilitation specialist;

23 (2) an employee who elects to accept a job dislocation benefit in
24 place of reemployment benefits and who has been given a permanent partial
25 impairment rating by a physician shall be paid

26 (A) \$5,000 if the employee's permanent partial impairment
27 rating is greater than zero and less than 15 percent;

28 (B) \$8,000 if the employee's permanent partial impairment
29 rating is 15 percent or greater but less than 30 percent; or

30 (C) \$13,500 if the employee's permanent partial
31 impairment rating is 30 percent or greater;

1 (3) the form provided by the division for election must specify that
 2 the employee understands the scope of the benefits and rights being waived by
 3 the election: the administrator shall serve a copy of the executed election form on
 4 the parties within 10 days after receiving the form from the employee; the
 5 election and waiver of unchosen benefits is effective upon service to the parties; a
 6 waiver and election effective under this subsection discharges the employer's
 7 liability for the benefits or rights under this section that were not elected; a
 8 waiver may not be modified under AS 23.30.130.

9 * Sec. 17. AS 23.30.041(j) is amended to read:

10 (j) The employee, rehabilitation specialist, and [THE] employer shall sign the
 11 reemployment benefits plan. If the employer and employee fail to agree on a
 12 reemployment plan, either party may submit a reemployment plan for approval to the
 13 administrator. The [; THE] administrator shall approve or deny a plan within 14 days
 14 after the plan is submitted. Within [; WITHIN] 10 days after [OF] the decision,
 15 either party may seek review of the decision by requesting a hearing under
 16 AS 23.30.110. The [; THE] board shall uphold the decision of the administrator
 17 unless evidence is submitted supporting an allegation of abuse of discretion on the part
 18 of the administrator. The [; THE] board shall render a decision within 30 days after
 19 completion of the hearing.

20 * Sec. 18. AS 23.30.041(p) is amended to read:

21 (p) When the United States Department of Labor publishes a new edition,
 22 revision, or replacement for the "Selected Characteristics of Occupations Defined in
 23 the Revised Dictionary of Occupational Titles" referred to in (e) of this section, the
 24 director [BOARD] shall, not later than 90 days after the last day of the month in
 25 which the new edition, revision, or replacement standard is published, hold an open
 26 meeting under AS 44.62.310 to select the proposed date on which the new edition,
 27 revision, or replacement standard will be implemented to make all eligibility
 28 determinations required under (e) of this section. The date selected by the
 29 department [BOARD] for implementing the new edition, revision, or replacement
 30 standard may not be later than 90 days after the last day of the month in which the new
 31 edition, revision, or replacement standard is published. After the meeting, the

5

Maintaining Medical Benefits While Reducing Costs

- Sec. 25 Reduce health care costs incrementally by resetting the current maximum reimbursement rates for health care services at the maximum level applied to bills for services rendered in 2004. (By using the Medical Fee Schedule originally adopted by the Alaska Workers' Compensation Board on July 1, 2003.) (Page 16)
- Sec. 23 Maintain those maximum reimbursement rates until completion of an appointed medical review committee's comprehensive examination of the workers' compensation health care delivery system. (Page 15)
- Sec. 51 The committee must report to the Commissioner of Labor & Workforce Development no later than March 1, 2007. (Page 28)
- Sec. 25 Continue to protect workers by providing that they may not be required to pay any fee or charge for health care services provided under the Act. (Page 17)
- Sec. 24 Seek to promote injured workers' safe and efficient return to health and function by presuming their injuries require the treatments described in the national, peer-reviewed Occupational Medicine Practice Guidelines of the American College of Occupational and Environmental Medicine. Presumption may be rebutted by injured worker's physician's written certification of the treatment at variance with the guidelines and the basis of the physician's conclusion that varying treatment was reasonably required by the nature of the injury or process of recovery. (Page 16)
- Sec. 24 The Board must also adopt other guidelines for injuries not covered by the ACOEM Guidelines. Presumption application and means of rebuttal of those standards same as those for ACOEM Guidelines. (Pages 15-16)
- Sec. 24 Take advantage of generic drug cost savings by requiring their use unless a name brand is medically necessary. (Page 15)
- Sec. 24 Take advantage of potential cost reductions by requiring the Department Of Labor & Workforce Development to adopt a preferred drug list like that developed by the Department of Health & Social Services. (The Department of Labor & Workforce Development must also set procedures for establishing need to depart from list.) (Page 15)
- Sec. 25 Remove roadblocks to potential cost savings by allowing employers to develop preferred provider lists and negotiate fee rates. Workers are not required, and must be informed, that they can choose physicians not on the list. (Page 16)

1 (p) The presumptions established under (o) of this section may be rebutted by
2 an employee's physician's written certification explaining

3 (1) the nature, extent, and scope of provided medical treatment or
4 service that is at variance with the applicable guidelines or standards; and

5 (2) the basis for the physician's conclusion that the provided medical
6 treatment or service at variance was reasonably required by the nature of the injury or
7 process of recovery.

8 * Sec. 25. AS 23.30 is amended by adding a new section to article 2 to read:

9 **Sec. 23.30.097. Fees for medical treatment and services; payment of bills.**

10 (a) All fees and other charges for medical treatment or service are subject to
11 regulation by the board consistent with this section. A fee or other charge for medical
12 treatment or service may not exceed the lesser of

13 (1) the usual, customary, and reasonable fees for the treatment or
14 service in the community in which it is rendered, not to exceed the fees in the fee
15 schedule specified by the board in its published bulletin ^{in effect} dated December 15, 2003; or

16 (2) the payment made by the employer as negotiated by the provider
17 and the employer ~~under (e) of this section~~.

18 (b) An employer, or group of employers, may establish a list of preferred
19 physicians and treatment service providers to provide medical, surgical, and other
20 attendance or treatment services to the employer's employees under this chapter;
21 however,

22 (1) the employee's right to choose the employee's attending physician
23 under AS 23.30.095(a) is not impaired;

24 (2) when given to the employee, the employer's preferred physician list
25 must clearly state that the list is voluntary, that the employee's choice is not restricted
26 to the list, that the employee's rights under this chapter are not impaired by choosing
27 an attending physician from the list, and that, if the employee chooses an attending
28 physician from the list, the employee may, in the manner provided in AS 23.30.095,
29 make one change of attending physician, from the list or otherwise; and

30 (3) establishment of a list of preferred physicians does not affect the
31 employer's choice of physician for an employer medical examination under

1 or more claims.

2 (g) In this section, "fund" means the workers' compensation benefits guaranty
3 fund.

4 * Sec. 23. AS 23.30.095(j) is amended to read:

5 (j) The commissioner shall [BOARD MAY] appoint a medical services
6 review committee, or contract with an existing organization in the state or another
7 state, to assist and advise the department and the board in matters involving the
8 appropriateness, necessity, and cost of medical and related services provided under
9 this chapter.

10 * Sec. 24. AS 23.30.095 is amended by adding new subsections to read:

11 (n) A generic drug product must be used when dispensing a drug product to an
12 employee under this chapter unless the prescribing physician provides justification in
13 writing explaining the medical necessity for the name-brand drug product. The
14 department, by regulation, shall establish a preferred drug list and a procedure for
15 establishing medical necessity to depart from the list and to use a name-brand drug
16 product. In this subsection, "generic drug product" has the meaning given the term
17 "equivalent drug product" in AS 08.80.480.

18 (o) For purposes of this chapter, the medical treatment or service that the
19 nature of the injury or the process of recovery requires under (a) of this section means
20 treatment or service that is within the recommended guidelines set out in the American
21 College of Occupational and Environmental Medicine's Occupational Medicine
22 Practice Guidelines in effect at the time the treatment or service is provided. The
23 American College of Occupational and Environmental Medicine's Occupational
24 Medicine Practice Guidelines shall be presumed correct on the issue of the nature,
25 extent, and scope of medical treatment or services. For an injury not covered by the
26 American College of Occupational and Environmental Medicine's Occupational
27 Medicine Practice Guidelines, the treatment or service shall be in accordance with
28 standards based on other scientific, evidence-based medical treatment guidelines
29 generally recognized by the national medical community and adopted by the board by
30 regulation, and those standards shall also be presumed correct on the issue of the
31 nature, extent, and scope of medical treatment or services.

1 * Sec. 50. The uncodified law of the State of Alaska is amended by adding a new section to
2 read:

3 IMPLEMENTATION OF REPEAL OF SECOND INJURY FUND. The balance of
4 the second injury fund created by former AS 23.30.040 is transferred to the general fund on
5 the effective date of this section.

6 * Sec. 51. The uncodified law of the State of Alaska is amended by adding a new section to
7 read:

8 TRANSITION: MEDICAL SERVICES REVIEW COMMITTEE STUDY AND
9 REPORT. The medical services review committee appointed by the commissioner of labor
10 and workforce development under AS 23.30.095(j), as amended by sec. 23 of this Act, shall
11 proceed to study medical and related benefits provided under AS 23.30 to determine the
12 appropriateness, necessity, and cost of the benefits and shall, by March 1, 2007, provide to the
13 commissioner of labor and workforce development a report of the results of the study.

14 * Sec. 52. Section 49 of this Act takes effect immediately under AS 01.10.070(c).

15 * Sec. 53. Sections 1 - 4, 30, and 51 of this Act take effect September 1, 2005.

16 * Sec. 54. Sections 5, 11, 37, 46, and 50 of this Act take effect on the date that the
17 commissioner of labor and workforce development certifies to the revisor of statutes and the
18 lieutenant governor that all liability for previously accepted claims to the second injury fund
19 created by former AS 23.30.040, and claims ordered to be paid from that fund, have been
20 satisfied.

21 * Sec. 55. Except as provided in secs. 52 - 54 of this Act, this Act takes effect August 1,
22 2005.

1 AS 23.30.095.

2 (c) An employer or group of employers may negotiate with physicians and
 3 other treatment service providers under this chapter to obtain reduced fees and service
 4 charges and may take the fees and charges into account when forming a list of
 5 preferred physicians and providers. In no event may an employer or group of
 6 employers attempt to influence the treatment, medical decisions, or permanent
 7 impairment ratings by physicians in the course of the negotiations regarding a
 8 preferred physician and provider fee list.

9 (d) An employer shall pay an employee's bills for medical treatment under this
 10 chapter, excluding prescription charges or transportation for medical treatment, within
 11 30 days after the date that the employer receives the provider's bill or a completed
 12 report as required by AS 23.30.095(c), whichever is later.

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

26 (f) An employee may not be required to pay a fee or charge for medical
 27 treatment or service provided under this chapter.

28 * Sec. 26. AS 23.30.100(b) is amended to read:

29 (b) The notice must be in writing, contain the name and address of the
 30 employee, [AND] a statement of the time, place, nature, and cause of the injury or
 31 death, and authority to release records of medical treatment for the injury or

1 (p) The presumptions established under (o) of this section may be rebutted by
2 an employee's physician's written certification explaining

3 (1) the nature, extent, and scope of provided medical treatment or
4 service that is at variance with the applicable guidelines or standards; and

5 (2) the basis for the physician's conclusion that the provided medical
6 treatment or service at variance was reasonably required by the nature of the injury or
7 process of recovery.

8 * Sec. 25. AS 23.30 is amended by adding a new section to article 2 to read:

9 **Sec. 23.30.097. Fees for medical treatment and services; payment of bills.**

10 (a) All fees and other charges for medical treatment or service are subject to
11 regulation by the board consistent with this section. A fee or other charge for medical
12 treatment or service may not exceed the lesser of

13 (1) the usual, customary, and reasonable fees for the treatment or
14 service in the community in which it is rendered, not to exceed the fees in the fee
15 schedule specified by the board in its published bulletin dated December 15, 2003; or

16 (2) the payment made by the employer as negotiated by the provider
17 and the employer under (c) of this section.

18 (b) An employer, or group of employers, may establish a list of preferred
19 physicians and treatment service providers to provide medical, surgical, and other
20 attendance or treatment services to the employer's employees under this chapter;
21 however,

22 (1) the employee's right to chose the employee's attending physician
23 under AS 23.30.095(a) is not impaired;

24 (2) when given to the employee, the employer's preferred physician list
25 must clearly state that the list is voluntary, that the employee's choice is not restricted
26 to the list, that the employee's rights under this chapter are not impaired by choosing
27 an attending physician from the list, and that, if the employee chooses an attending
28 physician from the list, the employee may, in the manner provided in AS 23.30.095,
29 make one change of attending physician, from the list or otherwise; and

30 (3) establishment of a list of preferred physicians does not affect the
31 employer's choice of physician for an employer medical examination under

1 or more claims.

2 (g) In this section, "fund" means the workers' compensation benefits guaranty
3 fund.

4 * Sec. 23. AS 23.30.095(j) is amended to read:

5 (j) The commissioner shall [BOARD MAY] appoint a medical services
6 review committee, or contract with an existing organization in the state or another
7 state, to assist and advise the department and the board in matters involving the
8 appropriateness, necessity, and cost of medical and related services provided under
9 this chapter.

10 * Sec. 24. AS 23.30.095 is amended by adding new subsections to read:

11 (n) A generic drug product must be used when dispensing a drug product to an
12 employee under this chapter unless the prescribing physician provides justification in
13 writing explaining the medical necessity for the name-brand drug product. The
14 department, by regulation, shall establish a preferred drug list and a procedure for
15 establishing medical necessity to depart from the list and to use a name-brand drug
16 product. In this subsection, "generic drug product" has the meaning given the term
17 "equivalent drug product" in AS 08.80.480.

18 (o) For purposes of this chapter, the medical treatment or service that the
19 nature of the injury or the process of recovery requires under (a) of this section means
20 treatment or service that is within the recommended guidelines set out in the American
21 College of Occupational and Environmental Medicine's Occupational Medicine
22 Practice Guidelines in effect at the time the treatment or service is provided. The
23 American College of Occupational and Environmental Medicine's Occupational
24 Medicine Practice Guidelines shall be presumed correct on the issue of the nature,
25 extent, and scope of medical treatment or services. For an injury not covered by the
26 American College of Occupational and Environmental Medicine's Occupational
27 Medicine Practice Guidelines, the treatment or service shall be in accordance with
28 standards based on other scientific, evidence-based medical treatment guidelines
29 generally recognized by the national medical community and adopted by the board by
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31 nature, extent, and scope of medical treatment or services.

1 (p) The presumptions established under (o) of this section may be rebutted by
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3 (1) the nature, extent, and scope of provided medical treatment or
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18 (b) An employer, or group of employers, may establish a list of preferred
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 29 make one change of attending physician, from the list or otherwise; and

30 (3) establishment of a list of preferred physicians does not affect the
 31 employer's choice of physician for an employer medical examination under

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: SB 130
 (S) Publish Date: 3/3/05

Revision Date/Time (Note if correction): _____ Department: Labor and Workforce Development
 Title: "An Act relating to Workers' Compensation..." RDU: Workers' Compensation
 Component: Workers' Compensation
 Sponsor: Rules
 Requester: Governor Component Number: 344

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services	209.3	209.3	209.3	209.3	209.3	209.3
Travel	69.8	69.8	36.8	36.8	36.8	36.8
Contractual	418.7	268.7	184.9	184.9	184.9	184.9
Supplies	22.5	12.5	12.5	12.5	12.5	12.5
Equipment	50.0	6.0	6.0	6.0	6.0	6.0
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	770.3	566.3	449.5	449.5	449.5	449.5

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES (1157)	6.0	6.0	6.0	6.0	6.0	6.0
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
1157 Workers' Safety Account	770.3	566.3	449.5	449.5	449.5	449.5
TOTAL	770.3	566.3	449.5	449.5	449.5	449.5

Estimate of any current year (FY2005) cost: None
 Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time	3	3	3	3	3	3
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

(See attached.)

Prepared by: Paul F. Lisankie, Director Phone: 465-6059
 Division: Workers' Compensation Date/Time: 2/24/05 3:42 PM
 Approved by: Greg O'Claray, Commissioner Date: 2/24/2005
 Agency: Department of Labor and Workforce Development

FISCAL NOTE #1

STATE OF ALASKA
2005 LEGISLATIVE SESSION

BILL VERSION: SB 130

ANALYSIS: (continued)

This legislation establishes a Workers' Compensation Appeals Commission within the Alaska Department of Labor & Workforce Development. The Appeals Commission is composed of 4 volunteer members and 3 new positions:

Commission Chair - range 27, will be responsible for general supervision and administrative functions of the Appeals Commission.

Administrative Assistant - range 13, will provide administrative support to the commission chair.

Administrative Clerk III - range 10, will maintain and index the administrative decisions and orders of the commission. Although the Commission doesn't start until September 2005, personal services have been calculated at a full year to allow the commission to be formed and fully operating by the implementation date.

Travel: The Commission will hold its appeal hearings in Anchorage and be staffed in that location. Planned travel includes 3 trips (ANC/JNO) for the commission chair and the division's administrative manager and travel costs and per diem for the volunteer commission members. Travel and per diem is included for the members of the medical review committee for FY06 and FY07 (\$33.0).

Contractual: This item includes costs for interagency services, leasing space, etc. as well as the honorariums for the volunteer commission members. To implement section 9 (contracting with a non-profit organization to provide legal representation for employees) \$75,000 has been included in FY06 and \$50,000 in FY07. There is a one-time cost in FY06 to create the office space for the commission (\$50.0). Costs for a consultant and Workers' Compensation board honorariums (\$86 ^) are included in the first two fiscal years for the medical review committee to study the medical delivery system for workers' compensation (due date 3/1/07).

Supplies and Equipment: There are one-time costs in FY06 to set up the Appeals Commission office; FY07 forward are for on-going supplies and equipment necessary to operate the commission.

New Fees/Fines:

This bill authorizes the Appeals Commission to charge a \$100 fee for the filing of an appeal. This is expected to amount to a yearly total of approximately \$6,000 payable to the Workers' Safety & Compensation Administration Account.

This bill authorizes the Workers' Compensation Board to impose civil penalties against employers that violate the statutory requirement to insure or properly self-insure their employees for workers' compensation benefits. Penalties may be up to \$1000 per employee per day. In FY04 over 150 employers were found without workers' compensation insurance; however, the amount of any penalties cannot be determined. Any penalties assessed will be deposited to the Workers' Compensation Guaranty Fund established by this legislation. The Guaranty Fund will use those funds to pay benefits to workers injured while employed by an uninsured employer. The amount of those benefits is also indeterminate.

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number 2
 Bill Version: SB 130
 (S) Publish Date: 3/3/05

Revision Date/Time (Note if correction): _____ Dept. Affected: Commerce, Community & Econ. Devel.
 Title Workers' Compensation RDU Insurance 116
 Component Insurance
 Sponsor Governor
 Requester _____ Component No. 354

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
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						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2004) cost: 0.0
 Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)
 This bill has no fiscal impact on the Division of Insurance

Prepared by: Linda S. Hall, Director Phone 907-269-7900
 Division: Insurance Date/Time 2/23/05 12:54 PM
 Approved by: Edgar Blatchford, Commissioner Date 2/23/2005
 Agency: Commerce, Community & Economic Development

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: 3
 Bill Version: SB 130
 (S) Publish Date: 3/3/05

Revision Date/Time (Note if correction): _____ Dept. Affected: LAW
 Title "An Act relating to a special deposit for workers' compensation and employers' liability insurers..." RDU CIVIL
 Component Labor & State Affairs
 Sponsor Rules Committee
 Requester Governor Component No. _____

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services	69.6	69.6	69.6			
Travel	0.2	0.2	0.2			
Contractual	8.2	8.2	8.2			
Supplies	1.1	1.1	1.1			
Equipment	7.1	7.1	7.1			
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	86.2	86.2	86.2	0.0	0.0	0.0

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

1002 Federal Receipts						
1003 GF Match						
1004 GF	86.2	86.2	86.2			
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	86.2	86.2	86.2	0.0	0.0	0.0

Estimate of any current year (FY2005) cost: 0.0
 Check this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time						
Part-time	1					
Temporary						

ANALYSIS: (Attach a separate page if necessary)
 This bill amends AS 21 and AS 23 in order to increase the efficiency and flexibility of the current workers' compensation system. A significant change proposed in this bill is the creation of an appeal commission specific to workers' compensation rather than the current system in which superior court judges hear appeals on a rotating basis. The bill also increases the responsibility for oversight of the system on the workers' compensation division. Additionally, the bill makes the division responsible for addressing rising medical costs which now make up 60 cents of every workers' compensation dollar paid; and it gives workers and employers greater flexibility over certain portions of the worker's claim. The bill enhances efficiency by expanding workers' access to legal counsel and medical information and it allows the division to contract with a non profit agency to provide legal services to injured workers. Under this proposed legislation employers would no longer be encouraged to hire under conditions of

Prepared by: Kathryn A. Daughhete, Director Phone 465-3673
 Division Administrative Services Division Date/Time 2/24/05 2:44 PM
 Approved by: K. Daughhete for Scott Nordstrand, Acting Attorney General Date 2/24/2005
 Agency Department of Law

FISCAL NOTE #3

STATE OF ALASKA
2005 LEGISLATIVE SESSION

BILL NO. SB 130

ANALYSIS CONTINUATION

the Second Injury fund, instead replacing that out-dated mechanism with contemporary standards in the Americans with Disabilities Act. Finally the bill increases the coordination of benefits between the workers' compensation system and other disability systems.

Although difficult to predict, passage of this legislation has the potential to increase the workload of the Labor and State Affairs Section by one half-time attorney needed to assist with revision to statutes that may ensue from the medical cost study and representation of the new commission. The cost associated with a half time attorney is in accordance with the Department of Law's FY 2006 timekeeping and billing rate and includes overhead costs and equipment consistent with the addition of a new attorney position in the Department of Law.

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: 4
 Bill Version: SB 130
 (S) Publish Date: 3/3/05

Revision Date/Time (Note if correction): _____ Dept. Affected: Administration
 Title: An act relating to workers' compensation benefits RDU: Risk Management
 Component: Risk Management
 Sponsor: Rules
 Requester: By request of the Governor Component No.: 71

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	*	*	*	*	*	*

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

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	*	*	*	*	*	*

Estimate of any current year (FY2005) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

As a self insured employer, the state will experience significant savings in future claims costs due to the changes proposed in this comprehensive reform to workers' compensation benefits and adjudication process.

continued page 2

Prepared by: J. Brad Thompson Phone 465-5723
 Division: Director Date/Time 2/24/05 2:28 PM
 Approved by: Michael A. Tibbles Deputy Commissioner Date 2/24/2005
 Agency: Administration

FISCAL NOTE #4

STATE OF ALASKA
2005 LEGISLATIVE SESSION

BILL NO. SB 130

ANALYSIS CONTINUATION

Many provisions will provide savings to the state's self insured workers' compensation claims...the more significant changes include but are not limited to the following:

workers' compensation appeals commission - streamlining adjudication process thereby reducing expenses presently incurred in resolving disputes in determining claim and benefit obligations.

ability to settle - if claimant is represented by an attorney licensed in Alaska settlements no longer need to be reviewed and approved by the board.

medical fee schedule, generic drug, medical treatment guidelines, and ability to create PPO's - reducing skyrocketing costs in the medical services component of workers' compensation claims expense.

coordination of disability benefits - eliminates present situation where injured employees may receive dual remedies that exceed pre-injury spendable wage.

fraud prevention - increased penalty and prosecution will reduce fraudulent claims and their inherent additional expense

repeal of the second injury fund - delayed implementation until present claims are resolved, future assessments will be eliminated.

If RM was authorized continuing funds for each FY (held in reserve until all outstanding liabilities from that period are paid - as an insurance carrier operates), then immediate reduction of cost of risk assessments to each agency - (a negative fiscal note) could be provided to reflect cost savings expected within these reforms.

However, the state funds its claims costs on a "cash flow" basis (appropriating only the amounts expected to be paid the next fiscal year) collected solely through interagency receipts (cost of risk allocations) assessed each agency based on relative share of exposure (payroll) and experience (past claims).

In time, RM cost of risk allocations will reflect the cost reductions generated by these reform measures as rates are developed from actual claims expenses realized.

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: 5
 Bill Version: CSSB 130 (L&C)
 (S) Publish Date: 4/4/05

Revision Date/Time (Note if correction): _____ Dept. Affected: _____
 Title Workers' Compensation BRU Alaska Court System
 Component Trial Courts
 Sponsor Senate Rules
 Requester Governor Component No. 768

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
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						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Matcr						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2005) cost: 0.0
 Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

The court system does not anticipate any fiscal impact from the passage of CSSB 130 (L&C).

Prepared by: Douglas Wooliver, Administrative Attorney Phone 463-4750
 Division: Alaska Court System Date/Time 4/1/05 1:11 PM
 Approved by: Doug Wooliver for Stephanie Cole, Administrative Director Date 4/1/2005
 Agency: Alaska Court System

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: 6
 Bill Version: CSSB 130(L&C)
 (S) Publish Date: 4/4/05

Revision Date/Time (Note if correction): _____ Department: Labor and Workforce Development
 Title: Workers' Compensation RDU: Workers' Compensation
 Component: Workers' Compensation
 Sponsor: Senate Rules
 Requester: Senate JUD Component Number: 344

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services						
Travel	45.0	45.0				
Contractual	270.0	245.0	145.0	145.0	145.0	145.0
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	315.0	290.0	145.0	145.0	145.0	145.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES (1157)	* 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						
1037 GF/Mental Health						
1157 Workers' Safety Account	315.0	290.0	145.0	145.0	145.0	145.0
TOTAL	315.0	290.0	145.0	145.0	145.0	145.0

Estimate of any current year (FY2005) cost: None
 Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

(See attached.)

Prepared by: Paul F. Lisankie, Director Phone: 465-6059
 Division: Workers' Compensation Date/Time: 4/4/05 2:32 PM
 Approved by: Greg O'Claray, Commissioner Date: 4/4/2005
 Agency: Department of Labor and Workforce Development

FISCAL NOTE # 6

STATE OF ALASKA
2005 LEGISLATIVE SESSION

BILL VERSION: CSSB 130(L&C)

ANALYSIS: (continued)

Travel: Funding of \$45.0 is necessary for travel and per-diem for the staff and members of the medical review committee for FY06 and FY 07.

Contractual: To implement section 9 (contracting with a non-profit organization to provide legal representation for employees) \$75.0 is requested in FY06 and \$50.0 in FY07 and following years. Funds of \$100.0 for a consultant and other costs associated with the Medical Services Review Committee are included in the first two fiscal years for the committee to study the medical delivery system for workers' compensation (due date 3/1/07). On-going contractual services funding of \$95.0 for fraud detection through an interagency contract with the Employment Security Division (\$60.0) and for rehabilitation program outcome tracking by the Labor Market Information component (\$35.0) is required.

New Fees/Fines:

This bill authorizes the Workers' Compensation Board to impose civil penalties against employers that violate the statutory requirement to insure or properly self-insure their employees for workers' compensation benefits.

* Penalties may be up to \$1,000.00 per employee per day. In FY04 over 150 employers were found without workers' compensation insurance, however, the amount of any penalties cannot be determined. Any penalties assessed will be deposited to the Workers' Compensation Guaranty Fund established by this legislation. The Guaranty Fund will use those funds to pay benefits to workers injured while employed by an uninsured employer. The amount of those benefits is also indeterminate.

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: CSHB 130(L&C)
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Commerce
 Title Workers' Compensation RDU Insurance (116)
 Component Insurance
 Sponsor Rules by Request of the Governor
 Requester Senate Judiciary Component No. 354

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
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						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2005) cost: 0.0
 Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill has no fiscal impact on the operations of the Division of Insurance.

Prepared by: Linda S. Hall, Director Phone 907-269-7900
 Division: Insurance Date/Time 4/4/05 5:09 PM
 Approved by: Edgar Blatchford, Commissioner Date 4/4/2005
 Agency: Commerce, Community & Economic Development

ASHNHA Position on CSSB 130
Presented by Rod Betit, President/CEO
Before Senate Judiciary Committee on April 6, 2005

CSSB 130 is an improved version of the Administration's workers compensation reform package, but ASHNHA seeks the following changes before we can support this legislation.

1) Section 24, page 15, Physician Practice Guidelines:

- ASHNHA's previous discussions with the Department left us with the understanding that the final language in this section would be negotiated with Alaska physicians to insure they agree that the practice guidelines dictated are medically appropriate. It would do little good to impose unacceptable medical practice guidelines on the small number of physicians treating workers compensation patients as they will simply choose not to participate.

2) Section 25, page 16, Medical Rate Roll Back:

- ASHNHA requests that the roll back to 2004 rates be replaced with a freeze at "2005" rates. This change is consistent with the discussion ASHNHA has had with Commissioner O'Claray on several occasions. We understood this was acceptable to the Commissioner.
- Language should be added to cause the rate freeze to be automatically repealed no later than March 1, 2007. We understand this to be the intent of the Department but request that specific language be added to reflect that. This provides a 15 month "window" during which the Committee can do its business after the 2005 rates would normally expire. Any rate reductions beyond that "window" would be a matter for the 25th Legislature to take up after reviewing the Committee's and the Department's long term recommendations.

3) Section 51, page 28:

- ASHNHA requests language be added making it clear a hospital representative will be included on the Review Committee.
- ASHNHA requests language requiring that any financial analysis provided to the Review Committee will either be done by, or validated by, an independent actuary to insure all information on which policy recommendations will be made is accurate.

4) General Concern:

- ASHNHA is unaware of the final outcome of the Administration's recent discussions with the Ad-hoc Committee regarding their concerns with this bill. Many of the Ad-hoc Committee's concerns are also concerns of ASHNHA membership as employers as well as health care providers. We will watch and listen in hopes of getting a better sense of how these discussions ended up, and what concerns remain unresolved to address at a later time.

Yes! – I want to help fix Alaska's workers' compensation system

Fax to: Anchorage Governor's Office at 269-7463

Name Swellen Nelles, Executive Director
 Business Farthest North Girl Scout Council
 Address 431 Old Steese Hwy., Ste. 100, Fairbanks, AK 99701
 Phone/fax Ph. 907-456-4782, Fax 907-452-2320
 Email fngsc4@alaska.com

No. of employees 7

Workers comp costs 1999-2005 (approx) 2000 - \$1,630. 2001 - \$1,796.
2002 - \$1,939. 2003 - \$3,602. 2004 - \$5,322. 2005 - \$6,445

Effect on business _____

Girl Scouts in Fairbanks is a small, non-profit business with only 7 year-round employees and 8 seasonal camp employees. Our annual budget is approximately \$435,000. As you can see from our figures, our worker's compensation premiums have more than quadrupled in the last five years, most notably in the area of camp staff. Currently we offer staff competitive wages, health care benefits, dental, disability, and life insurance. In addition, we offer a retirement benefit and annual leave. If the Worker's Compensation rates continue to climb at current levels, we will be forced to cut some of these benefits to employees. With a high turnover in our work force already, cutting benefits will only make employee turnover worse.

Message for Alaska Legislature _____

Please consider a responsible means to revamp Worker's Compensation while protecting employees and employers. Alaska needs to attract more insurance carriers to allow for more competition. The legislature also needs to examine the current enforcement systems to cut down on fraud and employer non-compliance. Employers are currently held hostage by a system that is out of our control. We cannot shop around for a better rate, we cannot opt out of the program, and we cannot control costs by educating employees regarding safer work conditions and therefore lower our rate



March 28, 2005

6411 South Airport Place
Anchorage, Alaska 99502-1809
(907) 245-1544
Fax (907) 245-1744

Honorable Con Bunde
Alaska State Senate
State Capitol, Rm 506
Juneau, Alaska 99801-1182

Re: Alaska Workers' Compensation Reform Act

Dear Senator Bunde,

The Lynden family of companies is proud to employ approximately 560 Alaskans and we strongly support the 2005 Workers' Compensation Reform Act. We value our employees at Lynden. We pay excellent wages, provide among the best benefits in our industry, and strive to create the safest possible workplace. Unfortunately, accidents and injuries do occasionally occur. When they do, we want our employees to receive the best medical care and rehabilitation services available. Sadly, however, Alaska's current workers' compensation system is broken. It is driving expenses to unmanageable levels, which thwarts our ability to grow and is costing our economy jobs.

It was noted in the February 23, 2005 Alaska Department of Labor and Workforce Development News Release that Alaska's rates are the second highest in the nation and have increased 36% over the last two years. There are other telling statistics. According to the National Council on Compensation Insurance, since 1990, countrywide workers' compensation benefit levels have risen a mere 3.2%. Alaska's corresponding increase has been 12.2% - nearly four times the national average. Also, while the countrywide change in premium level has *dropped* 22.2% since 1993, Alaska's premium level has *increased* 5.2% in the voluntary market and a whopping 30.1% in the assigned risk market.

This disparity is due, in part, to the fact that workers' compensation reform has already been instituted by many states. Clearly the time has arrived for Alaska to adopt proven reforms that do not harm injured workers.

Although benefit levels may be partly to blame, the inability to prudently control medical costs and generally manage a claim is the real problem. In Alaska the employee and his or her lawyer decide on appropriate medical treatment. The employer cannot even require preferred providers with negotiated fee rates. This impacts self-insured employers as much or more than those with traditional insurance policies.

Typically, treatments called for in the American Medical Association guides are blindly followed by the Alaska system. No discretion is used. As a result, the maximum treatments for chiropractic care, massage and physical therapy available under the required guidelines are viewed as entitlements and have become the minimum. Nearly every injured worker takes advantage of the full benefit, driving costs up. Doctors, fearing malpractice

Honorable Con Bunde
March 28, 2005
Page 2



liability, readily agree that the maximum scheduled benefit may have some medical indication. And, with small effort even the liberal AMA guidelines can be exceeded allowing long-term, purely palliative care at the employer's expense.

Alaska Supreme Court decisions in cases like *Egemo v. Egemo Construction Co.* 998 P.2d 434, 2000; *Phillip Weldner & Associates, Inc. v. Hibdon* 989 P.2d 727, 1999; and *Municipality of Anchorage v. Carter* 818 P.2d 661, 1991 have turned the statutes on their heads, and tied the hands of the Alaska Workers' Compensation Board (AWCB) from making common sense decisions. For all practical purposes, *Hibdon* extended workers' compensation benefits to cover any pre-existing injury if it is aggravated in the slightest by a person's work activities. If, for example, work contributes at all to accelerating a degenerative condition, a presumption requires the employer to pay for full treatment – even if the injury is an old athletic injury mostly exacerbated by shoveling snow, moose hunting, or simply aging. *Egemo* effectively eliminated the two year statute of limitations on claims. *Carter* opened the door widely to purely palliative care by requiring the AWCB to presume that any continuing care requested by an employee is medically indicated and must be paid by the employer unless the employer can prove otherwise – an impossible standard.

Using constructive tools such as return to work programs and vocational rehabilitation are too often unreasonably challenged by the AWCB following these precedents. Ironically, the injured worker pays the price and can be effectively placed on involuntary welfare.

Only the legislature has the power to restore legislative intent and common sense to the law.

Looking at Lynden's workers' compensation losses, you can understand our frustration. In 2000, our workers' compensation losses (i.e., paid and reserved for future payments) totaled \$573,669 six months after the policy term expired. Today, with no new claims, those same cases have escalated to \$863,881. 2001 was even worse. Six months after that policy term expired, the losses were \$569,775. Today we expect to pay at least \$1,526,969. Again, this is with no new losses. How costs continue to escalate so dramatically? It happens because there are no controls on medical costs, the AWCB cannot apply common sense, vocational rehabilitation is underutilized, and more. The worker's compensation reform bill will go a long way toward solving these problems.

We strongly urge passage of the 2005 Workers' Compensation Reform Act.

Sincerely,

A handwritten signature in black ink, appearing to read "David W. Haugen". The signature is fluid and cursive, with a long horizontal stroke at the end.

David W. Haugen
Vice President

cc: Hon. Ben Stevens
Hon. Ralph Seekins

Marjorie T. Linder, M.A., CRC, CLCP
PO Box 230029
Anchorage, AK 99523-0029
(907) 346-8345 (fax); (907) 346-2474 (ph)
mtlservices@gci.net

MTL Services

Fax

To: Brian Hovey **From:** Margie Linder
Fax: (907) 465-5241 **Pages:** 4 to follow
Phone: [Click here and type phone number] **Date:** 4/6/2005
Re: SB 130 - Testimony of Marjorie Linder **CC:** [Click here and type name]

Urgent **For Review** **Please Comment** **Please Reply** **Please Recycle**

• **Comments:** Please, please let me testify as soon as possible tomorrow a.m. because there are four amendments i am suggesting and also the rationale for removing the stipulation and especially the job dislocation benefit. I will call in on the 800 # tomorrow at 8 a.m. on 800-395-5073.

Thank you for listening to me today. I believe what I have to say has merit and that the judiciary committee is the place for the problems to be dealt with. The job dislocation benefit is really a back door settlement of retraining in future claims, not just the present claim. We are worried that insurance representatives will stipulate to the re-employment benefit, even when workers would not be eligible, and for \$5000 get them to sign away retraining forever! This will be done with no supervision or oversight by the Board to workers who may not be able to read, write, speak English or who are desperate for immediate cash, young, and non-English speaking.

This is going to set employers up for claims for permanent and total disability when these workers suffer a future injury and find they are not entitled to retraining but can't work. It will also attract expensive litigation down the road. Do we really want laws this unfair for Alaska? Thanks.
~Margie Linder



MTL Services

MEMO TO SENATE JUDICIARY COMMITTEE

FROM: Marjorie T. Under, M.A., CRC, CLCP, 346-7474, PO Box 230029, Anchorage, AK 99523-0029; (907) 346-8345 (fax); mtlservices@aci.net

RE: SENATE BILL 130 AND PROPOSED AMENDMENTS

DATE: April 5, 2005

THE JOB DISLOCATION BENEFIT IS A RISK MANAGEMENT TOOL AND SETTLEMENT IN DISGUISE:

Contrary to the hype on this bill, SB130 reduces benefits to injured workers in very crafty ways. The most serious is the so-called "job dislocation benefit" described in SECTIONS 15 and 16 of this bill. This job dislocation benefit is no benefit to the vulnerable injured worker. It is really a settlement FOR LIFE of the retraining benefit (aka re-employment benefit). The injured worker who opts for this so-called "benefit" in his youth, will find that this youthful decision will disqualify him for the re-employment benefit if he ever gets injured again.

Oh, yes, I know that the bill calls for compensation of up to \$13,500 for accepting the job dislocation benefit but most workers will get only \$5000, a measly sum by anyone's standards.

- In 2003, only 8 workers, who had any retraining costs reported in carrier cost reports, had ratings above 30% and could possibly qualify to be paid that sum.
- Only 89 such workers had ratings between 15 and 29% and could qualify to get the additional \$8000.
- The remainder, some 653 out of 750 injured workers, who might possibly qualify for the re-employment benefit, had ratings under 14% and would only qualify for \$5000.

This is a permanent settlement of retraining benefits with no legal counsel or review by a panel of the board as you have in SECTION 10. This job dislocation benefit needs only to be communicated to the worker by the insurance company. The only Board oversight is a form that the claimant signs and mails in. There is no assurance that the injured worker can truly understand what he is waiving, that he can read, speak English, or not be on medications. There is no way for the injured worker to afford legal counsel and no way for legal counsel to lawfully be paid the \$2700 or so that they would charge to review the file. Moreover, it is highly unlikely that credible attorneys would recommend that claimants accept this benefit because the risks to the worker are just too high.

The upshot is that this so-called job dislocation benefit is a backdoor settlement masquerading as a benefit. It is not noble, it is not just, and it is not the way I hope that we Alaskans want to treat our fellow man. So why is something like this really in this bill?

PROBLEMS WITH STIPULATION:

Because of the provision in SECTION 14, we in the vocational rehabilitation community are worried that insurance companies will stipulate to eligibility for injured workers (whether they need the benefit or not) and offer them this job dislocation benefit as a cheap and easy way to manage future risks for insurance companies. So often, we hear from claimants, "This is the first time I was told I would not be getting my impairment award in a lump sum," or "I didn't know that when I got rated I'd be paid out of my impairment money," or "I thought if I waived the benefit all I'd be giving up is the \$13,500 for tuition, books, and supplies," or "I didn't realize I could be paid income while going to school," or "I was hopeless and you have given me hope and ideas for my future."

We think it is bad public policy to give workers a handout instead of a hand up. We don't think Alaska wants more people on the public dole without real buying power. We also don't want employers to wind up paying workers compensation for life when they are reinjured and now no longer qualify for the re-employment benefit (aka retraining). It would be so much simpler to retrain them in the first place than be saddled with a claim for permanent and total disability. It is much easier to stop this job dislocation benefit in this committee and reduce future legal costs to fight for retraining in future claims.

I urge the following amendments be offered and passed.

1. **SECTION 14: REMOVE** from AS 23.30.041(c) the language: "An employee and an employer may stipulate to the employee's eligibility for reemployment benefits at any time."

RATIONALE FOR CHANGE: According to present insurance company expense reports, eligibility evaluations account for only .8% of the claims dollar. **A key motivation behind stipulating to the benefit is not only to speed up the process but to keep desperate injured workers in ignorance and away from anyone who will provide them information about the system so that insurers can offer employees the waiver or the job dislocation benefit in lieu of retraining.** These workers are told a minimum of information about how the re-employment system under workers' compensation operates. Claimants won't understand what they are missing until it is too late.

2. **SECTION 15: REMOVE** AS 23.30.041(f)(2) from the bill. This provision adds another disqualifier for the re-employment benefit called the job dislocation benefit.

RATIONALE FOR CHANGE: This is not a benefit but a permanent settlement of retraining billed as a "benefit". The worker who accepts this "benefit" and later has a more disabling work injury and needs retraining will no longer qualify for it. This is tricky, disingenuous and exploitive of young workers, workers with learning disabilities, non-English speaking claimants, and those workers desperate to pay their bills. Moreover, there is **no oversight** by the Division of Workers' Compensation on accepting the job dislocation benefit as there is on settlements, there is **no legal representation** required in this bill, and there is no provision for the insurance companies to pay for legal assistance on this matter.

Another down side to the job dislocation benefit is that **employers could be liable for more permanent and total claims.** If a person who needs retraining later on is barred from it and can't return to work without it, the worker may possibly be eligible to be paid wage replacement benefits forever.

3. **SECTION 16: REMOVE** the job dislocation benefit described in 23.30.041 g 1-3.

RATIONALE FOR CHANGE: The vast majority of Injured workers opting for this benefit would be eligible for only an additional \$5000 and yet be barred from retraining FOREVER. The data reported for 2003 show that claimants typically have ratings of 5% or less.

With private negotiations limited to insurance adjustors and claimants, there is no assurance that workers will really understand the long-term risks they are taking by accepting the so-called job dislocation benefit. There is no provision to pay attorneys for advice on what amounts to a settlement of future re-employment benefits. There is no real oversight by the Division as there is in other settlements for unrepresented claimants.

Moreover, there is no real connection between an Impairment rating and the ability to work. Look at my chart (EXH. 9). Sixty-three percent of workers with impairment ratings had no vocational rehabilitation costs reported. Moreover, not all of the remaining 47% of workers with impairment and rehab costs reported were eligible for the benefit. That is because non-rehab expenses are characterized as rehab expenses to avoid paying a 6% assessment into the second injury fund.

4. SECTION 16: ADD to AS 23.30.041(g)(1): Any rehabilitation specialist who works for a company to which the insurer/employer assigned work regarding a particular injured worker will be exempted from writing the re-employment services plan for the same worker.

RATIONAL FOR CHANGE: This provision avoids conflicts of interest and undue influence on the selection of the rehabilitation specialist by the insurer/employer. Companies performing contract services for the insurance company cannot be expected to switch roles and advocate for the most appropriate plan for the claimant. **THIS WAS PASSED AS A CONCEPTUAL AMENDMENT BY THE SENATE LABOR & COMMERCE COMMITTEE**

MEMO TO MEMBERS OF THE SENATE JUDICIARY & HOUSE LABOR & COMMERCE COMMITTEES:

FROM: Name, address, phone, fax, and email

RE: ENDORSEMENT OF PROPOSED AMENDMENTS TO SENATE BILL 130, HOUSE BILL 180

DATE: April 4, 2005

I am a rehabilitation counselor and am concerned that reducing benefits to injured workers will not translate into reduced premiums for employers. First of all, there is "fuzzy math" going on and little, if any, oversight by the Division of Workers' Compensation or Insurance Commission. How can reducing costs that have gone up less than 9% in two years impact premiums that are increasing 200% and 400%?

I am concerned that SB 130 and HB 180 have provisions that masquerade either as benefits and/or slicker methods of service delivery when their intention is to limit the amount of information communicated to claimants and to privately (without real oversight by the Division) convince injured workers to waive retraining in current claims or forfeit retraining in both current and future claims for a measly sum of money. In particular, I am concerned about the disadvantages to the claimant of stipulating to the re-employment benefit and accepting the job dislocation benefit.

As written, the claimant can accept the job dislocation benefit (which is really a backdoor settlement of future retraining benefits even with a new claim) without legal counsel or oversight by the Division. There is no way for attorneys to be paid to provide legal advice to the claimant regarding the job dislocation benefit. It appears that the only person who will communicate with the claimant at this juncture is likely to be the insurance adjuster who has a different interest than does the claimant. This is inherently unfair and lop-sided.

I urge the following amendments be offered and passed.

SECTION 14: REMOVE from AS 23.30.041(c) the language: "An employee and an employer may stipulate to the employee's eligibility for reemployment benefits at any time."

RATIONALE FOR CHANGE: According to present insurance company expense reports, eligibility evaluations account for only .8% of the claims dollar. **A key motivation behind stipulating to the benefit is not only to speed up the process but to keep desperate injured workers in ignorance and away from anyone who**

will provide them information about the system so that insurers can offer employees the waiver or the job dislocation benefit in lieu of retraining. It is more common than not that workers tell us rehabilitation counselors during the eligibility process, "This is the first time I understood that I'll be paid my own impairment money during rehab, that I won't get a lump sum at the end of my plan, that my rating is likely to be less than the VA, that if I waive retraining I'll be losing more than \$13,500 in benefits." These workers are told a minimum of information about how the re-employment system under workers' compensation operates. Claimants won't understand what they are missing until it is too late.

SECTION 15: REMOVE AS 23.30.041 (f)(2) from the bill. This provision adds another disqualifier for the re-employment benefit called the job dislocation benefit.

RATIONALE FOR CHANGE: This is not a benefit but a permanent settlement of retraining billed as a "benefit". The worker who accepts this "benefit" and later has a more disabling work injury and needs retraining will no longer qualify for it. This is tricky, disingenuous and exploitive of young workers, workers with learning disabilities, non-English speaking claimants, and those workers desperate to pay their bills. Moreover, there is **no oversight by the Division of Workers' Compensation on accepting the job dislocation benefit as there is on settlements, there is **no legal representation** required in this bill, and there is no provision for the insurance companies to pay for legal assistance on this matter.**

Another down side to the job dislocation benefit is that **employers could be liable for more permanent and total claims**. If a person who needs retraining later on is barred from it and can't return to work without it, the worker may possibly be eligible to be paid wage replacement benefits forever.

SECTION 16: REMOVE the job dislocation benefit described in 23.30.041 g 1-3.

RATIONALE FOR CHANGE: The vast majority of injured workers opting for this benefit would be eligible for only an additional \$5000 and yet be barred from retraining FOREVER. The data reported for 2003 show that claimants typically have ratings of 5% or less. Each percentage point of impairment is worth \$1770. Out of 750 workers with costs reported in vocational rehabilitation fields on the annual report, 653 or 87% of workers who might be eligible for an eligibility evaluation had ratings of less than 15%. Only 89 workers with costs recorded in rehab fields had ratings between 29 and 15%. Only 8 workers who had costs listed in rehab fields had ratings above 30%.

With private negotiations limited to insurance adjustors and claimants, there is no assurance that workers will really understand the long-term risks they are taking by accepting the so-called job dislocation benefit. There is no provision

to pay attorneys for advice on what amounts to a settlement of future re-employment benefits. There is no real oversight by the Division as there is in other settlements for unrepresented claimants.

Moreover, **there is no real connection between an impairment rating and the ability to work.** Look at my chart (EXH. 9). Sixty-three percent of workers with impairment ratings had no vocational rehabilitation costs reported. Moreover, not all of the remaining 47% of workers with impairment and rehab costs reported were eligible for the benefit. That is because non-rehab expenses are characterized as rehab expenses to avoid paying a 6% assessment into the second injury fund.

Thank you for having an open mind. My heart goes out to both employers saddled with these excessive premium hikes and injured workers whose benefits are being reduced. Unfortunately, nothing we do in the way of reducing benefits is going to impact the losses insurers experienced in the stock market, the Fremont debacle, the fact that we have a small market up here of 291,000 workers, and the entitlement insurance companies feel to earn excessive profits.

ALASKA STATE MEDICAL ASSOCIATION

4107 Laurel Street · Anchorage, Alaska 99508 · (907) 562-0304 · (907) 561-2063 (fax)

FAX COVER SHEET

Date: 4/7/2005

Number of Pages (Including Cover Sheet): 13

TO: Senator Ralph Seekins
Senator Hollis French

FROM: Jim Jordan

SUBJECT: SB 130 – Workers Compensation

MESSAGE:

Senator Seekins and Senator French:

Here is the ASMA Testimony provided in Senate Labor and Commerce that includes copies of the letters from the California Medical Association that I referred to this morning and which you requested.

Regards,



Jim Jordan,
Executive Director

Alaska State Medical Association

4107 Laurel Street • Anchorage, Alaska 99508 • (907) 562-0304 • (907) 561-2063 (fax)

March 9, 2005

Honorable Con Bunde
Chair, Senate Labor and Commerce Committee
State Capitol, Room 506
Juneau AK 99801

Re: SB 130 – Workers Compensation

Dear Senator Bunde:

The Alaska State Medical Association (ASMA), represents physicians throughout Alaska, and is primarily concerned with the health care for all Alaskans.

ASMA strongly recommends that section 24 and 25 of SB 130 be removed and that we support a longer term study of the very complex medical issues involved with the workers compensation system.

The questions provided in ASMA's written testimony would provide a good start for the research needed for a long term study.

ASMA urges you to consider this recommendation of careful study of the complicated issues raised to avoid adverse impact on access to care.

Sincerely,



By: Paul Worrell, MD President
For: The Alaska State Medical Association

cc: Senator Ralph Seekins
Senator Ben Stevens
Senator Bettye Davis
Senator Johnny Ellis

Alaska State Medical Association

4107 Laurel Street • Anchorage, Alaska 99508 • (907) 562-0304 • (907) 561-2063 (fax)

March 8, 2005

Honorable Con Bunde
Chair, Senate Labor and Commerce Committee
State Capitol, Room 506
Juneau AK 99801

Re: SB 130 – Workers Compensation

Dear Senator Bunde:

The Alaska State Medical Association (ASMA), represents physicians throughout Alaska, and is primarily concerned with the health care for all Alaskans.

ASMA's primary concerns regarding SB 130 are the potential unintended consequences that would be harmful to an injured worker, would be harmful to the patient/physician relationship, create medical liability questions relating to standard of care, or would create burdensome paperwork that does not add value to patient care.

ASMA has more questions than suggestions at this time. The workers compensation system is complex and deserving of in-depth analysis. The following comments are in the order found in SB 130.

1. Section 24 P. 19 lines 4 through 26

- A. Subsection (n) creates a requirement for use of a generic drug unless the physician explains in writing the medical necessity of using a brand name drug. It also establishes a "preferred drug list" (PDL) and directs the department to establish a policy for departure from that list.
1. Physician Assistants and Advanced Nurse Practitioners also prescribe. This language only refers to physicians. Does this mean that PAs and ANPs are not required to follow the same rules?
 2. Physicians do not have a financial stake in the sale of a prescription drug. Their interest is to get the most efficacious drug to the patient. The physician's stake in this process is the administrative / paperwork effort necessary to get a prescription filled. This adds additional hassle to the process with no discernable benefit to the patient. Departure from the PDL in the Medicaid program requires only that the prescriber state that the use of a particular drug is "medically necessary". This subsection also infers a pre-authorization process in the exception cases. This raises questions as to who will do the prior – authorization – an insurance company employee (clerk, nurse, pharmacist, doctor, etc), a department employee (clerk, nurse, pharmacist, doctor, etc.)? In

any event, an increased hassle factor is added with perhaps standard of care implications that might pertain to medical injury lawsuits.

3. The threshold question regarding establishing a PDL is whether or not a PDL is appropriate for the worker compensation system. The PDL developed for the Medicaid program may not be appropriate. If a PDL is appropriate for workers compensation, physicians specializing in treating workers compensation patients need to be an integral part in its development. The final questions are what are the projected cost savings for adopting a PDL and what is the impact on access to care?
- B. Subsection (o) establishes the presumptive standard of care for treatment of an injured worker that must be followed for payment to be made for the medical services provided. The American College of Occupation and Environmental Medicine's (ACOEM) Occupational Medicine Practice Guidelines are adopted as the presumptive standard.
1. What is the evidence that the ACOEM guidelines are the definitive, presumptive standards? At its face, it is suspect that one book of guidelines can encompass every possible treatment scenario for every injured worker. California adopted the ACOEM guidelines about a year ago. Attached are copies of two letters from the California Medical Association (by Dr. Hertzka, CMA President) to Ms. Hoch, the Administrative Director of the California Division of Workers' Compensation, dated 1/06/2005 and 12/12/2004. You will note that CMA recommends to also include the practice guidelines developed by national specialty societies listed in the 1/6/05 letter. The concerns and recommendations made by CMA should be investigated as to their applicability in Alaska.
 2. The CMA letter dated 12/12/2004 also states that 80% of services provided by physicians are not addressed in treatment guidelines. If that is the case in Alaska, what will be the cost savings impact?
 3. What is the value added to patient treatment and care by the adoption of the ACOEM guidelines? Or is this just added hassle that may adversely impact access to care and create standard of care implications in medical injury lawsuits?

II. Section 25 p 19 lines 27-31, p 20 lines 1-31. and p21 lines 1-15

- A. AS 23.30.097 (a) would roll back the fees paid for treatment of an injured worker to the lesser of the fee schedule in place at 12/15/99 or an employer negotiated amount of payment.
1. It is presumed that the workers compensation system is primarily established to treat and care for an injured worker in an expeditious manner in order to get the worker back on the job. It would seem that a primary determination would be that optimal outcomes are achieved. How do outcomes in the Alaska Workers Compensation compare to other states? Will there be outcome studies in the future?

2. What are the cost savings estimated to be achieved by the fee rollback? What are the cost breakdowns for the last 5 years by type of medical care provider? What are the costs by CPT code for physician charges for the last 5 years?
 3. What are the implications for access to care?
 4. What are the implications in recruiting needed physicians to Alaska?
- B. AS 23.30.097 (b) allows employers to establish a list of preferred physicians.
1. What are the cost saving to be achieved by forming groups of preferred physicians?
 2. What would be the cost to the employer to negotiate such arrangements with individual physicians?
 3. Will an employer become a co-defendant in any lawsuit pertaining to a medical injury allegedly caused by a physician on the preferred list?
- C. AS 23.30.097 (c) allows an employer or groups of small employers to negotiate reduced fees with physicians.
1. Independently practicing physician may not jointly negotiate fees. How will the State oversee this process so that harmful monopsonic or oligopsonic situations do not occur?
 2. Considering that employers will need to negotiate with individual physicians that would seemingly be costly, what are the anticipated savings projected by this provision?

ASMA believes that careful study is required of the complex issues raised in this testimony as well as others that come up in the course of your deliberations. Undue interference with the patient/physician relationship and adverse impact on access to care needs to be avoided.

Sincerely,



By: James Jordan, Executive Director
For: The Alaska State Medical Association

cc: Senator Ralph Seekins
Senator Ben Stevens
Senator Bettye Davis
Senator Johnny Ellis



California Medical Association
Physicians dedicated to the health of Californians

January 6, 2005

Ms. Andrea Hoch
Administrative Director
Division of Workers' Compensation
455 Golden Gate Avenue
San Francisco, CA 94102

Dear Ms. Hoch:

As promised, here is a comprehensive list of the national specialty society guidelines that meet the current labor code requirements for treatment/utilization guidelines. We strongly urge you to adopt these guidelines in conjunction with the ACOEM guidelines. Each of the national specialty societies listed below are American Board of Medical Specialties (ABMS) or Medical Board of California (MBC) recognized specialties.

The American Society of Anesthesiologists

<http://www.asahq.org/publicationsAndServices/practiceparam.htm>

- chronic pain: www.asahq.org/publicationsAndServices/chronic_pain.html
- treating cancer pain: www.asahq.org/publicationsAndServices/cancer.html
- treating perioperative pain: www.asahq.org/publicationsAndServices/pain.pdf

American College of Emergency Physicians

Clinical policies and guidelines: <http://www.acep.org/1.18.0.html>

American Academy of Neurology

<http://www.aan.com/professionals/practice/guideline/index.cfm>

The Society of Nuclear Medicine

<http://interactive.snm.org/index.cfm?PageID=1377&RPID=969>

American Academy of Ophthalmology

<http://www.aao.org/aao/education/library/upload/Summary-Benchmarks-2002.pdf>

American Academy of Orthopaedic Surgeons

<http://www.aaos.org/wordhtml/research/guidelin/guide.htm>

American Osteopathic Association

Protocols For Osteopathic Manipulative Treatment (OMT)

Andrea Hoch, Administrative Director
Division of Workers' Compensation
January 6, 2005
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American Academy of Pain Medicine
Wisconsin Medical Society -Chronic Pain
http://www.wisconsinmedicalsociety.org/uploads/wmi/pain_manageguides.pdf

AHCPR Guideline - Acute Pain
<http://www.ncbi.nlm.nih.gov/books/bv.fcgi?rid=hstat6.chapter.8991>

AHCPR Guideline - Acute Low Back Pain
<http://www.ncbi.nlm.nih.gov/books/bv.fcgi?rid=hstat6.chapter.25870>

AHCPR Guideline - Cancer Pain Link below
<http://www.ncbi.nlm.nih.gov/books/bv.fcgi?rid=hstat6.chapter.18803>

(The documents listed below were previously forwarded to the DWC, CHSWC and RAND.)

Acute Pain and Cancer Pain – A position statement

AAPM – Basic Principles of Ethics for the Practice of Pain Medicine

AAPM – Long-term Controlled Substances Therapy for Chronic Pain Sample Agreement

AAPM – Federal Criminal Penalties for Illegal Trafficking of Prescription Drugs

AAPM – Definitions Related to the Use of Opioids for the Treatment of Pain

AAPM - The Necessity for Early Evaluation and Treatment of the Chronic Pain Patient

AAPM – Consent for Chronic Opioid Therapy

AAPM and American Pain Society

The Use of Opioids for the Treatment of Chronic Pain

AAPM – A Pledge

AAPM – Quality Care at the End of Life

AAPM – Undergraduate Medical Education on Pain Management, End-of-Life Care, and Palliative Care

AAPM, Amer. Pain Society and Amer. Society of Addiction Medicine Public Policy Statement on the Rights and Responsibilities of Healthcare Professionals in the use of Opioids for the Treatment of Pain

American Academy of Physical Medicine and Rehabilitation
[http://www.aapmr.org/hpl/pracguide/resource.htm#\"Clinical%20Practice%20Guidelines:%20The%20Management%20of%20Chronic%20Pain%20in%20Older%20Persons\"](http://www.aapmr.org/hpl/pracguide/resource.htm#\)

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American Psychiatric Association

http://www.psych.org/psych_pract/treatg/pg/prac_guidc.cfm

American Thoracic Society

- ATS Guide – Asthma
<http://www.thoracic.org/adobe/statements/eval1-6.pdf>
- ATS Standards - Pulmonology Disease (see attached)
<http://www.thoracic.org/adobe/statements/copd1-45.pdf>

We appreciate your consideration of these treatment guidelines. The CMA contact is Elizabeth McNeil 415-882-3376; emcneil@cmanet.org.

Sincerely,

RE Hertz MD

Robert E. Hertzka, MD
President

cc: Ann Searcy, MD, DWC
Executive Committee
Workers' Compensation Committee



December 12, 2004

Andrea Hoch
Administrative Director
Division of Workers' Compensation
455 Golden Gate Avenue
San Francisco, CA 94102

Dear Ms. Hoch:

The California Medical Association appreciates the opportunity to comment on the RAND report, "Evaluating Medical Treatment Guideline Sets for Injured Workers In California," and the Commission on Health and Safety and Workers' Compensation's recommendations regarding the Workers' Compensation Utilization Schedule. In general, we support the recommendations with a few additions. Our comments are specifically outlined below.

CMA Opposes Adoption of Commercial Proprietary Guidelines

CMA continues to oppose the adoption of commercial proprietary guidelines because they are developed solely for cost containment purposes and do not take quality outcomes into consideration. Moreover, physicians do not have the opportunity to provide input into the development of such guidelines. Please see the attached October 14, 2004 letter in which CMA commented on this issue in great detail.

CMA Supports the Adoption of the ACOEM Guidelines

CMA supports the permanent adoption of the ACOEM Guidelines. These are appropriate, comprehensive guidelines written by occupational physicians dedicated to workplace injury. Moreover, ACOEM is developing support software that will assist both physicians and payers in interpreting the guidelines.

CMA Supports the Adoption of the AAOS Guidelines for Spinal Surgery

CMA endorses the adoption of the American Academy of Orthopaedic Surgeons Guidelines for spinal surgery as recommended by RAND and CHSWC. However, we also support the adoption of all national specialty society guidelines. Please see the discussion below.

CMA Urges the Adoption of the National Specialty Society Guidelines

The physician reviewers used by RAND stated that they preferred the national specialty society guidelines to ACOEM and the other Commercial Guidelines they were asked to review. Unfortunately, the physician reviewers were never asked to review the other national specialty guidelines because the staff at RAND had disqualified the specialty society guidelines on the grounds they were not "comprehensive" – meaning they were too specialty specific. CMA emphatically agrees with the assessment of the RAND physician reviewers. We strongly urge the DWC to adopt all American Board of Medical Specialties (ABMS) and Medical Board of California (MBC) recognized medical specialties who have developed treatment guidelines applicable to workers' compensation cases. We are currently working with the specialty societies to submit a consolidated list of their applicable guidelines to you.

Physicians appropriately seek and follow the guidelines adopted by their national specialty societies. The national specialties provide the most respected clinical guidance to physicians in this country either through evidence-based guidelines developed by the most respected physicians in the specialty or by making the latest literature available to their members. These guidelines attempt to provide physicians with a thoughtful course of treatment based on the most current knowledge and available resources. However, while grounded in science, the practice of medicine is an art. The variety and complexity of the human condition makes it impossible to always reach the correct diagnosis or to predict the response to treatment with precision. Therefore, the sole purpose of guidelines is to assist physicians who are using their reasonable judgment to develop an accurate diagnosis and successful treatment. Therefore, if any guideline is adopted for the workers' compensation system, it should be the professional standard of care that respected physicians in each specialty work to achieve. That professional standard of care, in part, comes from the national specialty guidelines.

The national specialty guidelines will also address some of the gaps and weaknesses in the ACOEM guidelines. The physician reviewers used by RAND already identified the AAOS guidelines as being superior to ACOEM in the area of spinal surgery. Further, ACOEM is admittedly silent in the areas of psychiatry and pain medicine. Those specialty society guidelines should be adopted immediately.

There has been some concern expressed that the payers won't be able to manage multiple sets of guidelines. It should be noted that during the RAND stakeholder meeting prior to the release of the RAND report, two health plans, that also provide private health care, reported that they currently use multiple sets of guidelines and they do not think it to be inordinately difficult to manage. In fact, they thought it was extremely helpful to be able to use all potential evidence-based guidelines in determining the appropriateness of care.

The importance of adopting national specialty society guidelines, in addition to ACOEM, is that they would then carry the "presumption of correctness." Most physicians treating workers' compensation patients will eventually use their specialty society guidelines to justify a course of treatment that may differ from ACOEM. It is inefficient utilization management and inappropriate to not presume a physician is correct if they are adhering to their national specialty society guidelines. Not adopting the specialty guidelines in addition to ACOEM will force physicians to appeal more payer decisions and backlog the already backlogged utilization review system. Therefore, we strongly urge you to adopt the ACOEM guidelines and the national specialty society guidelines and presume them both to be correct. It will create the most effective utilization schedule in the long term.

Finally, ACOEM is attempting to work more collaboratively with the other national specialty societies to develop a consensus set of guidelines. We believe this collaboration will result in a more consolidated set of workers' compensation guidelines that could eventually be adopted by the DWC. But in the meantime, the only solution is to adopt all of the applicable ABMS or MBC-recognized specialty societies' guidelines.

CMA Urges A Prior Authorization System for the Physical Modalities

The RAND reviewers also identified major weaknesses in the ACOEM guidelines related to the physical modalities, such as physical therapy, chiropractic care and acupuncture. CMA certainly does not oppose the adoption of evidenced-based guidelines in these areas, such as the new NIH guidelines on acupuncture that will be released in the near future. However, we believe in the absence of appropriate guidelines, the adoption of a prior authorization system is preferable as long as it is clinically-based and performed in a timely manner.

Moreover, CMA would like to propose that we work with you to develop a system that identifies the 10 most common diagnoses that are also the major cost drivers in the worker's compensation system. The high risk diagnoses should also be included. For these 10 diagnoses, we would propose that a specific number of visits in a specific time period be automatically authorized for initial treatment. Any requests for subsequent treatments would need to be authorized by the payer in a timely way based on the patient's functional improvement. This kind of prior authorization system is successfully applied in all well-managed health care systems today.

However, in order for this system to work, the payers will need to significantly improve the way they are conducting utilization review. Physicians report to CMA that payers are currently taking 5, 10 and sometimes 30 days to approve treatments. The workers' comp community needs the DWC's utilization review regulations to be promulgated as soon as possible. We need a formal process to file complaints with the DWC and most importantly, we need enforcement action against the payers who do not comply with the utilization review timelines, appropriate utilization review procedures and the guidelines that are adopted. We also need to require that under certain circumstances only a physician within the same specialty as the treating physician may deny care.

CMA Urges that the Treating Physician Be Presumed Correct For Treatments That Are Not Addressed in the Guidelines

- A. If a physician deviates from the guidelines, CMA believes that the burden should be on the physician to demonstrate to the payer why the treatment is medically necessary and appropriate.
- B. Where there are gaps in the guidelines, CMA urges the DWC to adopt the following amendment. Current law states that adherence to the ACOEM guidelines is presumed to be correct. However, the law goes on to say that where ACOEM is silent, physicians must rely on other evidence-based guidelines. However, 80% of the services physicians provide their patients are not addressed in treatment guidelines – and certainly not evidence-based treatment guidelines. Therefore, CMA proposes the following language as a balanced approach to allow the judgment of the treating physician to be presumed correct within certain parameters – when there is no guiding evidence-based treatment protocol. Two major health plans have adopted this CMA language as part of our RICO lawsuit settlement agreements.

To cure and relieve shall mean health care services that a physician, exercising prudent clinical judgment, would provide to a patient for the purpose of preventing, evaluating, diagnosing or treating an illness, injury, disease or its symptoms, and that are (a) in accordance with generally accepted standards of medical practice; (b) clinically appropriate, in terms of type, frequency, extent, site and duration, and considered effective for the patient's illness, injury or disease; and (c) not primarily for the convenience of the patient, physician, or other health care provider, and not more costly than an alternative services or sequence of services at least as likely to produce equivalent therapeutic or diagnostic results as to the diagnosis or treatment of that patient's illness, injury or disease. For these purposes, "generally accepted standards of medical practice" means standards that are based on credible scientific evidence published in peer-reviewed medical literature generally recognized by the relevant medical community, physician specialty society recommendations, the views of physicians practicing in the relevant clinical areas and any other relevant factors.

- C. In conjunction with the amendment set forth above, CMA urges the DWC to adopt a hierarchy of evidence that should be used by both physicians and the payers when justifying treatment or payment decisions. The following hierarchy was enacted for the Knox-Keene health plans in California for independent medical review.
- i. Scientific-Evidence Based Guidelines
 - ii. Professional Standards of Care
 - iii. Expert Opinion

CMA Urges the DWC To Adopt Best Practices for Chronic Care

As outlined in the attached October 14, 2004 letter, CMA urges the DWC to establish a physician advisory committee to assist the DWC in developing "best practices" for chronic care which is an area that is not addressed in any of the guidelines under your consideration and in desperate need of attention. We believe this project would provide the most meaningful utilization management tool to control the cases that are the real cost drivers in the workers' compensation system. Such treatment protocols would also help guide physicians in providing better care to patients whose conditions have become chronic.

We appreciate your consideration of these positions related to the treatment guidelines. The CMA contact is Elizabeth McNeil 415-882-3376; emcneil@cmanet.org

Sincerely,

RE Hertzka MD

Robert E. Hertzka, MD
President

cc: Ann Searcy, MD, DWC
Executive Committee
Workers' Compensation Committee

Testimony For House Judiciary:

I recently received the new changes to the current workers compensation bill. There are serious problems with the new amendments that will affect thousand of injured Alaskans. Changing the palliative care provisions and preexisting condition provisions will eliminate claims yes, but it is merely a tool to shift cost for insurance companies.

This means more cuts to benefits for workers and not equal cuts or freezes for insurance companies or employers. In this whole workers compensation system, there is a lot of measurable waste. While we are whittling away at important benefits that worker need to return to work. We are not looking at the actual problems in this very broken system.

The Legislative Audit that was completed showed significant usable information that has been ignored. We need to save money and provide benefits. Reviews or audits are necessary as each time we have acted to adjust the workers compensation law, it has created a greater imbalance or disparagement between workers who need benefits to return to work and employers who are paying expensive premiums.

Acting out of ignorance could be the biggest disservice to both workers and employers. Complex changes can be enacted but will be meaningless and will not work if we do not talk to the employee and the employers. Restoring balance in the system and looking at the complex fixes must be based on factual data and not fuzzy math or the power of the influential insurance carriers.

Thank you

Barbara Williams
Alaska Injured Workers Alliance
P. O. Box 101093
Anchorage, Alaska 99510



Alaska State Legislature

Please enter into the record my testimony to the SENATE JUDICIARY
Committee name

Committee on SB 130 dated FIXED 4-7-05
Bill/Subject

LA
AGRS
Including Cover -

Signed: LAWRENCE BUCHHOLZ
Testifier

FORMER WORKERS COMPENSATION OFFICER - Retired 1987
Representing (Optional)

PO BOX 254 SUTTON, ALASKA 99674
Address

745-4332 ideas@POBOX.mtaonline.net
Phone number



Alaska State Legislature

Please enter into the record my testimony to the House of Commerce, Judiciary & Finance committee name

committee on HB 180 & SB 130 bill/subject, dated 4-6-2005

I came to testify at the LHO in Wasilla on Wednesday but will be out of state on Monday. It is difficult to testify against the Bill to change workers' compensation as it was in 1994 & 98 because the changes are so drastic and so numerous that it looks like I am simply against change. I have previously accused of being a Luddite, but here goes - most important change is the elimination of workers' civil right to the court. #23,30,007 A rubber stamp commission doesn't begin to improve on the oversight of the court. Workers gave up their right to sue but expected justice at the hands of the system. Abrogating the responsibility of the administration to provide information to its constituents #23,30,005 MAY eliminate the problem of facing the people damaged by this law (ever)

Signed:

Lawrence Paul Buchholz (ever)
Testifier Former Workers Compensation Officer

Representing (Optional)

P.O. Box 254

Retired 1987

Mailing Address

Sutton ALASKA 99674-0254

Phone Number

(907) 745-4332

E-MAIL

ideas@pobox.mtaonline.net

But it will not help the injured worker - Non Profit
or any other entity could represent under current
law - only restriction was against charging fees -
providing a low profit alternative guarantees sub-
standard & second class representation. The
Establishment of Company Doctors @ 23.30.09 & Drug and
Treatment Codes @ 23.30.09S guarantees reduced
quality of treatment hope at recovery for
any injured worker. The elimination of the
"Outmoded" Second Injury fund may be appropriate
in the same way that the "Job Dislocation" benefit
replaces any vocational rehabilitation effort
under the law and may signal the end of the
"Exclusive Remedy", No Fault System altogether.
Perhaps it is time to review ~~Dr. Carlson's~~ Carlson's
suggestion from the 70's to dispossess the
workers' compensation altogether & rely on the
social systems currently established for
workers injured accidentally and the court
for people injured by some cause. ALASKA
could be the first to attempt such a system.
~~All~~ All the money spent on insurance could be
spent on prevention.

I know it is HARD to resist the pressure of
the Insurance lobby & the Employee Groups but
please remember when you were a worker &
the trust that you had in the system - think
of your children & grand children & the danger
in the work place. Nobody studies up to be
hurt & when it happens their life is
changed forever. Without exception, for the
worse. How much worse is up to you.

But it will help the injured worker - Now he's
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and only restriction was against - charging fees -
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Alaska State Legislature

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Committee name

Committee on HB 180 & SB 130 dated 4.6.2005
Bill/Subject

P.S. At least replace the insulting
phrase "Appearance of impropriety" with
something that implies fairness.

Thanks

Signed: Lawrence P. Buchholz
Testifier

Former Workers' Compensation Officer Retired 1987
Representing (Optional)

P.O. Box 254 Sutton Alaska 99674
Address

(907) 745-4332
Phone number

E-mail ideas@PO Box.mtsonline.net