

**HB**

**79**

<TARGET><BILL>HB 79</BILL><SUBJECT>HB  
79</SUBJECT><COMM>HL&C30</COMM></TARGET>



THE STATE  
of **ALASKA**  
GOVERNOR BILL WALKER

**Department of Labor and  
Workforce Development**

Office of the Commissioner

Post Office Box 11149  
Juneau, Alaska 99811  
Main: 907.465.2700  
Fax: 907.465.2784

TO: Representative Sam Kito, III, Labor and Commerce Chair

FROM: Commissioner Heidi Drygas 

DATE: January 27, 2017

RE: Scheduling of HB 79, "Omnibus Workers Compensation"

At your earliest convenience, I respectfully request the scheduling of House Bill 79, "Omnibus Worker's Compensation."

Please do not hesitate to contact my staff, Debbie Banaszak, at 465-2702, with any questions or concerns about this legislation. I look forward to hearing from you and discussing the bill in further detail.

Thank you for your consideration.

STATE CAPITOL  
P.O. Box 110001  
Juneau, AK 99811-0001  
907-465-3500  
fax: 907-465-3532



Governor Bill Walker  
STATE OF ALASKA

550 West Seventh Avenue, Suite 1700  
Anchorage, AK 99501  
907-269-7450  
fax 907-269-7461  
[www.Gov.Alaska.Gov](http://www.Gov.Alaska.Gov)  
[Governor@Alaska.Gov](mailto:Governor@Alaska.Gov)

January 24, 2017

The Honorable Bryce Edgmon  
Speaker of the House  
Alaska State Legislature  
State Capitol Room 208  
Juneau, AK 99801

Dear Speaker Edgmon:

Under the authority of Article III, Section 18, of the Alaska Constitution, I am transmitting a bill relating to the workers' compensation system. The bill proposes improvements to increase the efficiency and flexibility of the current system for the benefit of injured workers and employers, including improving the delivery of benefits to injured employees, deterring workers' compensation fraud, ensuring compliance with the requirement that employers insure for workers' compensation liability, and providing adequate funding for the administration of the system.

The Legislature has consistently endeavored to create a workers' compensation system that delivers benefits quickly, efficiently, fairly, and predictably to injured workers at a reasonable cost to employers. Yet the system has not been significantly reformed in more than 10 years. The improvements in this bill address rising costs, recent legal developments, and new approaches to improve the system's efficiency and fairness.

First, the bill would speed up dispute resolution before the Workers' Compensation Board (Board), providing closure for both injured workers and their employers. The bill simplifies the process by requiring a hearing shortly after a claim is filed, rather than waiting for an employee to request a hearing, and by ending the practice of permitting non-attorneys to represent parties before the Board. The bill also simplifies settlement agreements by eliminating a requirement that the Board approve attorney fees as part of a settlement when fees are the sole issue in the settlement that requires Board approval. Finally, the process of imposing civil penalties against uninsured employers is streamlined. The bill permits the Division of Workers' Compensation to assess the civil penalty directly, rather than petitioning the Board to set the penalty. An employer who disputes the assessed penalty may challenge the assessment before the board.

Second, to speed up the delivery of medical care to injured workers and reduce confusion for employers as a result of the Supreme Court's decision in *M-K Rivers v. Harris*, 325 P.3d 510 (2014), the bill adds provisions requiring employers to authorize or deny medical treatment upon a medical provider's written request, and provides a reasonable timeframe for an employer to respond without incurring a penalty. The Alaska Supreme Court held in *M-K Rivers* that an employer could

be subject to a penalty for unfairly controverting a prescribed medical treatment, even though no bill for the treatment had been presented to the employer for payment. This has resulted in questions over when medical treatment must be preauthorized.

Third, the bill strengthens provisions to prevent workers' compensation fraud by employers and employees. The bill defines when an employer's misclassification of employees or deceptive leasing practices amounts to fraud under the Alaska Workers' Compensation Act. In response to the Supreme Court's decision in *Shebata v. Salvation Army*, 225 P.3d 1106 (Alaska 2010), the bill also imposes an affirmative duty on employees receiving workers' compensation benefits to report work and receipt of other types of wage-loss replacement benefits. These provisions will deter fraudulent conduct by employees that results in the unlawful receipt of workers' compensation benefits, or conduct by employers that results in artificially low workers' compensation premiums.

Fourth, the bill makes a number of substantive changes to the assessment of civil penalties against employers who fail to insure for workers' compensation. Among other changes, the Division of Workers' Compensation's ability to assess a civil penalty is expanded to include employers who are underinsured because they have misclassified workers in a variety of ways as not subject to workers' compensation coverage, misrepresented the nature of their business, or engaged in deceptive leasing practices. Provisions in the bill would expand personal liability for workers' compensation benefits and civil penalties for failure to insure to owners of more types of employing business entities. Most significantly, the bill changes the calculation and maximum civil penalty for a failure to insure for workers' compensation liability. The current maximum penalty of \$1,000 for each uninsured employee workday has led to two unintended consequences. The calculation results in astronomically high penalties that do not withstand review on appeal and that increase litigation costs and employer defaults. In addition, uninsured employers that have not maintained required records frequently are penalized less severely than similar employers that have kept records because of the difficulty of establishing the number of uninsured employee workdays without records. To correct these issues, the bill sets a maximum penalty of three times the workers' compensation insurance premium that the employer would have paid if the employer had properly insured its employees. This calculation is easier because it requires only the employer's overall payroll data and the Division of Insurance's assigned risk rates for the nature of the employer's business. The new penalty will result in a reasonable deterrent that takes into account the employer's size, the nature of the employer's business, and the financial gain the employer realized by operating without paying, in full or in part, for workers' compensation insurance.

Fifth, the bill reduces administrative costs. The bill allows employers to pay benefits electronically, both delivering benefits to workers faster and saving costs. The bill also allows the Division of Workers' Compensation to mandate electronic filing of certain reports from employers and insurers, and eliminates a requirement that corporate executive officers seek the division's approval before opting out of workers' compensation coverage for themselves. The bill adds medical publications to a list the Department of Labor and Workforce Development may incorporate, including future amended versions, into regulation. In addition, the bill provides a penalty for insurers and employers that fail to timely submit proof of coverage in order to reduce the Division's wasted efforts investigating insured employers that neglected to report insurance

The Honorable Bryce Edgmon  
Transmittal Workers' Compensation Efficiencies  
January 24, 2017  
Page 3

coverage. The bill also phases out the second injury fund, saving administrative costs for the Department and reducing costs for employers, which are required to contribute to the fund. The fund's purpose is to encourage employers to hire or retain disabled individuals, but the fund is no longer necessary with the passage of laws barring employment discrimination on the basis of disability. Under the bill, the fund would not accept new claims and would be phased out as current claims are paid. Employers' required contributions to the fund would gradually drop to zero as the claims are paid.

Finally, the bill would ensure adequate funding for the administration of the workers' compensation and workers' safety programs by allowing the Department of Labor and Workforce Development to receive a greater percentage of the annual service fees that insurers pay to the Division of Insurance. The bill does not increase the service fee for workers' compensation insurers or employers, but allocates more of the insurers' annual service fee to the Department.

In the spirit of streamlining government processes and protecting citizen rights, the bill would speed up resolution of disputes, improve delivery of benefits to injured employees, strengthen fraud prosecution and employers' compliance with the requirement to insure employees for workers' compensation liability, and reduce administrative costs.

I urge your prompt and favorable action on this measure.

Sincerely,



Bill Walker  
Governor

Enclosure



THE STATE  
of **ALASKA**  
GOVERNOR BILL WALKER

**Department of Labor and  
Workforce Development**

Office of the Commissioner

Post Office Box 111149  
Juneau, Alaska 99811  
Main: 907.465.2700  
Fax: 907.465.2784

Sectional Analysis for HB 79 and SB 40:

Section 1 amends AS 23.05.067(a), by allowing the department of labor and workforce development to receive a greater percentage of the annual service fees that insurers pay.

Section 2 amends AS 23.05.067(a), by phasing out the second injury fund.

Section 3 amends AS 23.05.067(e), by phasing out the second injury fund.

Section 4 amends AS 23.30.015(e), by phasing out the second injury fund.

Section 5 amends AS 23.30.070(a), by making technical changes to allow electronic filing of documents.

Section 6 amends AS 23.30.070(b), by making technical changes to allow electronic filing of documents.

Section 7 amends AS 23.30.070(d), by allowing the division director to prescribe the format for reporting injuries to the division.

Section 8 amends AS 23.30.070(f), by making technical changes to allow electronic filing of documents.

Section 9 amends AS 23.30.075(b), by expanding personal liability for workers' compensation benefits and civil penalties to owners of more types of employing business entities if the business fails to carry workers' compensation insurance.

Section 10 amends AS 23.30.080(e), by moving the failure to insure process from the board to the division.

Section 11 amends AS 23.30.080(f), by allowing the division to assess a civil penalty directly rather than petitioning the board to set the penalty, simplifying the calculation and maximum civil penalty for a failure to insure for workers' compensation liability, and allowing the division to assess a civil penalty against employers who have engaged in misclassification of workers for the purpose of evading full payment of workers' compensation insurance premiums.

Section 12 amends AS 23.30.080(g), by extending from 7 days to 30 days for an employer to pay an assessed penalty.

Section 13 adds new subsections to AS 23.30.080, providing for penalties for failure to produce records legally required to be kept, providing a process for an employer to dispute a civil penalty

assessment, allowing an employer to pay an assessed civil penalty by payment plan, requiring that employers who agree to a payment plan pay interest, and clarifying penalties may not be suspended.

Section 14 amends AS 23.30.082(a), by providing interest on civil penalties and other civil penalties under the Workers' Compensation Act (Act) accrue to the workers' compensation benefits guaranty fund.

Section 15 amends AS 23.30.085, by establishing a civil penalty for failure to submit proof of insurance to the division within 30 days.

Section 16 amends AS 23.30.097(d), by clarifying when an employer must authorize or deny a provider's written request for medical treatment.

Section 17 amends AS 23.30.098, by adding publications to a list the department of labor and workforce development may incorporate, including future amended versions, into regulation.

Section 18 amends AS 23.30.110(c) by requiring the board to schedule a prehearing conference not later than 30 days after a claim is filed, and at the prehearing conference set discovery deadlines and a hearing date, rather than waiting for an employee to request a hearing.

Section 19 amends AS 23.30.110(d) by ending the practice of permitting non-attorneys to represent parties before the board.

Section 20 adds a new subsection to AS 23.30.110, providing the board shall file its decision not later than 30 days after the hearing record closes.

Section 21 amends AS 23.30.155(a), by making technical changes to allow electronic filing of documents.

Section 22 amends AS 23.30.155(b), by extending the date by which non-medical compensation benefits must be paid and clarifying when medical benefits are due.

Section 23 amends AS 23.30.155(c), by making technical changes to allow electronic filing of documents.

Section 24 amends AS 23.30.155(d), by making technical changes to allow electronic filing of documents, removing the seven day grace period for payment of compensation benefits, and clarifying when an employer's denial of a provider's written request for medical treatment must be filed.

Section 25 amends AS 23.30.155(e), by clarifying when a penalty accrues for late-paid medical benefits, including a provider's written request for medical treatment.

Section 26 amends AS 23.30.155(m), by making technical changes to allow electronic filing of documents.

Section 27 amends AS 23.30.155(q), by allowing employers to pay benefits electronically.

Section 28 amends AS 23.30.165(a), by allowing the workers' compensation benefits guaranty fund to file a lien at the onset of a claim for benefits and allowing the division to file a lien for the amount of an assessed civil penalty.

Section 29 amends AS 23.30.165(d), by allowing the workers' compensation benefits guaranty fund the ability to file a lien at the onset of a claim for benefits and allowing the division to file a lien for the amount of an assessed civil penalty.

Section 30 amends AS 23.30.205, by phasing out the second injury fund, setting an end date for the fund's acceptance of new reimbursement claims, and clarifying the fund will continue to pay reimbursement claims until all liability for previously accepted claims to the second injury fund, and claims ordered to be paid from that fund, have been satisfied.

Section 31 amends AS 23.30.230(a), by providing for a definition of "independent contractor."

Section 32 amends AS 23.30.240, by eliminating the requirement corporate executive officers seek the division's approval before opting out of workers' compensation coverage for themselves, and clarifying the requirements for opting out.

Section 33 amends AS 23.30.247(c), by phasing out the second injury fund.

Section 34 amends AS 23.30.250(a), and expands the basis for a finding of fraud by imposing an affirmative duty on an employee receiving workers' compensation benefits to report work and receipt of other types of wage-loss replacement benefits, and allowing the division to assess a civil penalty against employers who have engaged in misclassification of workers for the purpose of evading full payment of workers' compensation insurance premiums.

Section 35 amends AS 23.30.250(b), and expands the basis for a finding of fraud by imposing an affirmative duty on an employee receiving workers' compensation benefits to report work and receipt of other types of wage-loss replacement benefits.

Section 36 adds a new subsection to AS 23.30.250, and expands the basis for a finding of fraud by imposing an affirmative duty on an employee receiving workers' compensation benefits to report work and receipt of other types of wage-loss replacement benefits, and clarifying what constitutes misclassification of workers for the purpose of evading full payment of workers' compensation insurance premiums.

Section 37 amends AS 23.30.255(a), by clarifying which business entities and individuals are liable for failure to secure compensation.

Section 38 amends AS 23.30.255(b), by clarifying which business entities and individuals are liable for violating AS 23.30.255.

Section 39 adds a new subsection to AS 23.30.260, by eliminating a requirement that the board approve attorney fees as part of a settlement when fees are the sole issue in the settlement that requires board approval.

Section 40 amends AS 23.30.395, by defining "employee."

Section 41 repeals AS 23.30.015(c), 23.30.040, 23.30.205, 23.30.395(35), and AS 37.05.146(c)(12) relating to the second injury fund.

Section 42 repeals AS 23.30.040(f), 23.30.080(d), and 23.30.110(h) relating to the second injury fund, stop work orders, and hearing requests.

Section 43 amends the uncodified law of the State of Alaska, by adding transitional language.

Section 44 amends the uncodified law of the State of Alaska, by adding transitional language and clarifying the balance of the second injury fund will be transferred to the general fund after all liability for previously accepted claims to the second injury fund, and claims ordered to be paid from that fund, have been satisfied.

Section 45 amends the uncodified law of the State of Alaska, by authorizing the department to initiate the regulatory process before the effective date.

Section 46 amends the uncodified law of the State of Alaska, by adding conditional effect language that secs. 2, 4, 33, 41 and 44 take effect only after the commissioner of labor and workforce development provides notification that all liability for previously accepted claims to the second injury fund under AS 23.30.205, and claims ordered to be paid from that fund, have been satisfied.

Section 47 clarifies when secs. 2, 4, 33, 41, and 44 take effect.

Section 48 clarifies that sec. 45 takes effect immediately.

# Fiscal Note

State of Alaska  
2017 Legislative Session

Bill Version:	HB 79
Fiscal Note Number:	1
(H) Publish Date:	1/25/2017

Identifier: DOA-DRM-01-19-17  
 Title: OMNIBUS WORKERS' COMPENSATION  
 Sponsor: RLS BY REQUEST OF THE GOVERNOR  
 Requester: Governor

Department: Department of Administration  
 Appropriation: Risk Management  
 Allocation: Risk Management  
 OMB Component Number: 71

**Expenditures/Revenues**

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2018	Included in	Out-Year Cost Estimates				
	Appropriation Requested	Governor's FY2018 Request	FY 2019	FY 2020	FY 2021	FY 2022	FY 2023
<b>OPERATING EXPENDITURES</b>	<b>FY 2018</b>	<b>FY 2018</b>					
Personal Services							
Travel							
Services	40.0		40.0	40.0	40.0	40.0	40.0
Commodities							
Capital Outlay							
Grants & Benefits							
Miscellaneous							
<b>Total Operating</b>	<b>40.0</b>	<b>0.0</b>	<b>40.0</b>	<b>40.0</b>	<b>40.0</b>	<b>40.0</b>	<b>40.0</b>

**Fund Source (Operating Only)**

1007 I/A Rcpts (Other)	40.0		40.0	40.0	40.0	40.0	40.0
<b>Total</b>	<b>40.0</b>	<b>0.0</b>	<b>40.0</b>	<b>40.0</b>	<b>40.0</b>	<b>40.0</b>	<b>40.0</b>

**Positions**

Full-time							
Part-time							
Temporary							

**Change in Revenues**

None							
<b>Total</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

**Estimated SUPPLEMENTAL (FY2017) cost:** 0.0 *(separate supplemental appropriation required)*  
*(discuss reasons and fund source(s) in analysis section)*

**Estimated CAPITAL (FY2018) cost:** 0.0 *(separate capital appropriation required)*  
*(discuss reasons and fund source(s) in analysis section)*

**ASSOCIATED REGULATIONS**

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? No  
 If yes, by what date are the regulations to be adopted, amended or repealed?

**Why this fiscal note differs from previous version:**

Not applicable; initial version.

Prepared By:	Scott Jordan, Director	Phone:	(907)465-5723
Division:	Risk Management	Date:	01/19/2017 11:05 AM
Approved By:	Sheldon Fisher, Commissioner	Date:	01/19/17
Agency:	Administration		

FISCAL NOTE ANALYSIS

STATE OF ALASKA  
2017 LEGISLATIVE SESSION

Analysis

This bill will clarify, amend, add, repeal and change quite a few statutes within workers' compensation. There are several reporting changes to the Alaska Workers Compensation Board's various forms from a manual process to an Electronic Data Input (EDI) process. The EDI form submittals are through a third party vendor. The cost to submit each form can range from \$3.50 - \$6.00 per form. Risk Management (RM) receives about 1,500 Report of Injury (ROI) forms a year, approximately 1,200 of those forms turn into compensable claims. Each claim can generate approximately 6 forms per claim, with some generating many more. Our Third Party Administrator (TPA) who handles the adjusting for the workers' compensation claim, has estimated a cost of approximately \$40,000 per year to submit the current claim count through the EDI process.

# Fiscal Note

State of Alaska  
2017 Legislative Session

Bill Version:	HB 79
Fiscal Note Number:	2
(H) Publish Date:	1/25/2017

Identifier: DOLWD-WC-01-24-17  
 Title: OMNIBUS WORKERS' COMPENSATION  
 Sponsor: RLS BY REQUEST OF THE GOVERNOR  
 Requester: Governor

Department: Department of Labor and Workforce Development  
 Appropriation: Workers' Compensation  
 Allocation: Workers' Compensation  
 OMB Component Number: 344

**Expenditures/Revenues**

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2018 Appropriation Requested	Included in Governor's FY2018 Request	Out-Year Cost Estimates				
			FY 2019	FY 2020	FY 2021	FY 2022	FY 2023
<b>OPERATING EXPENDITURES</b>	<b>FY 2018</b>	<b>FY 2018</b>	<b>FY 2019</b>	<b>FY 2020</b>	<b>FY 2021</b>	<b>FY 2022</b>	<b>FY 2023</b>
Personal Services			(59.3)	(59.3)	(59.3)	(59.3)	(59.3)
Travel							
Services							
Commodities							
Capital Outlay							
Grants & Benefits							
Miscellaneous							
<b>Total Operating</b>	<b>0.0</b>	<b>0.0</b>	<b>(59.3)</b>	<b>(59.3)</b>	<b>(59.3)</b>	<b>(59.3)</b>	<b>(59.3)</b>

**Fund Source (Operating Only)**

1157 Wrkrs Safe (DGF)			(59.3)	(59.3)	(59.3)	(59.3)	(59.3)
<b>Total</b>	<b>0.0</b>	<b>0.0</b>	<b>(59.3)</b>	<b>(59.3)</b>	<b>(59.3)</b>	<b>(59.3)</b>	<b>(59.3)</b>

**Positions**

Full-time			(1.0)	(1.0)	(1.0)	(1.0)	(1.0)
Part-time							
Temporary							

**Change in Revenues**

1004 Gen Fund (UGF)	(1,890.9)		(1,890.9)	(1,890.9)	(1,890.9)	(1,890.9)	(1,890.9)
1157 Wrkrs Safe (DGF)	1,890.9		1,890.9	1,890.9	1,890.9	1,890.9	1,890.9
<b>Total</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

**Estimated SUPPLEMENTAL (FY2017) cost:** 0.0 (separate supplemental appropriation required)  
 (discuss reasons and fund source(s) in analysis section)

**Estimated CAPITAL (FY2018) cost:** 0.0 (separate capital appropriation required)  
 (discuss reasons and fund source(s) in analysis section)

**ASSOCIATED REGULATIONS**

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? No  
 If yes, by what date are the regulations to be adopted, amended or repealed?

**Why this fiscal note differs from previous version:**

Not applicable; initial version.

Prepared By:	Marie Marx, Director	Phone:	(907)465-6060
Division:	Workers' Compensation	Date:	01/24/2017 09:00 AM
Approved By:	Heidi Drygas, Commissioner	Date:	01/24/17
Agency:	Department of Labor and Workforce Development		

## FISCAL NOTE ANALYSIS

STATE OF ALASKA  
2017 LEGISLATIVE SESSION

## Analysis

This legislation makes a number of changes to the Workers' Compensation Act. One of these changes mandates electronic filing of documents. Once all employers have converted to electronic filing, which is anticipated to occur by FY2019, the department will be able to eliminate one position that currently supports paper filings.

Additionally, this legislation would increase the percent of fees deposited into the Workers' Compensation Administration Account (WSCAA) fund. Under current statute, AS 21.09.210, the Division of Insurance collects a 2.7% tax from insurers on their annual Workers' Compensation premiums. Of this, 1.82% is deposited into the WSCAA fund and the remaining .88% is deposited into the Unrestricted General Fund (UGF).

This legislation would increase the tax deposited into WSCAA to 2.50% and decrease the tax deposited into the UGF to .20%. Based on FY2016 collected tax revenue, the .68% tax distribution change from UGF to WSCAA equates to \$1,890.9 annually.

# Fiscal Note

State of Alaska  
2017 Legislative Session

Bill Version:	HB 79
Fiscal Note Number:	3
(H) Publish Date:	1/25/2017

Identifier: DOLWD-SIF-12-23-16  
 Title: OMNIBUS WORKERS' COMPENSATION  
 Sponsor: RLS BY REQUEST OF THE GOVERNOR  
 Requester: Governor

Department: Department of Labor and Workforce Development  
 Appropriation: Workers' Compensation  
 Allocation: Second Injury Fund  
 OMB Component Number: 2342

**Expenditures/Revenues**

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2018 Appropriation Requested	Included in Governor's FY2018 Request	Out-Year Cost Estimates					
			FY 2018	FY 2019	FY 2020	FY 2021	FY 2022	FY 2023
<b>OPERATING EXPENDITURES</b>								
Personal Services								
Travel								
Services								
Commodities								
Capital Outlay								
Grants & Benefits			(400.0)	(800.0)	(1,200.0)	(1,600.0)	(2,000.0)	
Miscellaneous								
<b>Total Operating</b>	<b>0.0</b>	<b>0.0</b>	<b>(400.0)</b>	<b>(800.0)</b>	<b>(1,200.0)</b>	<b>(1,600.0)</b>	<b>(2,000.0)</b>	

**Fund Source (Operating Only)**

1031 Sec Injury (DGF)			(400.0)	(800.0)	(1,200.0)	(1,600.0)	(2,000.0)
<b>Total</b>	<b>0.0</b>	<b>0.0</b>	<b>(400.0)</b>	<b>(800.0)</b>	<b>(1,200.0)</b>	<b>(1,600.0)</b>	<b>(2,000.0)</b>

**Positions**

Full-time							
Part-time							
Temporary							

**Change in Revenues**

1031 Sec Injury (DGF)			(400.0)	(800.0)	(1,200.0)	(1,600.0)	(2,000.0)
<b>Total</b>	<b>0.0</b>	<b>0.0</b>	<b>(400.0)</b>	<b>(800.0)</b>	<b>(1,200.0)</b>	<b>(1,600.0)</b>	<b>(2,000.0)</b>

**Estimated SUPPLEMENTAL (FY2017) cost:** 0.0 *(separate supplemental appropriation required)*  
*(discuss reasons and fund source(s) in analysis section)*

**Estimated CAPITAL (FY2018) cost:** 0.0 *(separate capital appropriation required)*  
*(discuss reasons and fund source(s) in analysis section)*

**ASSOCIATED REGULATIONS**

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? No  
 If yes, by what date are the regulations to be adopted, amended or repealed?

**Why this fiscal note differs from previous version:**

Not applicable; initial version.

Prepared By:	Marie Marx, Director	Phone:	(907)465-6060
Division:	Workers' Compensation	Date:	12/23/2016 02:30 PM
Approved By:	Heidi Drygas, Commissioner	Date:	12/23/16
Agency:	Department of Labor and Workforce Development		

FISCAL NOTE ANALYSIS

STATE OF ALASKA  
2017 LEGISLATIVE SESSION

Analysis

This legislation will sunset the Second Injury Fund (Fund). Future claim payments will only be made on those claims accepted by July 1, 2018. The Fund's liability will contract over time and assessment rates will gradually be reduced until claim liability is exhausted. However, there will be no reduction of the staffing required to process these claim payments in the near future because it could take decades for the Fund to pay its ongoing claim obligation.

95% of claims are categorized as permanent total disability (PTD) benefits. PTD benefits are paid until disability ends or until death. The reduced Fund liability reflected in this fiscal note assumes the average age of the claimant at closure would be about 80 years old and 2 to 3 cases would be closed per year due to the death of the claimant.

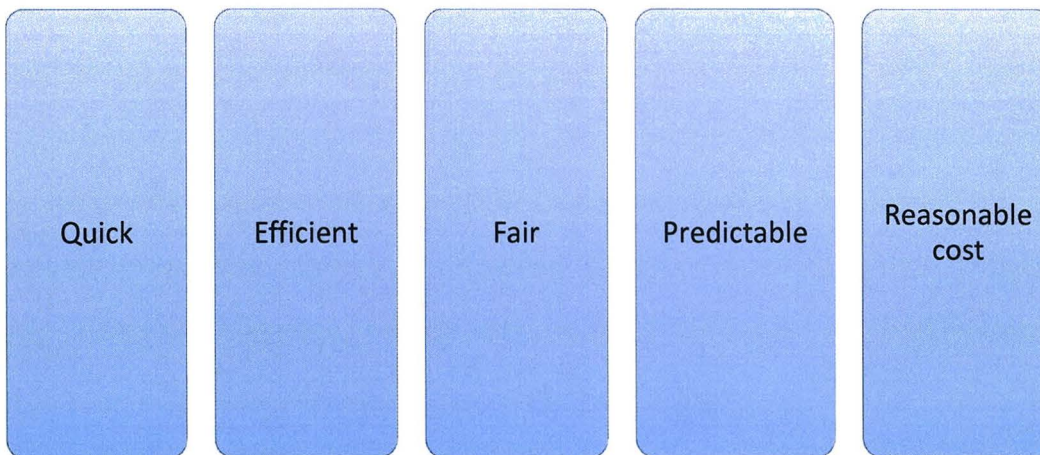
Workers' Compensation: HB 79  
House Labor and Commerce Committee  
February 20, 2017



ALASKA DEPARTMENT OF LABOR & WORKFORCE DEVELOPMENT  
COMMISSIONER HEIDI DRYGAS



## Workers' Compensation



ALASKA DEPARTMENT OF LABOR & WORKFORCE DEVELOPMENT  
COMMISSIONER HEIDI DRYGAS



## Workers' Compensation

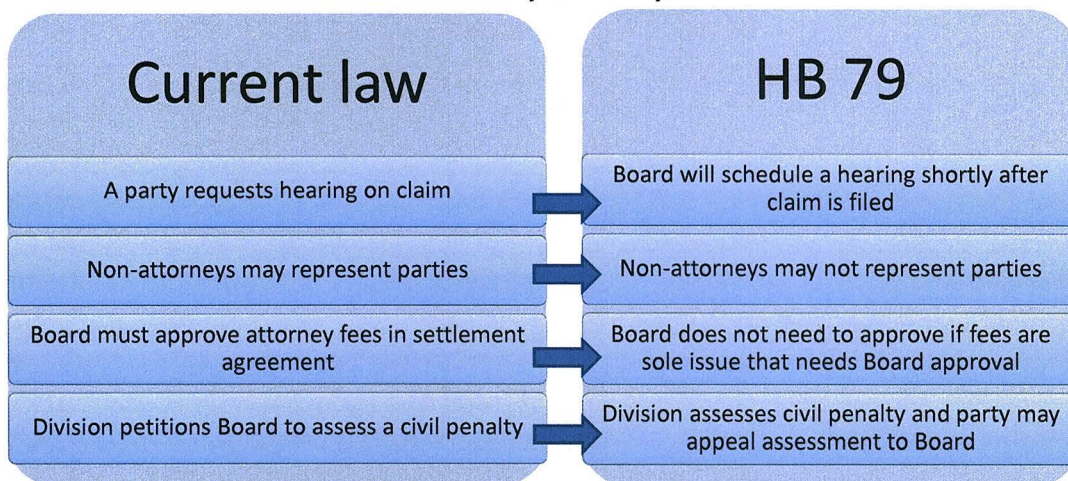
### HB 79: Workers' Compensation Efficiencies Bill

- Speed up dispute resolution
- Improve the delivery of medical care to injured workers
- Strengthen provisions to prevent workers' compensation fraud by employers and employees
- Reduce administrative costs
- Ensure adequate funding for the administration of the workers' compensation and workers' safety programs



## Workers' Compensation

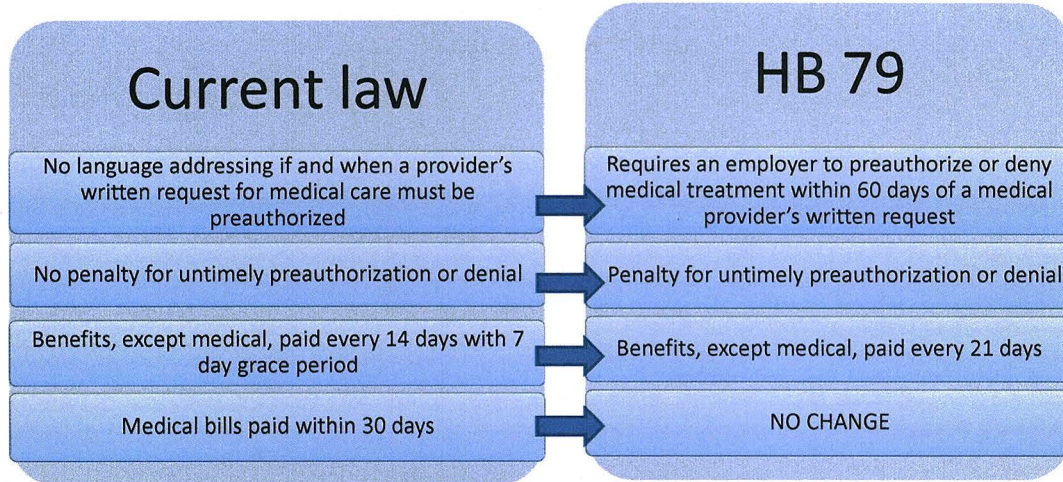
### SPEED UP DISPUTE RESOLUTION: SECS. 10-13, 18-20, 39



## Workers' Compensation

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### IMPROVE THE DELIVERY OF MEDICAL CARE: SECS. 16, 22, 24-25



## Workers' Compensation

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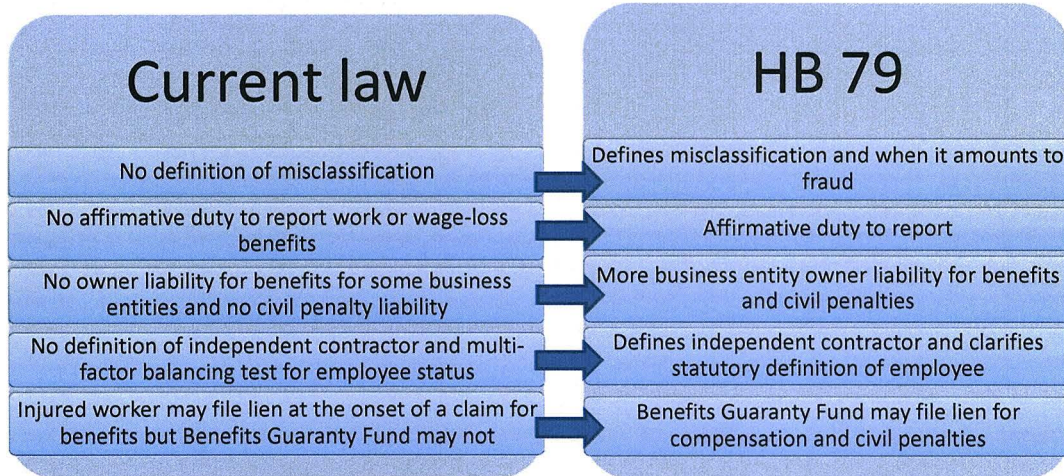
### Why the Division is Tackling Misclassification

- Worker safety
- Risk of uninsured losses
- Law-abiding employers bear greater financial burden



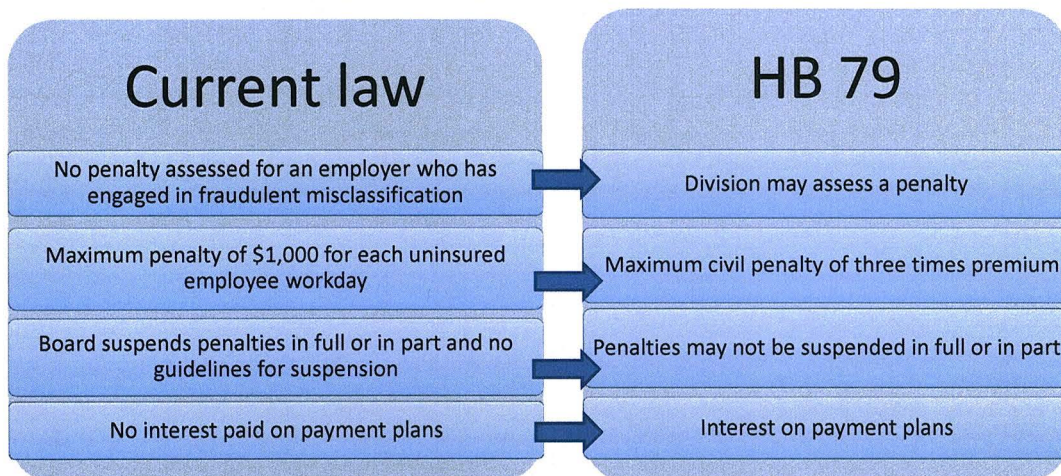
## Workers' Compensation

### STRENGTHEN FRAUD PROVISIONS: SECS. 9, 11, 14, 28-29, 31, 34-38, 40



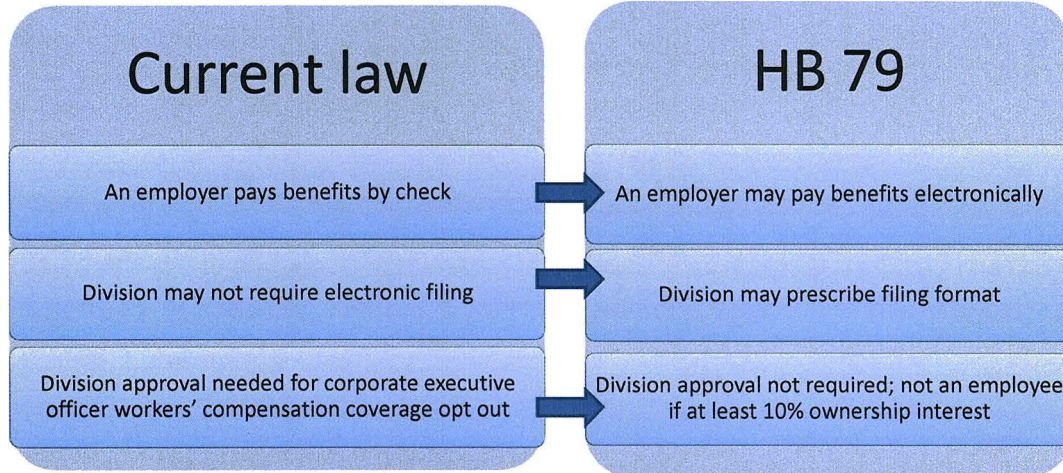
## Workers' Compensation

### STRENGTHEN FRAUD PROVISIONS CONT.: SECS. 9, 11, 14, 28-29, 31, 34-38, 40



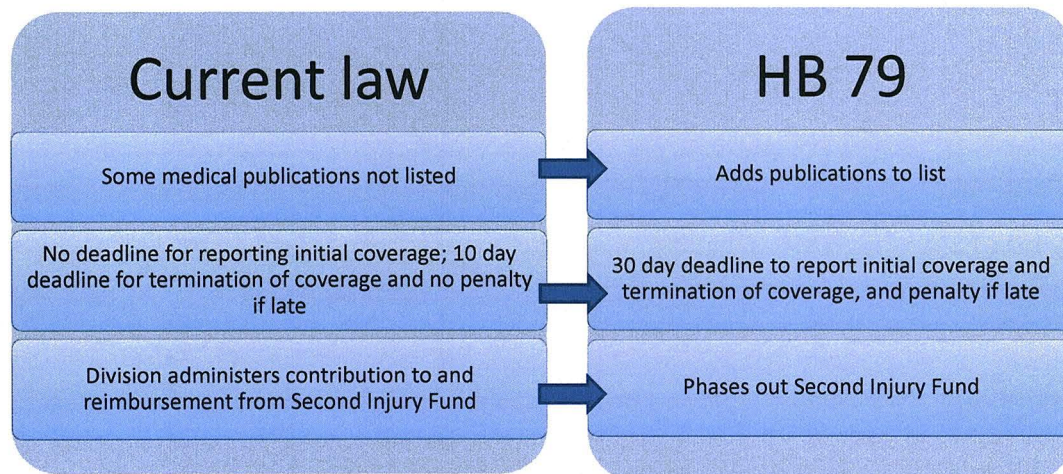
## Workers' Compensation

### REDUCE ADMINISTRATIVE COSTS: SECS. 2-8, 15, 17, 21, 23, 26-27, 30, 32-33



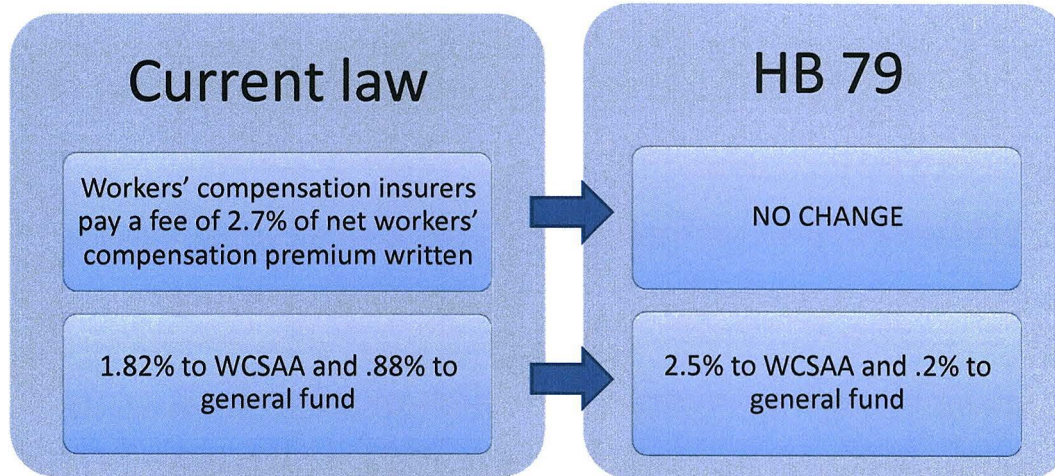
## Workers' Compensation

### REDUCE ADMINISTRATIVE COSTS CONT.: SECS. 2-8, 15, 17, 21, 23, 26-27, 30, 32-33



## Workers' Compensation

### ENSURE ADEQUATE FUNDING: SEC. 1



**WE'RE PREPARING ALASKANS  
FOR THE JOBS OF TODAY—AND  
TOMORROW.**

**Alaska Department of Labor and  
Workforce Development  
Commissioner Heidi Drygas**  
Email: [Commissioner.Labor@alaska.gov](mailto:Commissioner.Labor@alaska.gov)  
Phone: (907) 465-2700



# LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES  
LEGISLATIVE AFFAIRS AGENCY  
STATE OF ALASKA

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


State Capitol  
Juneau, Alaska 99801-1182  
Deliveries to: 129 6th St., Rm. 329

## MEMORANDUM

March 3, 2017

**SUBJECT:** Second injury fund (CSHB 79(L&C);  
Work Order No. 30-GH1789\D)

**TO:** Representative Sam Kito  
Chair, House Labor and Commerce Committee  
Attn: Tally Teal

**FROM:** Megan A. Wallace   
Legislative Counsel

Attached please find the draft bill you requested. Please be advised that I have some concerns relating to the method of repeal used for the second injury fund (AS 23.30.040) in the draft bill.

Section 29 of the draft bill provides that claims may not be submitted to the second injury fund on or after September 1, 2017, and that the fund will only continue to make reimbursement payments on claims accepted by July 1, 2018. Given the intent is to wind up the second injury fund, the draft bill contains a conditional effective date, delaying repeal of the second injury fund and conforming changes until after the commissioner of labor and workforce development notifies the revisor of statutes and the lieutenant governor that all claims ordered to be paid from the fund have been satisfied. While the department will likely know by July 1, 2018 how *many* claims remain to be satisfied from the fund, it is my understanding that the department will not know for certain how *long* until the claims are satisfied. In this regard, it is also my understanding that claims from the second injury fund are for permanent and total disability and are often paid until the employee's death. Accordingly, there is a chance that it could take decades to satisfy the claims under the second injury fund, even after the July 1, 2018 cut off.

For the above reasons, it is my recommendation that the conditional effective date and conditional repealer sections relating to the second injury fund in the draft bill be removed. Because sec. 29 of the draft bill creates a cut-off date for claims to the second injury fund, it is my opinion that it would be in the legislature's best interests to wait until it has been notified that the claims to the second injury fund have been satisfied before repealing the fund. Otherwise, if this draft bill becomes law, any time the legislature wishes to revise AS 23.30.015(c), 23.30.040, 23.30.205, 23.30.395(35), or AS 37.05.146(c)(12), or the provisions contained in secs. 2, 4, 32, 40, or 43 of the bill, the legislature will have to go back and amend the session law associated with this bill. This could require amendment of the session law for decades. This approach is

Representative Sam Kito  
March 3, 2017  
Page 2

extremely complicated and leaves open the door for mistakes or oversight of future repealers. If the draft bill retains the cut off for new claims and provides for the balance of the second injury fund to be transferred to the general fund upon satisfaction of claims<sup>1</sup>, the legislature can easily clean-up those statutes after it has been confirmed that all claims have been satisfied.<sup>2</sup>

If you have any questions, please advise.

MAW:boo  
17-221.boo

Attachment

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<sup>1</sup> Once claims have been satisfied, the balance of the second injury fund can be transferred to the general fund in any appropriations bill.

<sup>2</sup> Another option may be to repeal the statutes on July 1, 2018, and include a transition section that requires the department to continue to pay claims from the fund under the statutes as they read before the day it was repealed.



THE STATE  
of **ALASKA**  
GOVERNOR BILL WALKER

Department of Labor and  
Workforce Development

Office of the Commissioner

Post Office Box 111149  
Juneau, Alaska 99811  
Main: 907.465.2700  
Fax: 907.465.2784

February 22, 2017

The Honorable Sam Kito  
House Labor and Commerce Chair  
State Capitol, Room 403  
Juneau, AK 99801

Dear Chair Kito:

Thank you for the opportunity to provide testimony in support of HB 79 on February 20, 2017. In response to the outstanding questions from the committee, I have provided the following responses.

**Representative Birch asked how state employee workplace injury incident rates compare to incident rates for all industries in Alaska.**

State of Alaska workers' compensation incident rates are not high when compared to all industries. In 2015, the incident rate of nonfatal occupational injuries and illnesses for all industries including state and local government was 4.0 per 100 employees. For state government the rate was 2.9. It is important to remember that there are many public safety state employees (state troopers, correctional officers, fire fighters...) and this affects state employee incident rates. More information on incident rates is available on the department's Research and Analysis website: <http://live.laborstats.alaska.gov/injill/index.cfm>. The 2015 incident rate details are provided here: <http://live.laborstats.alaska.gov/injill/xls/Table01sum.xls>.

**Representative Birch asked about the mechanism in place for addressing employers' concerns regarding employee workers' compensation fraud.**

The Workers' Compensation Division's Special Investigations Unit investigates reports of fraud committed by claimants/employees, employers, health care providers, or insurance adjusters. Fraud may be reported by calling the Division's toll free fraud hotline at 1-888-372-8330 or emailing [wcfraud@alaska.gov](mailto:wcfraud@alaska.gov). In FY16, the Division's Special Investigations Unit investigated 170 allegations of fraud, 30 of which involved claimant fraud.

Please don't hesitate to contact me if you have additional questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Heidi Drygas".

Heidi Drygas  
Commissioner



## PROPOSED CHANGES TO HB 79

### 1. Title Changes

- a) What: Modifies the title paragraph of the bill.
- b) Why: To reflect the proposed changes made.

### 2. Sec. 9: Persons Liable for Civil Penalties for Failure to Insure

- a) What: Adds a person "actively in charge of the operations of the business entity" or a person that has "the authority to insure the business entity" as persons liable for penalties for an employer's failure to insure.
- b) Why: Closes a loophole inadvertently opened with the language of HB 79. Proposed change makes sure that if a business entity has eleven members, all with less than ten percent ownership interest, that a person is still accountable for uninsured injuries and penalties for failing to insure. The "actively in charge of the operations of the business entity" or a person that has "the authority to insure the business entity" language currently exists in AS 23.30.075 with regards to criminal penalties and corporate liability for compensable claims. The proposed changes to HB 79 extend this to more types of business entities and apply it to civil penalties as well.

### 3. Sec. 11: Division's Investigation and Civil Penalty Assessment

- a) What: Adds language clarifying the Division's civil penalty assessment must be based on substantial evidence and that the civil penalty assessment is based on payroll which includes payments that would be considered wages if the employer had not misclassified its employees.
- b) Why: Makes sure the Division's investigation is supported by evidence and clarifies that an employer's civil penalty is based on the amount it would have paid had it insured as required by law, including properly classifying its employees.

### 4. Sec. 13: Civil Penalty Assessment Appeal

- a) What: This is not a substantive change. Makes a technical revision clarifying the civil penalty assessment appeal process.
- b) Why: Previous HB 79 language was a bit unclear. This rewords the provision to make it clearer.

### 5. Sec. 16: Preauthorization

- a) What: Adds language clarifying the preauthorization request's estimated fee may not exceed the maximum allowable under Alaska law.
- b) Why: To clarify that the preauthorization request's estimated fee is subject to the Alaska medical fee schedule just like any other workers' compensation medical bill.

**6. Sec. 18: Hearing Scheduling**

- a) What: Removes the language allowing parties to agree to reschedule a hearing and allows a party to request a change based on good cause.
- b) Why: Having the parties to control the hearing scheduling process has led to inefficiencies. The board should control the scheduling of its hearings, subject to a party's request to move a hearing based on good cause.

**7. Sec. 19: Self-Representation**

- a) What: Simplifies the self-representation language.
- b) Why: Previous HB 79 language was a bit unclear. This rewords the provision to make it clearer.

**8. Sec. 23: Reporting Change in Compensation**

- a) What: Adds language stating the division will provide notice to an employee when an employer has terminated or changed compensation.
- b) Why: This clarifies how an employee will be notified that an employer has terminated or changed compensation payments.

**9. Sec. 24: Reporting Denials**

- a) What: Adds language stating the division will provide notice to an employee when an employer has denied benefits.
- b) Why: This clarifies how an employee will be notified that an employer has denied benefits.

**10. Sec. 25: Penalty for Failure to Timely Preauthorize**

- a) What: Clarifies the penalty for untimely payment is 25 percent of the amount in the preauthorization request.
- b) Why: Previous HB 79 language was a bit unclear. This rewords the provision to make it clearer.

**11. Sec. 27: Methods of Paying Benefits**

- a) What: Repeals the section addressing how benefits are paid.
- b) Why: This section is no longer needed now that other methods of payment are allowed in addition to payment by check. Instead of listing all the types of ways benefits may be paid (by check, electronic funds transfer, direct deposit, etc.) it is cleaner to repeal this provision.

**12. Sec. 28: Filing Liens**

- a) What: Revises language to allow the Benefits Guaranty Fund to file a lien within one year of its knowledge of an employee's injury or death.
- b) Why: The Fund may not become aware of the injury or death when it occurs. The change would allow the Fund one year from its knowledge of the injury or death to file a lien.

**13. Sec. 30: Independent Contractor Definition**

- a) What: Refines the independent contractor definition.
- b) Why: These revisions ensure that true independent contractors can continue to operate as independent contractors.

**14. Sec. 36: Persons Liable for Criminal Penalties for Failure to Pay Compensation**

- a) What: Adds a person “actively in charge of the operations of the business entity” or a person that has “the authority to insure the business entity” as persons liable for criminal penalties for failure to pay compensation.
- b) Why: Closes a loophole inadvertently opened with the language of HB 79. Proposed change makes sure that if a business entity has eleven members, all with less than ten percent ownership interest, that a person is still accountable for an employer’s failure to secure the payment of compensation. Current AS 23.30.255 provides a corporation’s president, secretary, and treasurer are criminally liable for failing to pay compensation. However, the president, secretary and treasurer may not be the persons who are responsible for securing workers’ compensation insurance and paying benefits. The proposed change clarifies that liability extends not only to a business entity’s members, partners, or corporate executive officers who have at least a 10 percent ownership interest but also to those who are actively in charge of the operations of the business entity, or have the authority to insure the business entity or apply for a certificate of self-insurance.

**15. Sec. Sec. 37: Persons Liable for Criminal Penalties for Transferring Assets**

- a) What: Adds a person “actively in charge of the operations of the business entity” or a person that has “the authority to insure the business entity” as persons liable for criminal penalties for knowingly transferring assets with the intent to avoid the payment of compensation.
- c) Why: Closes a loophole inadvertently opened with the language of HB 79. Proposed change makes sure that if a business entity has eleven members, all with less than ten percent ownership interest, that a person is still accountable for an employer’s knowing transfer of assets with the intent to avoid the payment of compensation. Current AS 23.30.255 provides a corporation’s president, secretary, and treasurer are criminally liable for knowingly transferring assets with the intent to avoid the payment of compensation. However, the president, secretary and treasurer may not be the persons who are responsible. The proposed change clarifies that liability extends not only to a business entity’s members, partners, or corporate executive officers who have at least a 10 percent ownership interest but also to those who are actively in charge of the operations of the business entity, or have the authority to insure the business entity or apply for a certificate of self-insurance.

**16. Sec. 39: Definition of “Employee”**

- a) What: Removes “in the service of” and inserts “employed by” in the definition of employee.
- b) Why: “In the service of” is a bit unclear. This rewords the provision to make it clearer.

30-GH1789\D  
Wallace  
3/3/17

**CS FOR HOUSE BILL NO. 79(L&C)**

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTIETH LEGISLATURE - FIRST SESSION

BY THE HOUSE LABOR AND COMMERCE COMMITTEE

Offered:

Referred:

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

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act relating to workers' compensation; repealing the second injury fund upon  
2 satisfaction of claims; relating to service fees and civil penalties for the workers' safety  
3 programs and the workers' compensation program; relating to the liability of business  
4 entities and certain persons for payment of workers' compensation benefits and civil  
5 penalties; relating to civil penalties for underinsuring or failing to insure or provide  
6 security for workers' compensation liability; relating to preauthorization and timely  
7 payment for medical treatment and services provided to injured employees; relating to  
8 incorporation of reference materials in workers' compensation regulations; relating to  
9 proceedings before the Alaska Workers' Compensation Board; relating to the  
10 authorization of the workers' compensation benefits guaranty fund to claim a lien;  
11 excluding independent contractors from workers' compensation coverage; establishing  
12 the circumstances under which certain nonemployee executive corporate officers and

1 **members of limited liability companies may obtain workers' compensation coverage;**  
 2 **relating to the duties of injured employees to report income or work; relating to**  
 3 **misclassification of employees and deceptive leasing; defining 'employee'; relating to the**  
 4 **Alaska Workers' Compensation Board's approval of attorney fees in a settlement**  
 5 **agreement; relating to reemployment benefits; and providing for an effective date."**

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

7 **\* Section 1.** AS 23.05.067(a) is amended to read:

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

13 (1) for each employer,

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

17 (B) the service fee is 2.9 percent of all payments reported to the  
 18 division of workers' compensation in the department under AS 23.30.155(m)  
 19 or (n), except second injury fund payments; and

20 (2) for each insurer, the director of the division of insurance shall,  
 21 under (e) of this section, deposit from funds received from the insurer under  
 22 AS 21.09.210 a service fee of 2.5 [1.82] percent of the direct premium income for  
 23 workers' compensation insurance received by the insurer during the year ending on the  
 24 preceding December 31, subject to all the deductions specified in AS 21.09.210(b).

25 **\* Sec. 2.** AS 23.05.067(a), as amended by sec. 1 of this Act, is amended to read:

26 (a) Each insurer providing workers' compensation insurance and each  
 27 employer who is self-insured or uninsured for purposes of AS 23.30 in this state shall  
 28 pay an annual service fee to the department for the administrative expenses of the state  
 29 for workers' safety programs under AS 18.60 and the workers' compensation program

1 under AS 23.30 as follows:

2 (1) for each employer,

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

6 (B) the service fee is 2.9 percent of all payments reported to the  
7 division of workers' compensation in the department under AS 23.30.155(m)  
8 or (n) [, EXCEPT SECOND INJURY FUND PAYMENTS]; and

9 (2) for each insurer, the director of the division of insurance shall,  
10 under (e) of this section, deposit from funds received from the insurer under  
11 AS 21.09.210 a service fee of 2.5 percent of the direct premium income for workers'  
12 compensation insurance received by the insurer during the year ending on the  
13 preceding December 31, subject to all the deductions specified in AS 21.09.210(b).

14 \* **Sec. 3.** AS 23.05.067(e) is amended to read:

15 (e) Annual service fees and civil penalties collected under this section **and**  
16 **AS 23.30.155(c) and (m)** shall be deposited in the workers' safety and compensation  
17 administration account in the state treasury. Under AS 37.05.146(c), the service fees  
18 and civil penalties shall be accounted for separately, and appropriations from the  
19 account are not made from the unrestricted general fund. The legislature may  
20 appropriate money from the account for expenditures by the department for necessary  
21 costs incurred by the department in the administration of the workers' safety programs  
22 contained in AS 18.60 and of the Alaska Workers' Compensation Act contained in  
23 AS 23.30. Nothing in this subsection creates a dedicated fund or dedicates the money  
24 in the account for a specific purpose. Money deposited in the account does not lapse at  
25 the end of a fiscal year unless otherwise provided by an appropriation.

26 \* **Sec. 4.** AS 23.30.015(e) is amended to read:

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

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

30 (A) the expenses incurred by the employer with respect to the  
31 action or compromise, including a reasonable attorney fee determined by the

1 board;

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

4 (C) all amounts paid as compensation [AND SECOND-  
5 INJURY FUND PAYMENTS,] and, if the employer is self-insured or  
6 uninsured, all service fees paid under AS 23.05.067;

7 (D) the present value of all amounts payable later as  
8 compensation, computed from a schedule prepared by the board, and the  
9 present value of the cost of all benefits to be furnished later under  
10 AS 23.30.095 as estimated by the board; the amounts so computed and  
11 estimated shall be retained by the employer as a trust fund to pay compensation  
12 and the cost of benefits as they become due and to pay any finally remaining  
13 excess sum to the person entitled to compensation or to the representative; and

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

16 \* Sec. 5. AS 23.30.070(a) is amended to read:

17 (a) Within 10 days from the date the employer has knowledge of an injury or  
18 death or from the date the employer has knowledge of a disease or infection, alleged  
19 by the employee or on behalf of the employee to have arisen out of and in the course  
20 of the employment, the employer shall file with [SEND TO] the division a report  
21 setting out

- 22 (1) the name, address, and business of the employer;
- 23 (2) the name, address, and occupation of the employee;
- 24 (3) the cause and nature of the alleged injury or death;
- 25 (4) the year, month, day, and hour when and the particular locality  
26 where the alleged injury or death occurred; and
- 27 (5) the other information that the division may require.

28 \* Sec. 6. AS 23.30.070(b) is amended to read:

29 (b) Additional reports with respect to the injury and to the condition of the  
30 employee shall be filed [SENT] by the employer with [TO] the division at the times  
31 and in the manner that the director prescribes.

1 \* **Sec. 7.** AS 23.30.070(d) is amended to read:

2 (d) **Filing** [MAILING] of the report **with** [AND A COPY TO] the division **in**  
3 **a format prescribed by the director** [IN A STAMPED ENVELOPE], within the  
4 time prescribed in (a) or (b) of this section, is compliance with this section.

5 \* **Sec. 8.** AS 23.30.070(f) is amended to read:

6 (f) An employer who fails or refuses to **file** [SEND] a report required of the  
7 employer by this section or who fails or refuses to **file** [SEND] the report required by  
8 (a) of this section within the time required shall, if so required by the board, pay the  
9 employee or the legal representative of the employee or other person entitled to  
10 compensation by reason of the employee's injury or death an additional award equal to  
11 20 percent of the amounts that were unpaid when due. The award shall be against  
12 either the employer or the insurance carrier, or both.

13 \* **Sec. 9.** AS 23.30.075(b) is repealed and reenacted to read:

14 (b) If an employer is a corporation, limited liability company, or limited  
15 liability partnership, or a person who, at the time of an employee's injury or death, has  
16 at least a 10 percent ownership in the business entity, is actively in charge of the  
17 operations of the business entity, or has the authority to insure the business entity or  
18 apply for a certificate of self insurance, is personally, jointly, and severally liable, with  
19 the business entity, for the payment of

20 (1) all compensation or other benefits for which the business entity is  
21 liable under this chapter if the business entity is not insured or qualified as a self-  
22 insurer at the time of the injury or death; and

23 (2) a civil penalty under AS 23.30.080 for which the business entity is  
24 liable.

25 \* **Sec. 10.** AS 23.30.080(e) is amended to read:

26 (e) If a representative of the department investigates an employer's failure to  
27 file the evidence of compliance required by AS 23.30.085 and, after investigation,  
28 there is substantial evidence that the employer failed to insure or provide security as  
29 required by AS 23.30.075, the representative shall inform the employer. The  
30 representative may request the director to issue a stop order prohibiting the use of  
31 employee labor by the employer until the employer insures or provides security as

1 required by AS 23.30.075. The director may issue a stop order, without a hearing,  
 2 based on the representative's investigation. The director shall dissolve a stop order  
 3 issued under this subsection upon receipt of substantial evidence that the employer is  
 4 insured or has provided security as required by AS 23.30.075(a). If an employer fails  
 5 to comply with a stop order issued under this subsection, the division may [PETITION  
 6 THE BOARD TO ASSESS A CIVIL PENALTY. THE BOARD MAY] assess a civil  
 7 penalty of \$1,000 a day. An employer who is assessed a penalty under this subsection  
 8 may not obtain a public contract with the state or a political subdivision of the state for  
 9 the three years following violation of the stop order.

10 \* **Sec. 11.** AS 23.30.080(f) is repealed and reenacted to read:

11 (f) If, after an investigation, the division finds substantial evidence that an  
 12 employer has failed to insure or provide security as required by AS 23.30.075 or is  
 13 underinsured as a result of misclassifying employees or engaging in deceptive leasing  
 14 practices as defined in AS 23.30.250, the division may assess a civil penalty of up to  
 15 three times the workers' compensation insurance premium that the employer would  
 16 have paid if the employer had insured, provided the required security, or properly  
 17 classified employees. The division shall calculate the premium based on the  
 18 employer's payroll, including payments that would be considered wages if the  
 19 employer had not misclassified employees or engaged in deceptive leasing practices  
 20 under AS 23.30.250, and the assigned risk rates approved by the division of insurance  
 21 in effect at the time the employer was uninsured or underinsured. The division shall  
 22 apply aggravating and mitigating factors adopted in regulation to set the penalty  
 23 amount. Notwithstanding AS 23.30.250(e), a civil penalty under this subsection may  
 24 be assessed against an employer that misclassifies employees or engages in deceptive  
 25 leasing practices, even if the employer does not do so knowingly and with the purpose  
 26 of evading full payment for workers' compensation insurance premiums.

27 \* **Sec. 12.** AS 23.30.080(g) is amended to read:

28 (g) **The** [IF AN EMPLOYER FAILS TO PAY A CIVIL PENALTY ORDER  
 29 ISSUED UNDER (d), (e), OR (f) OF THIS SECTION WITHIN SEVEN DAYS  
 30 AFTER THE DATE OF SERVICE OF THE ORDER UPON THE EMPLOYER,  
 31 THE] director may declare **an** [THE] employer in default **if the employer fails to pay**

1 **or contest a civil penalty assessed under this section not later than 30 days after**  
2 **the date of service of notice on the employer, fails to pay a civil penalty not later**  
3 **than 30 days after the board orders payment, or fails to pay a civil penalty in**  
4 **accordance with the terms of a payment plan.** The director shall file a certified copy  
5 of the penalty order, **notice, or payment plan**, and declaration of default with the  
6 clerk of the superior court. The court shall, upon the filing of the copy [OF THE  
7 ORDER] and declaration, enter judgment for the amount declared in default if it is in  
8 accordance with law. **Any time** [ANYTIME] after a declaration of default, the  
9 attorney general shall, when requested to do so by the director, take appropriate action  
10 to ensure collection of the defaulted payment. Review of the judgment may be had as  
11 provided under the Alaska Rules of Civil Procedure. Final proceedings to execute the  
12 judgment may be had by writ of execution.

13 \* **Sec. 13.** AS 23.30.080 is amended by adding new subsections to read:

14 (h) If the division requests copies of records required to be kept under  
15 AS 23.05.080 or information relating to an investigation of an employer's compliance  
16 with the insurance provisions of this chapter, and the employer does not provide the  
17 requested records or information not later than 30 days after service of the written  
18 request, the division may assess a civil penalty against the employer of \$150 for each  
19 day the employer is late, up to a maximum penalty of \$10,000.

20 (i) A civil penalty assessed under this section may not be suspended in full or  
21 in part.

22 (j) The division and an employer may agree to a payment plan for a civil  
23 penalty assessed under this section. The board, in reviewing an assessed civil penalty  
24 under (k) of this section, may order a payment plan. Interest under a payment plan  
25 accrues at the rate specified in AS 09.30.070(a) that is in effect on the date that the  
26 payment plan is agreed to or ordered.

27 (k) An employer may contest a civil penalty assessed by the division under  
28 (e), (f), or (h) of this section by filing a petition with the board not later than 30 days  
29 after the notice of the civil penalty is served on the employer. The board shall schedule  
30 a prehearing not later than 30 days after the filing date of the petition for the purpose  
31 of setting a hearing date. The board may not consider a late petition unless the

1 employer shows good cause for the late filing. The failure of an employer to file  
2 evidence of compliance as required by AS 23.30.085 creates a rebuttable presumption  
3 that the employer failed to insure or provide security as required by AS 23.30.075. If  
4 the employer disputes the division's calculation of the amount that the employer would  
5 have paid for workers' compensation insurance during the time the employer was  
6 uninsured or underinsured, the employer bears the burden of producing evidence and  
7 proving that the workers' compensation insurance premium would have been less than  
8 the division's calculation. If the employer does not file a petition, the assessment of the  
9 civil penalty is considered final and not subject to review by the board, commission, or  
10 a court.

11 \* **Sec. 14.** AS 23.30.082(a) is amended to read:

12 (a) The workers' compensation benefits guaranty fund is established in the  
13 general fund to carry out the purposes of this section. The fund is composed of civil  
14 penalty **and interest** payments made by employers under AS 23.30.080, **civil penalty**  
15 **payments under AS 23.30.085**, income earned on investment of the money in the  
16 fund, money deposited in the fund by the department, and appropriations to the fund,  
17 if any. However, money appropriated to the fund does not lapse. Amounts in the fund  
18 may be appropriated for claims against the fund, for expenses directly related to fund  
19 operations and claims, and for legal expenses.

20 \* **Sec. 15.** AS 23.30.085 is repealed and reenacted to read:

21 **Sec. 23.30.085. Duty of employer or insurer to file evidence of compliance.**

22 (a) An employer or insurer subject to this chapter shall, not later than 30 days after  
23 acquiring insurance, initially file with the division, in the format prescribed by the  
24 director, evidence of compliance with the insurance provisions of this chapter. The  
25 employer or insurer also shall, not later than 30 days after the expiration or  
26 termination, file evidence of compliance by expiration or cancellation of the  
27 employer's insurance. The requirements in this section do not apply to an employer  
28 who has certification from the division of the employer's financial ability to pay  
29 compensation directly without insurance.

30 (b) If an employer or insurer fails, refuses, or neglects to comply with this  
31 section, the employer or insurer is subject to a civil penalty of \$100 for each day the

1 employer or insurer is late. Total penalties under this subsection may not exceed  
2 \$1,000 for each late filing and \$10,000 for each employer or insurer each year for late  
3 filings under this section.

4 \* **Sec. 16.** AS 23.30.097(d) is amended to read:

5 (d) An employer shall

6 (1) pay or controvert an employee's bills for medical treatment under  
7 this chapter, excluding prescription charges or transportation for medical treatment,  
8 not later than [WITHIN] 30 days after the date that the employer receives the  
9 provider's bill or a completed report as required by AS 23.30.095(c), whichever is  
10 later;

11 (2) authorize or controvert medical treatment or services,  
12 excluding prescription charges or transportation for medical treatment, not later  
13 than 60 days after the date that the employer receives the provider's written  
14 request for authorization for medical treatment that includes the estimated fee or  
15 charge for the medical treatment and does not exceed the maximum  
16 reimbursement allowed under this section.

17 \* **Sec. 17.** AS 23.30.098 is amended to read:

18 **Sec. 23.30.098. Regulations.** Under AS 44.62.245(a)(2), in adopting or  
19 amending regulations under this chapter, the department may incorporate future  
20 amended versions of a document or reference material incorporated by reference if the  
21 document or reference material is one of the following:

22 (1) Current Procedural Terminology Codes, produced by the American  
23 Medical Association;

24 (2) Healthcare Common Procedure Coding System, produced by the  
25 federal Centers for Medicare and Medicaid Services [AMERICAN MEDICAL  
26 ASSOCIATION];

27 (3) International Classification of Diseases, published by the World  
28 Health Organization [AMERICAN MEDICAL ASSOCIATION];

29 (4) Relative Value Guide, produced by the American Society of  
30 Anesthesiologists;

31 (5) Diagnostic and Statistical Manual of Mental Disorders, produced

1 by the American Psychiatric Association;

2 (6) Current Dental Terminology, published by the American Dental  
3 Association;

4 (7) Resource-Based Relative Value Scale, produced by the federal  
5 Centers for Medicare and Medicaid Services;

6 (8) Ambulatory Payment Classifications, produced by the federal  
7 Centers for Medicare and Medicaid Services; [OR]

8 (9) Medicare Severity Diagnosis Related Groups, produced by the  
9 federal Centers for Medicare and Medicaid Services;

10 **(10) International Classification of Diseases, Tenth Revision,**  
11 **Clinical Modification, developed by the National Center for Health Statistics;**

12 **(11) Clinical Diagnostic Laboratory Services, produced by the**  
13 **federal Centers for Medicare and Medicaid Services;**

14 **(12) Durable Medical Equipment, Prosthetics, Orthotics, and**  
15 **Supplies, produced by the federal Centers for Medicare and Medicaid Services;**

16 **(13) Payment Allowance Limits for Medicare Part B Drugs,**  
17 **Average Sale Price, produced by the federal Centers for Medicare and Medicaid**  
18 **Services;**

19 **(14) Ambulance Fee Schedule, produced by the federal Centers for**  
20 **Medicare and Medicaid Services;**

21 **(15) Hospital Outpatient Prospective Payment System, produced**  
22 **by the federal Centers for Medicare and Medicaid Services; or**

23 **(16) Ambulatory Surgical Center Payment System, produced by**  
24 **the federal Centers for Medicare and Medicaid Services.**

25 \* Sec. 18. AS 23.30.110(c) is repealed and reenacted to read:

26 (c) The board shall schedule a prehearing not later than 30 days after a claim  
27 is filed. At the prehearing, the board or the board's designee shall issue a scheduling  
28 order that includes a discovery plan, appropriate deadlines, and the hearing date. The  
29 board or the board's designee may modify the scheduling order, including changing  
30 the hearing date, on the board's own motion or upon a showing of good cause by the  
31 party seeking the modification. The board shall serve notice on each party at least 10

1 days before the hearing.

2 \* **Sec. 19.** AS 23.30.110(d) is repealed and reenacted to read:

3 (d) At the hearing, each party may present evidence with respect to the claim  
4 and may be self-represented, represented by an attorney licensed to practice law in this  
5 state, or by a parent of a minor, guardian, or court-appointed representative.

6 \* **Sec. 20.** AS 23.30.110 is amended by adding a new subsection to read:

7 (i) The board shall file its decision not later than 30 days after the hearing  
8 record closes.

9 \* **Sec. 21.** AS 23.30.155(a) is amended to read:

10 (a) Compensation under this chapter shall be paid periodically, promptly, and  
11 directly to the person entitled to it, without an award, except where liability to pay  
12 compensation is controverted by the employer. To controvert a claim, the employer  
13 must file a notice, **in a format** [ON A FORM] prescribed by the director, stating

14 (1) that the right of the employee to compensation is controverted;

15 (2) the name of the employee;

16 (3) the name of the employer;

17 (4) the date of the alleged injury or death; and

18 (5) the type of compensation and all grounds **on** [UPON] which the  
19 right to compensation is controverted.

20 \* **Sec. 22.** AS 23.30.155(b) is amended to read:

21 (b) The first installment of compensation, **excluding medical benefits, shall**  
22 **be paid** [BECOMES DUE] on **or before** the **21st** [14TH] day after the employer has  
23 knowledge of the injury or death. [ON THIS DATE ALL COMPENSATION THEN  
24 DUE SHALL BE PAID.] Subsequent compensation, **excluding medical benefits,**  
25 shall be paid in installments, every **21** [14] days, except where the board determines  
26 that payment in installments should be made monthly or at some other period.  
27 **Medical benefits shall be paid in accordance with AS 23.30.095 and 23.30.097.**

28 \* **Sec. 23.** AS 23.30.155(c) is amended to read:

29 (c) The insurer or adjuster shall notify the division **in a format** [AND THE  
30 EMPLOYEE ON A FORM] prescribed by the director that the payment of  
31 compensation has begun or has been increased, decreased, suspended, terminated,

1 resumed, or changed in type. An initial report shall be filed **not later than** [WITH  
2 THE DIVISION AND SENT TO THE EMPLOYEE WITHIN] 28 days after the date  
3 of issuing the first payment of compensation. If, at any time, 21 days or more pass and  
4 no compensation payment is issued, a report notifying the division [AND THE  
5 EMPLOYEE] of the termination or suspension of compensation shall be filed **not**  
6 **later than** [WITH THE DIVISION AND SENT TO THE EMPLOYEE WITHIN] 28  
7 days after the date the last compensation payment was issued. A report shall also be  
8 filed **not later than** [WITH THE DIVISION AND SENT TO THE EMPLOYEE  
9 WITHIN] 28 days after the date of issuing a payment increasing, decreasing,  
10 resuming, or changing the type of compensation paid. **When the insurer or adjuster**  
11 **files a report, the division shall notify the employee of the payment or change in**  
12 **payment or compensation.** If the division **is** [AND THE EMPLOYEE ARE] not  
13 notified within the 28 days prescribed by this subsection for reporting, the insurer or  
14 adjuster shall pay a civil penalty of \$100 for the first day plus \$10 for each day after  
15 the first day that the notice was not given. Total penalties under this subsection may  
16 not exceed \$1,000 for a failure to file a required report. Penalties assessed under this  
17 subsection are eligible for reduction under (m) of this section. A penalty assessed  
18 under this subsection after penalties have been reduced under (m) of this section shall  
19 be increased by 25 percent and shall bear interest at the rate established under  
20 AS 45.45.010.

21 \* **Sec. 24.** AS 23.30.155(d) is amended to read:

22 (d) If the employer controverts the right to compensation, the employer shall  
23 file with the division, **in a format prescribed by the director,** [AND SEND TO THE  
24 EMPLOYEE] a notice of controversion on or before the 21st day after the employer  
25 has knowledge of the alleged injury or death. If the employer controverts the right to  
26 compensation, **excluding medical benefits,** after payments have begun, the employer  
27 shall file with the division, **in a format prescribed by the director,** [AND SEND TO  
28 THE EMPLOYEE] a notice of controversion **not later than the date** [WITHIN  
29 SEVEN DAYS AFTER] an installment of compensation payable without an award is  
30 due **under (b) of this section. If the employer controverts medical treatment, the**  
31 **employer shall file with the division, in a format prescribed by the director, a**

1 notice of controversion not later than the date the payment, reimbursement, or  
2 authorization for medical treatment is due under AS 23.30.097. The division shall  
3 notify the employee if an employer controverts the employee's right to  
4 compensation. When payment of temporary disability benefits is controverted solely  
5 on the grounds that another employer or another insurer of the same employer may be  
6 responsible for all or a portion of the benefits, the most recent employer or insurer  
7 who is party to the claim and who may be liable shall make the payments during the  
8 pendency of the dispute. When a final determination of liability is made, any  
9 reimbursement required, including interest at the statutory rate, and all costs and  
10 attorney fees incurred by the prevailing employer, shall be made not later than  
11 [WITHIN] 14 days after the determination.

12 \* **Sec. 25.** AS 23.30.155(e) is amended to read:

13 (e) If any installment of compensation, excluding medical benefits, payable  
14 without an award is [NOT] paid late [WITHIN SEVEN DAYS AFTER IT  
15 BECOMES DUE], as provided in (b) of this section, there shall be added to the unpaid  
16 installment an amount equal to 25 percent of the installment. If a bill for medical  
17 treatment, including prescription charges or transportation for medical  
18 treatment, is paid or reimbursed late, or a request for medical treatment is not  
19 timely authorized under AS 23.30.097, there shall be added an amount equal to  
20 25 percent of the bill, reimbursement, or estimated fee or charge for the  
21 requested medical treatment. This additional amount shall be paid to the person  
22 owed or to be reimbursed at the same time as, and in addition to, the installment,  
23 bill, or reimbursement, or sent with authorization for medical treatment, unless  
24 notice is filed under (d) of this section or unless the nonpayment or late authorization  
25 is excused by the board after a showing by the employer that, owing to conditions over  
26 which the employer had no control, the installment, bill, or reimbursement could not  
27 be paid or the request could not be authorized within the period prescribed for the  
28 payment or authorization. The additional amount shall be paid directly to the  
29 recipient to whom the unpaid installment, bill, or reimbursement was to be paid or,  
30 if authorization of medical treatment was requested, to the employee seeking the  
31 medical treatment.

1 \* **Sec. 26.** AS 23.30.155(m) is amended to read:

2 (m) On or before March 1 of each year, the insurer or adjuster shall file a  
3 verified annual report **in a format** [ON A FORM] prescribed by the director stating  
4 the total amount of all compensation by type, the number of claims received and the  
5 percentage controverted, medical and related benefits, vocational rehabilitation  
6 expenses, legal fees, including a separate total of fees paid to attorneys and fees paid  
7 for the other costs of litigation, and penalties paid on all claims during the preceding  
8 calendar year. If the annual report is timely and complete when received by the  
9 division and provides accurate information about each category of payments, the  
10 director shall review the timeliness of the insurer's or adjuster's reports filed during the  
11 preceding year under (c) of this section. If, during the preceding year, the insurer or  
12 adjuster filed at least 99 percent of the reports on time, the penalties assessed under (c)  
13 of this section shall be waived. If, during the preceding year, the insurer or adjuster  
14 filed at least 97 percent of the reports on time, 75 percent of the penalties assessed  
15 under (c) of this section shall be waived. If, during the preceding year, the insurer or  
16 adjuster filed 95 percent of the reports on time, 50 percent of the penalties assessed  
17 under (c) of this section shall be waived. If, during the preceding year, the insurer's or  
18 adjuster's reports have not been filed on time at least 95 percent of the time, none of  
19 the penalties assessed under (c) of this section shall be waived. The penalties that are  
20 not waived are due and payable when the insurer or adjuster receives notification from  
21 the director regarding the timeliness of the reports. If the annual report is not filed by  
22 March 1 of each year, the insurer or adjuster shall pay a civil penalty of \$100 for the  
23 first day the annual report is late and \$10 for each additional day the report is late. If  
24 the annual report is incomplete when filed, the insurer or adjuster shall pay a civil  
25 penalty of \$1,000.

26 \* **Sec. 27.** AS 23.30.165(a) is amended to read:

27 (a) **If an** [EACH] employee, **a** [AND] beneficiary, **or the workers'**  
28 **compensation benefits guaranty fund (AS 23.30.082) is** entitled to compensation  
29 under the provisions of this chapter, **the person or the fund** has a lien for the full  
30 amount of the compensation the person **or the fund** is entitled to, including costs and  
31 disbursements of suit and attorney fees allowed, **on** [UPON] all of the property in

1 connection with the construction, preservation, maintenance, or operation of which the  
2 work of the employee was being performed at the time of the injury or death. For  
3 example, [:] in the case of an employee injured or killed while engaged in mining or in  
4 work connected with mining, the lien extends to the entire mine and all property used  
5 in connection with it; and, in the case of an employee injured or killed while engaged  
6 in fishing or in the packing, canning, or salting of fish, or other branch of the fish  
7 industry, the lien extends to the entire packing, fishing, salting, or canning plant or  
8 establishment and all property used in connection with it; and this is the case with  
9 other businesses, industries, works, occupations, and employments. **If the workers'**  
10 **compensation benefits guaranty fund (AS 23.30.082) is entitled to a civil penalty**  
11 **assessed under AS 23.30.080, the fund has a lien for the full amount of the civil**  
12 **penalty on all of the property in connection with the construction, preservation,**  
13 **maintenance, or operation of the uninsured or underinsured employer.**

14 \* **Sec. 28.** AS 23.30.165(d) is amended to read:

15 (d) A person **or the workers' compensation benefits guaranty fund**  
16 **(AS 23.30.082)** claiming a lien under this chapter shall, **not later than** [WITHIN] one  
17 year after the **person or the fund has knowledge** [DATE] of the injury **or death**  
18 [FROM WHICH THE CLAIM OF COMPENSATION ARISES], record in the office  
19 of the recorder of the recording district in which the property affected by the lien is  
20 located, a notice of lien signed and verified by the claimant, or someone on behalf of  
21 the claimant **or the fund,** and stating [, IN SUBSTANCE,] the name of the person  
22 injured or killed out of which injury or death the claim of compensation arises, the  
23 name of the employer of the injured or deceased person at the time of the injury or  
24 death, a description of the property affected or covered by the lien, and the name of  
25 the owner or reputed owner of the property. **In claiming a lien for a civil penalty**  
26 **under AS 23.30.080, the workers' compensation benefits guaranty (AS 23.30.082)**  
27 **fund shall, not later than one year after the date of a declaration of default,**  
28 **record in the office of the recorder of the recording district in which the property**  
29 **affected by the lien is located a signed and verified notice of lien stating the name**  
30 **of the employer assessed a civil penalty under AS 23.30.080, a description of the**  
31 **property affected or covered by the lien, and the name of the owner or reputed**

1           owner of the property.

2           \* **Sec. 29.** AS 23.30.205 is amended by adding a new subsection to read:

3                   (g) Claims for reimbursement may not be submitted to the second injury fund  
4                   on or after September 1, 2017. The fund shall continue to make reimbursement  
5                   payments on claims accepted before July 1, 2018, or ordered by the board, until the  
6                   fund's liabilities for the claim are extinguished.

7           \* **Sec. 30.** AS 23.30.230(a) is amended to read:

8                   (a) The following persons are not covered by this chapter:

9                           (1) a part-time baby-sitter;

10                           (2) a cleaning person;

11                           (3) harvest help and similar part-time or transient help;

12                           (4) a person employed as a sports official on a contractual basis and  
13                   who officiates only at sports events in which the players are not compensated; in this  
14                   paragraph, "sports official" includes an umpire, referee, judge, scorekeeper,  
15                   timekeeper, organizer, or other person who is a neutral participant in a sports event;

16                           (5) a person employed as an entertainer on a contractual basis;

17                           (6) a commercial fisherman, as defined in AS 16.05.940;

18                           (7) an individual who drives a taxicab whose compensation and written  
19                   contractual arrangement is as described in AS 23.10.055(a)(13), unless the hours  
20                   worked by the individual or the areas in which the individual may work are restricted  
21                   except to comply with local ordinances;

22                           (8) a participant in the Alaska temporary assistance program  
23                   (AS 47.27) who is engaged in work activities required under AS 47.27.035 other than  
24                   subsidized or unsubsidized work or on-the-job training;

25                           (9) a person employed as a player or coach by a professional hockey  
26                   team if the person is covered under a health care insurance plan provided by the  
27                   professional hockey team, the coverage is applicable to both work-related and  
28                   nonwork-related injuries, and the coverage provides medical and related benefits as  
29                   required under this chapter, except that coverage may not be limited to two years from  
30                   the date of injury as described under AS 23.30.095(a); in this paragraph, "health care  
31                   insurance" has the meaning given in AS 21.12.050; [AND]

1 (10) a person working as a qualified real estate licensee who performs  
2 services under a written contract that provides that the person will not be treated as an  
3 employee for federal income tax or workers' compensation purposes; in this  
4 paragraph, "qualified real estate licensee" means a person who is required to be  
5 licensed under AS 08.88.161 and whose payment for services is directly related to  
6 sales or other output rather than the number of hours worked; and

7 (11) a person employed as an independent contractor; a person is  
8 an independent contractor for the purposes of this chapter only if the person

9 (A) has an express contract to perform the services;

10 (B) is free from direction and control over the means and  
11 manner of providing services, subject only to the right of the individual  
12 for whom, or entity for which, the services are provided to specify the  
13 desired results, completion schedule, or range of work hours, or to  
14 monitor the work for compliance with contract plans and specifications,  
15 or federal, state, or municipal law;

16 (C) incurs most of the expenses for tools, labor, and other  
17 operational costs necessary to perform the services, except that materials  
18 and equipment may be supplied;

19 (D) has an opportunity for profit and loss as a result of the  
20 services performed for the other individual or entity;

21 (E) is free to hire and fire employees to help perform the  
22 services for the contracted work;

23 (F) has a license, permit, or certification if required by  
24 federal, state, or municipal authorities for a business or individual  
25 engaging in the same type of services as the person;

26 (G) follows federal Internal Revenue Service requirements  
27 by

28 (i) obtaining an employer identification number, if  
29 required;

30 (ii) filing business or self-employment tax returns for  
31 the previous tax year to report profit or income earned for the

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same type of services provided under the contract; or

(iii) intending to file business or self-employment tax returns for the current tax year to report profit or income earned for the same type of services provided under the contract if the person's business was not operating in the previous tax year; and

(H) meets at least three of the following criteria:

(i) the person maintains liability insurance or other insurance policies necessary to protect the employees, financial interests, and customers of the person's business;

(ii) the person maintains a business location separate from the location of the individual for whom, or the entity for which, the services are performed;

(iii) the person engages in business advertising, solicitation, or other marketing efforts reasonably calculated to obtain new contracts to provide similar services;

(iv) the person holds a bank account in the name of the business entity for the purpose of paying business expenses or expenses related to the work or services performed;

(v) the person engages in a trade, occupation, profession, or business to provide services that are outside the usual course of business for the individual for whom, or the entity for which, the services are performed.

\* Sec. 31. AS 23.30.240 is repealed and reenacted to read:

**Sec. 23.30.240. Officers of corporations, municipal corporations, and nonprofit corporations, and members of limited liability companies as employees.**

(a) Except as provided in (b) of this section, an executive officer elected or appointed and empowered in accordance with the charter and bylaws of a corporation or a member of a limited liability company organized under AS 10.50 is not an employee of the business entity under this chapter if the executive officer or member owns at least 10 percent of the business entity. Except as provided in (b) of this section, an executive officer of a municipal corporation or charitable, religious, educational, or

1 other nonprofit corporation is not an employee of the corporation under this chapter.

2 (b) Any type of corporation or limited liability company may bring an  
3 executive officer or a member exempted under (a) of this section within the coverage  
4 of the business entity's insurance contract by specifically including the executive  
5 officer or member in the contract of insurance. The election to bring the executive  
6 officer or member within the business entity's coverage continues in force for the  
7 period during which the contract of insurance is in effect. During that period, an  
8 executive officer or a member brought within the coverage of the insurance contract is  
9 an employee of the business entity under this chapter.

10 \* **Sec. 32.** AS 23.30.247(c) is amended to read:

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

18 \* **Sec. 33.** AS 23.30.250(a) is amended to read:

19 (a) A person who (1) knowingly makes a false or misleading statement,  
20 representation, or submission **or knowingly fails to report a material fact** related to  
21 a benefit under this chapter; (2) knowingly assists, abets, solicits, or conspires in  
22 making a false or misleading submission affecting the payment, coverage, or other  
23 benefit under this chapter; (3) knowingly misclassifies employees or engages in  
24 deceptive leasing practices for the purpose of evading full payment of workers'  
25 compensation insurance premiums; or (4) employs or contracts with a person or firm  
26 to coerce or encourage an individual to file a fraudulent compensation claim is civilly  
27 liable to a person adversely affected by the conduct, is guilty of theft by deception as  
28 defined in AS 11.46.180, and may be punished as provided by AS 11.46.120 -  
29 11.46.150. **The division may assess a civil penalty as provided in AS 23.30.080**  
30 **against an employer that misclassifies employees or engages in deceptive leasing**  
31 **practices.**

1 \* **Sec. 34.** AS 23.30.250(b) is amended to read:

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

15 \* **Sec. 35.** AS 23.30.250 is amended by adding new subsections to read:

16 (d) While receiving compensation provided under this chapter, an employee  
17 shall inform the employer or insurer of the employee's receipt of any unemployment  
18 or disability benefits other than the compensation provided under this chapter, and  
19 shall report any employment other than work for the employer providing the  
20 compensation under this chapter. An employee knowingly fails to report a material  
21 fact under (a) and (b) of this section if the employee does not disclose the receipt of  
22 unemployment or other disability benefits or other employment, and the employee  
23 knowingly receives compensation under this chapter to which the employee is not  
24 entitled because of the receipt of the other benefits or other employment. In this  
25 subsection, "employment" means any type of work, whether paid or unpaid.

26 (e) An employer misclassifies employees or engages in deceptive leasing  
27 practices under (a) of this section if, for the purpose of evading full payment of  
28 workers' compensation insurance premiums, the employer knowingly falsifies or  
29 misrepresents the

30 (1) job duties of employees;

31 (2) payments made to employees, including concealing payment by not

1 reporting or underreporting wages or payments made in kind;

2 (3) true identity of the employer;

3 (4) nature of the employer's business;

4 (5) the employer's history of injuries or deaths covered under this  
5 chapter; or

6 (6) number of employees, including by misclassifying a worker as an  
7 independent contractor as described in AS 23.30.230(a)(11), or as a nonemployee,  
8 when that worker is an employee covered under this chapter as provided in  
9 AS 23.30.230, 23.30.239, or 23.30.240.

10 \* **Sec. 36.** AS 23.30.255(a) is amended to read:

11 (a) An employer required to secure the payment of compensation under this  
12 chapter who fails to do so is guilty of a class B felony if the amount involved exceeds  
13 \$25,000 or a class C felony if the amount involved is \$25,000 or less. If the employer  
14 is a **limited liability company, limited liability partnership, or** corporation, **a**  
15 **person who, at the time of an employee's injury or death, has at least a 10 percent**  
16 **ownership in the business entity and is actively in charge of the operations of the**  
17 **business entity or has the authority to insure the business entity or apply for a**  
18 **certificate of self insurance, is** [ITS PRESIDENT, SECRETARY, AND  
19 TREASURER ARE ALSO] severally liable **with the business entity for** [TO] the  
20 fine or imprisonment imposed for the failure of the **business entity**  
21 [CORPORATION] to secure the payment of compensation. [THE PRESIDENT,  
22 SECRETARY, AND TREASURER ARE SEVERALLY PERSONALLY LIABLE,  
23 JOINTLY WITH THE CORPORATION, FOR THE COMPENSATION OR OTHER  
24 BENEFIT WHICH ACCRUES UNDER THIS CHAPTER IN RESPECT TO AN  
25 INJURY THAT HAPPENS TO AN EMPLOYEE OF THE CORPORATION WHILE  
26 IT HAS FAILED TO SECURE THE PAYMENT OF COMPENSATION AS  
27 REQUIRED BY AS 23.30.075.]

28 \* **Sec. 37.** AS 23.30.255(b) is amended to read:

29 (b) An employer who knowingly transfers, sells, encumbers, assigns, or in any  
30 manner disposes of, conceals, secretes, or destroys any property after one of the  
31 employer's employees has been injured within the scope of this chapter, with intent to

1 avoid the payment of compensation under this chapter to the employee or the  
 2 employee's dependents, is guilty of a class B felony if the amount involved exceeds  
 3 \$25,000 or a class C felony if the amount involved is \$25,000 or less. If the employer  
 4 is a limited liability company, limited liability partnership, or corporation, a  
 5 person who, at the time of an employee's injury or death, has at least a 10 percent  
 6 ownership in the business entity and is actively in charge of the operations of the  
 7 business entity or has the authority to insure the business entity or apply for a  
 8 certificate of self insurance, is [ITS PRESIDENT, SECRETARY, AND  
 9 TREASURER ARE ALSO] severally liable with the business entity for [TO] the  
 10 penalty of imprisonment as well as jointly liable with the business entity  
 11 [CORPORATION] for the fine.

12 \* **Sec. 38.** AS 23.30.260 is amended by adding a new subsection to read:

13 (c) Notwithstanding AS 23.30.145 and (a) of this section, approval of a fee is  
 14 not required if the parties who reach an agreement in regard to a claim for injury or  
 15 death under this chapter agree to the payment of attorney fees, and the agreement in  
 16 regard to a claim for injury or death does not require board approval under  
 17 AS 23.30.012.

18 \* **Sec. 39.** AS 23.30.395(19) is repealed and reenacted to read:

19 (19) "employee" means a person who is not an independent contractor  
 20 as described in AS 23.30.230 and who, under a contract of hire, express or implied, is  
 21 employed by an employer as defined in (20) of this section;

22 \* **Sec. 40.** AS 23.30.015(c), 23.30.040, 23.30.205, 23.30.395(35); and AS 37.05.146(c)(12)  
 23 are repealed.

24 \* **Sec. 41.** AS 23.30.040(f), 23.30.080(d), 23.30.110(h), and 23.30.155(q) are repealed.

25 \* **Sec. 42.** The uncodified law of the State of Alaska is amended by adding a new section to  
 26 read:

27 **APPLICABILITY.** (a) Notwithstanding AS 23.30.075(b), as repealed and reenacted  
 28 by sec. 9 of this Act, AS 23.30.080(e), as amended by sec. 10 of this Act, AS 23.30.080(f), as  
 29 repealed and reenacted by sec. 11 of this Act, AS 23.30.080(8), as amended by sec. 12 of this  
 30 Act, AS 23.30.080(n) - (k), added by sec. 13 of this Act, and the repeal of AS 23.30.080(d) by  
 31 sec. 41 of this Act, petitions of the division of workers' compensation against employers for a

1 failure to insure for workers' compensation liability that are pending before the Alaska  
2 Workers' Compensation Board before the effective date of secs. 9 - 13 and 41 of this Act shall  
3 be continued and completed under AS 23.30.075(b) and 23.30.080, as those statutes read on  
4 the day before the effective date of secs. 9 - 13 and 41 of this Act.

5 (b) AS 23.30.110(c), as repealed and reenacted by sec. 18 of this Act, and the repeal  
6 of AS 23.30.110(h) by sec. 41 of this Act apply to claims filed on or after the effective date of  
7 secs. 18 and 41 of this Act. Claims pending on the effective date of secs. 18 and 41 of this Act  
8 shall be continued and completed under AS 23.30.110(c) and (h), as those statutes read on the  
9 day before the effective date of secs. 18 and 41 of this Act.

10 \* **Sec. 43.** The uncodified law of the State of Alaska is amended by adding a new section to  
11 read:

12 TRANSITION: IMPLEMENTATION OF REPEAL OF SECOND INJURY FUND.  
13 The balance of the second injury fund created by former AS 23.30.040 shall be transferred to  
14 the general fund on the effective date of this section.

15 \* **Sec. 44.** The uncodified law of the State of Alaska is amended by adding a new section to  
16 read:

17 TRANSITION: REGULATIONS. The Department of Labor and Workforce  
18 Development and the Alaska Workers' Compensation Board may adopt regulations to  
19 implement this Act. The regulations take effect under AS 44.62 (Administrative Procedure  
20 Act), but not before the effective date of the law implemented by the regulation.

21 \* **Sec. 45.** The uncodified law of the State of Alaska is amended by adding a new section to  
22 read:

23 CONDITIONAL EFFECT; NOTIFICATION. (a) Sections 2, 4, 32, 40, and 43 of this  
24 Act take effect only if the commissioner of labor and workforce development notifies the  
25 revisor of statutes and the lieutenant governor in writing as required under (b) of this section.

26 (b) The commissioner of labor and workforce development shall notify the revisor of  
27 statutes and the lieutenant governor in writing of the date that all liability for previously  
28 accepted claims under AS 23.30.205 to the second injury fund created under former  
29 AS 23.30.040 and claims ordered to be paid from that fund have been satisfied.

30 \* **Sec. 46.** If, under sec. 45 of this Act, secs. 2, 4, 32, 40, and 43 of this Act take effect, they  
31 take effect on the day after the date the commissioner of labor and workforce development

1 makes the notification required under sec. 45 of this Act.

2 \* **Sec. 47.** Section 44 of this Act takes effect immediately under AS 01.10.070(c).



**Explanation of Changes  
CS for HB 79 (L&C)  
Version D to Version O**

**Page 2 and 21-22, Secs. 2, 4, 40, 45, and 46:** Deletes sections 2, 4, 40, 45 and 46 relating to second injury fund transition. This allows the legislature to amend the statutes to repeal the second injury fund after it has been notified that all second injury fund claims have been satisfied, rather than having the repeal occur automatically.

**Page 11, Line 4, Sec. 21:** Technical correction changing "payment or compensation" to "payment of compensation."

**Page 11, Lines 25-26, Sec. 22:** Inserts "When the employer files a notice of controversion" to the sentence, "The Division shall notify the employee if an employer controverts the employee's right to compensation."

**Page 12, Lines 13-14, Sec. 23:** Deletes "to the person owed or to be reimbursed." Lines 28-31 describe more specifically to whom the additional amount should be paid. Stating it twice in the same subsection may open it to inconsistent interpretations.

**Page 14, Lines 17-18, Sec. 26:** Technical correction reorganizing sentence so "AS 23.30.082" appears after "fund" instead of "guaranty."

**Page 16, Lines 14-16, Sec. 28:** Deletes "has a license, permit, or certification" and inserts, "has all business, trade, or professional licenses."

**Page 19, Line 26, Sec. 33:** Technical correction deleting "the."

**Page 20, Line 7, Sec. 34 and Page 20, Line 28, Sec. 35:** Technical correction deleting "and" and inserting a comma.

**Page 21, Line 18, Sec. 39:** Technical correction changing AS 23.30.080(8) to AS 23.30.080(g).

**Page 21, Line 19, Sec. 39:** Technical correction changing AS 23.30.080(n)–(k) to AS 23.30.080(h)–(k).

**Page 21, Line 26, Sec. 39:** Inserts “AS 23.30.110(d), as repealed and reenacted by sec. 17 of this Act.” This clarifies the new provision relating to representation applies to new claims filed on or after the effective date of the bill.

**Pages 21, Line 31-Page 22, Line 5, Sec. 39:** Inserts a new subsection (c) providing the new executive officer and business entity member provisions apply to an insurance policy or contract entered into or renewed on or after the effective date of sec. 29, which August 1, 2018.

**Page 22, Lines 8-11, Sec. 40:** Deletes “The balance of the second injury fund created by former AS 23.30.040 shall be transferred to the general fund on the effective date of this section” and inserts, “Subject to appropriation, the balance of the second injury fund created under AS 23.30.040 lapses into the general fund when all liability for accepted claims under AS 23.30.205 to the second injury fund and claims ordered to be paid from that fund have been satisfied.”

**Page 22, Line 18, Sec. 43:** Provides Sec. 30 takes effect July 1, 2018.

**Page 22, Line 20, Sec. 44:** Provides Sec. 29 takes effect August 1, 2018.



THE STATE  
of **ALASKA**  
GOVERNOR BILL WALKER

Department of Labor and  
Workforce Development

Office of the Commissioner

Post Office Box 111149  
Juneau, Alaska 99811  
Main: 907.465.2700  
Fax: 907.465.2784

**CS for HB 79 (L&C) ver O Work Draft  
Sectional Analysis**

Section 1: Amends AS 23.05.067(a), by allowing the department of labor and workforce development to receive a greater percentage of the annual service fees that insurers pay.

Section 2: Amends AS 23.05.067(e), by clarifying that penalties for late-filed reports accrue to the workers' safety and compensation administration account.

Section 3: Amends AS 23.30.070(a), by making technical changes to allow electronic filing of documents.

Section 4: Amends AS 23.30.070(b), by making technical changes to allow electronic filing of documents.

Section 5: Amends AS 23.30.070(d), by allowing the division director to prescribe the format for reporting injuries to the division.

Section 6: Amends AS 23.30.070(f), by making technical changes to allow electronic filing of documents.

Section 7: Amends AS 23.30.075(b), by expanding personal liability for workers' compensation benefits and civil penalties to owners of more types of employing business entities if the business fails to carry workers' compensation insurance.

Section 8: Amends AS 23.30.080(e), by moving the failure to insure process from the board to the division.

Section 9: Amends AS 23.30.080(f), by allowing the division to assess a civil penalty directly rather than petitioning the board to set the penalty, simplifying the calculation and maximum civil penalty for a failure to insure for workers' compensation liability, and allowing the division to assess a civil penalty against employers who have engaged in misclassification of workers for the purpose of evading full payment of workers' compensation insurance premiums.

Section 10: Amends AS 23.30.080(g), by extending from 7 days to 30 days for an employer to pay an assessed penalty.

Section 11: Adds new subsections to AS 23.30.080, providing for penalties for failure to produce records legally required to be kept, providing a process for an employer to dispute a civil penalty assessment, allowing an employer to pay an assessed civil penalty by payment plan, requiring that employers who agree to a payment plan pay interest, and clarifying penalties may not be suspended.

Section 12: Amends AS 23.30.082(a), by providing interest on civil penalties and other civil penalties under the Workers' Compensation Act (Act) accrue to the workers' compensation benefits guaranty fund.

Section 13: Amends AS 23.30.085, by extending from 10 days to 30 days the deadline for reporting termination of coverage, establishing a 30 day deadline for reporting initial coverage, and establishing a civil penalty for failure to submit proof of insurance to the division within 30 days.

Section 14: Amends AS 23.30.097(d), by clarifying when an employer must preauthorize or deny a provider's written request for medical treatment.

Section 15: Amends AS 23.30.098, by adding publications to a list the department of labor and workforce development may incorporate, including future amended versions, into regulation.

Section 16: Amends AS 23.30.110(c) by requiring the board to schedule a prehearing conference not later than 30 days after a claim is filed, and at the prehearing conference set discovery deadlines and a hearing date, rather than waiting for an employee to request a hearing.

Section 17: Amends AS 23.30.110(d) by ending the practice of permitting non-attorneys to represent parties before the board.

Section 18: Adds a new subsection to AS 23.30.110, providing the board shall file its decision not later than 30 days after the hearing record closes.

Section 19: Amends AS 23.30.155(a), by making technical changes to allow electronic filing of documents.

Section 20: Amends AS 23.30.155(b), by extending the date by which non-medical compensation benefits must be paid and clarifying when medical benefits are due.

Section 21: Amends AS 23.30.155(c), by making technical changes to allow electronic filing of documents.

Section 22: Amends AS 23.30.155(d), by making technical changes to allow electronic filing of documents, removing the seven day grace period for payment of compensation benefits, and clarifying when an employer's denial of a provider's written request for medical treatment must be filed.

Section 23: Amends AS 23.30.155(e), by clarifying when a penalty accrues for late-paid medical benefits, including a provider's written request for medical treatment.

Section 24: Amends AS 23.30.155(m), by making technical changes to allow electronic filing of documents.

Section 25: Amends AS 23.30.165(a), by allowing an employee or the workers' compensation benefits guaranty fund the ability to file a lien within one year of knowledge of an employee's injury or death and allowing the division to file a lien for the amount of an assessed civil penalty.

Section 26: Amends AS 23.30.165(d), by allowing an employee or the workers' compensation benefits guaranty fund the ability to file a lien within one year of knowledge of an employee's injury or death and allowing the division to file a lien for the amount of an assessed civil penalty.

Section 27: Amends AS 23.30.205, by phasing out the second injury fund, setting an end date for the fund's acceptance of new reimbursement claims, and clarifying the fund will continue to pay reimbursement claims until all liability for previously accepted claims to the second injury fund, and claims ordered to be paid from that fund, have been satisfied.

Section 28: Amends AS 23.30.230(a), by providing for a definition of "independent contractor."

Section 29: Amends AS 23.30.240, by eliminating the requirement corporate executive officers seek the division's approval before opting out of workers' compensation coverage for themselves, and clarifying the requirements for opting out.

Section 30: Amends AS 23.30.247(c), by phasing out the second injury fund.

Section 31: Amends AS 23.30.250(a), and expands the basis for a finding of fraud by imposing an affirmative duty on an employee receiving workers' compensation benefits to report work and receipt of other types of wage-loss replacement benefits, and allowing the division to assess a civil penalty against employers who have engaged in misclassification of workers.

Section 32: Amends AS 23.30.250(b), and expands the basis for a finding of fraud by imposing an affirmative duty on an employee receiving workers' compensation benefits to report work and receipt of other types of wage-loss replacement benefits.

Section 33: Adds a new subsection to AS 23.30.250, and expands the basis for a finding of fraud by imposing an affirmative duty on an employee receiving workers' compensation benefits to report work and receipt of other types of wage-loss replacement benefits, and clarifying what constitutes misclassification of workers for the purpose of evading full payment of workers' compensation insurance premiums.

Section 34: Amends AS 23.30.255(a), by clarifying which business entities and individuals are liable for failure to secure compensation.

Section 35: Amends AS 23.30.255(b), by clarifying which business entities and individuals are liable for knowingly disposing of assets with intent to avoid the payment of compensation to an employee or the employee's dependents.

Section 36: Adds a new subsection to AS 23.30.260, eliminating a requirement that the board approve attorney fees as part of a settlement when fees are the sole issue in the settlement that requires board approval.

Section 37: Amends AS 23.30.395, by defining "employee."

Section 38: Repeals AS 23.30.040(f), 23.30.080(d), 23.30.110(h), and 23.30.155(q) relating to the second injury fund, stop work orders, hearing requests, and methods of paying benefits.

Section 39: Amends the uncodified law of the State of Alaska, by adding transitional language.

Section 40: Amends the uncodified law of the State of Alaska, by adding transitional language and clarifying that subject to appropriation, the balance of the second injury fund lapses into the general fund after all liability for previously accepted claims to the second injury fund, and claims ordered to be paid from that fund, have been satisfied.

Section 41: Amends the uncodified law of the State of Alaska, by authorizing the department to initiate the regulatory process before the effective date.

Section 42: Clarifies sec. 41 takes effect immediately.

Section 43: Clarifies sec. 30 takes effect July 1, 2018.

Section 44: Clarifies sec. 29 takes effect August 1, 2018.

30-GH1789\O  
Wallace  
3/13/17

**CS FOR HOUSE BILL NO. 79(L&C)**

**IN THE LEGISLATURE OF THE STATE OF ALASKA**

**THIRTIETH LEGISLATURE - FIRST SESSION**

**BY THE HOUSE LABOR AND COMMERCE COMMITTEE**

**Offered:**

**Referred:**

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

**A BILL**

**FOR AN ACT ENTITLED**

1 **"An Act relating to workers' compensation; relating to the second injury fund; relating**  
2 **to service fees and civil penalties for the workers' safety programs and the workers'**  
3 **compensation program; relating to the liability of business entities and certain persons**  
4 **for payment of workers' compensation benefits and civil penalties; relating to civil**  
5 **penalties for underinsuring or failing to insure or provide security for workers'**  
6 **compensation liability; relating to preauthorization and timely payment for medical**  
7 **treatment and services provided to injured employees; relating to incorporation of**  
8 **reference materials in workers' compensation regulations; relating to proceedings**  
9 **before the Alaska Workers' Compensation Board; relating to the authorization of the**  
10 **workers' compensation benefits guaranty fund to claim a lien; excluding independent**  
11 **contractors from workers' compensation coverage; establishing the circumstances under**  
12 **which certain nonemployee executive corporate officers and members of limited liability**

1 **companies may obtain workers' compensation coverage; relating to the duties of injured**  
2 **employees to report income or work; relating to misclassification of employees and**  
3 **deceptive leasing; defining 'employee'; relating to the Alaska Workers' Compensation**  
4 **Board's approval of attorney fees in a settlement agreement; relating to reemployment**  
5 **benefits; and providing for an effective date."**

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

7 \* **Section 1.** AS 23.05.067(a) is amended to read:

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

13 (1) for each employer,

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

17 (B) the service fee is 2.9 percent of all payments reported to the  
18 division of workers' compensation in the department under AS 23.30.155(m)  
19 or (n), except second injury fund payments; and

20 (2) for each insurer, the director of the division of insurance shall,  
21 under (e) of this section, deposit from funds received from the insurer under  
22 AS 21.09.210 a service fee of 2.5 [1.82] percent of the direct premium income for  
23 workers' compensation insurance received by the insurer during the year ending on the  
24 preceding December 31, subject to all the deductions specified in AS 21.09.210(b).

25 \* **Sec. 2.** AS 23.05.067(e) is amended to read:

26 (e) Annual service fees and civil penalties collected under this section **and**  
27 **AS 23.30.155(c) and (m)** shall be deposited in the workers' safety and compensation  
28 administration account in the state treasury. Under AS 37.05.146(c), the service fees  
29 and civil penalties shall be accounted for separately, and appropriations from the

1 account are not made from the unrestricted general fund. The legislature may  
2 appropriate money from the account for expenditures by the department for necessary  
3 costs incurred by the department in the administration of the workers' safety programs  
4 contained in AS 18.60 and of the Alaska Workers' Compensation Act contained in  
5 AS 23.30. Nothing in this subsection creates a dedicated fund or dedicates the money  
6 in the account for a specific purpose. Money deposited in the account does not lapse at  
7 the end of a fiscal year unless otherwise provided by an appropriation.

8 \* **Sec. 3.** AS 23.30.070(a) is amended to read:

9 (a) Within 10 days from the date the employer has knowledge of an injury or  
10 death or from the date the employer has knowledge of a disease or infection, alleged  
11 by the employee or on behalf of the employee to have arisen out of and in the course  
12 of the employment, the employer shall **file with** [SEND TO] the division a report  
13 setting out

14 (1) the name, address, and business of the employer;

15 (2) the name, address, and occupation of the employee;

16 (3) the cause and nature of the alleged injury or death;

17 (4) the year, month, day, and hour when and the particular locality  
18 where the alleged injury or death occurred; and

19 (5) the other information that the division may require.

20 \* **Sec. 4.** AS 23.30.070(b) is amended to read:

21 (b) Additional reports with respect to the injury and to the condition of the  
22 employee shall be **filed** [SENT] by the employer **with** [TO] the division at the times  
23 and in the manner that the director prescribes.

24 \* **Sec. 5.** AS 23.30.070(d) is amended to read:

25 (d) **Filing** [MAILING] of the report **with** [AND A COPY TO] the division **in**  
26 **a format prescribed by the director** [IN A STAMPED ENVELOPE], within the  
27 time prescribed in (a) or (b) of this section, is compliance with this section.

28 \* **Sec. 6.** AS 23.30.070(f) is amended to read:

29 (f) An employer who fails or refuses to **file** [SEND] a report required of the  
30 employer by this section or who fails or refuses to **file** [SEND] the report required by  
31 (a) of this section within the time required shall, if so required by the board, pay the

1 employee or the legal representative of the employee or other person entitled to  
 2 compensation by reason of the employee's injury or death an additional award equal to  
 3 20 percent of the amounts that were unpaid when due. The award shall be against  
 4 either the employer or the insurance carrier, or both.

5 \* **Sec. 7.** AS 23.30.075(b) is repealed and reenacted to read:

6 (b) If an employer is a corporation, limited liability company, or limited  
 7 liability partnership, or a person who, at the time of an employee's injury or death, has  
 8 at least a 10 percent ownership in the business entity, is actively in charge of the  
 9 operations of the business entity, or has the authority to insure the business entity or  
 10 apply for a certificate of self insurance, is personally, jointly, and severally liable, with  
 11 the business entity, for the payment of

12 (1) all compensation or other benefits for which the business entity is  
 13 liable under this chapter if the business entity is not insured or qualified as a self-  
 14 insurer at the time of the injury or death; and

15 (2) a civil penalty under AS 23.30.080 for which the business entity is  
 16 liable.

17 \* **Sec. 8.** AS 23.30.080(e) is amended to read:

18 (e) If a representative of the department investigates an employer's failure to  
 19 file the evidence of compliance required by AS 23.30.085 and, after investigation,  
 20 there is substantial evidence that the employer failed to insure or provide security as  
 21 required by AS 23.30.075, the representative shall inform the employer. The  
 22 representative may request the director to issue a stop order prohibiting the use of  
 23 employee labor by the employer until the employer insures or provides security as  
 24 required by AS 23.30.075. The director may issue a stop order, without a hearing,  
 25 based on the representative's investigation. The director shall dissolve a stop order  
 26 issued under this subsection upon receipt of substantial evidence that the employer is  
 27 insured or has provided security as required by AS 23.30.075(a). If an employer fails  
 28 to comply with a stop order issued under this subsection, the division may [PETITION  
 29 THE BOARD TO ASSESS A CIVIL PENALTY. THE BOARD MAY] assess a civil  
 30 penalty of \$1,000 a day. An employer who is assessed a penalty under this subsection  
 31 may not obtain a public contract with the state or a political subdivision of the state for

1 the three years following violation of the stop order.

2 \* **Sec. 9.** AS 23.30.080(f) is repealed and reenacted to read:

3 (f) If, after an investigation, the division finds substantial evidence that an  
4 employer has failed to insure or provide security as required by AS 23.30.075 or is  
5 underinsured as a result of misclassifying employees or engaging in deceptive leasing  
6 practices as defined in AS 23.30.250, the division may assess a civil penalty of up to  
7 three times the workers' compensation insurance premium that the employer would  
8 have paid if the employer had insured, provided the required security, or properly  
9 classified employees. The division shall calculate the premium based on the  
10 employer's payroll, including payments that would be considered wages if the  
11 employer had not misclassified employees or engaged in deceptive leasing practices  
12 under AS 23.30.250, and the assigned risk rates approved by the division of insurance  
13 in effect at the time the employer was uninsured or underinsured. The division shall  
14 apply aggravating and mitigating factors adopted in regulation to set the penalty  
15 amount. Notwithstanding AS 23.30.250(e), a civil penalty under this subsection may  
16 be assessed against an employer that misclassifies employees or engages in deceptive  
17 leasing practices, even if the employer does not do so knowingly and with the purpose  
18 of evading full payment for workers' compensation insurance premiums.

19 \* **Sec. 10.** AS 23.30.080(g) is amended to read:

20 (g) **The** [IF AN EMPLOYER FAILS TO PAY A CIVIL PENALTY ORDER  
21 ISSUED UNDER (d), (e), OR (f) OF THIS SECTION WITHIN SEVEN DAYS  
22 AFTER THE DATE OF SERVICE OF THE ORDER UPON THE EMPLOYER,  
23 THE] director may declare **an** [THE] employer in default **if the employer fails to pay**  
24 **or contest a civil penalty assessed under this section not later than 30 days after**  
25 **the date of service of notice on the employer, fails to pay a civil penalty not later**  
26 **than 30 days after the board orders payment, or fails to pay a civil penalty in**  
27 **accordance with the terms of a payment plan.** The director shall file a certified copy  
28 of the penalty order, **notice, or payment plan,** and declaration of default with the  
29 clerk of the superior court. The court shall, upon the filing of the copy [OF THE  
30 ORDER] and declaration, enter judgment for the amount declared in default if it is in  
31 accordance with law. **Any time** [ANYTIME] after a declaration of default, the

1 attorney general shall, when requested to do so by the director, take appropriate action  
2 to ensure collection of the defaulted payment. Review of the judgment may be had as  
3 provided under the Alaska Rules of Civil Procedure. Final proceedings to execute the  
4 judgment may be had by writ of execution.

5 \* **Sec. 11.** AS 23.30.080 is amended by adding new subsections to read:

6 (h) If the division requests copies of records required to be kept under  
7 AS 23.05.080 or information relating to an investigation of an employer's compliance  
8 with the insurance provisions of this chapter, and the employer does not provide the  
9 requested records or information not later than 30 days after service of the written  
10 request, the division may assess a civil penalty against the employer of \$150 for each  
11 day the employer is late, up to a maximum penalty of \$10,000.

12 (i) A civil penalty assessed under this section may not be suspended in full or  
13 in part.

14 (j) The division and an employer may agree to a payment plan for a civil  
15 penalty assessed under this section. The board, in reviewing an assessed civil penalty  
16 under (k) of this section, may order a payment plan. Interest under a payment plan  
17 accrues at the rate specified in AS 09.30.070(a) that is in effect on the date that the  
18 payment plan is agreed to or ordered.

19 (k) An employer may contest a civil penalty assessed by the division under  
20 (e), (f), or (h) of this section by filing a petition with the board not later than 30 days  
21 after the notice of the civil penalty is served on the employer. The board shall schedule  
22 a prehearing not later than 30 days after the filing date of the petition for the purpose  
23 of setting a hearing date. The board may not consider a late petition unless the  
24 employer shows good cause for the late filing. The failure of an employer to file  
25 evidence of compliance as required by AS 23.30.085 creates a rebuttable presumption  
26 that the employer failed to insure or provide security as required by AS 23.30.075. If  
27 the employer disputes the division's calculation of the amount that the employer would  
28 have paid for workers' compensation insurance during the time the employer was  
29 uninsured or underinsured, the employer bears the burden of producing evidence and  
30 proving that the workers' compensation insurance premium would have been less than  
31 the division's calculation. If the employer does not file a petition, the assessment of the

1 civil penalty is considered final and not subject to review by the board, commission, or  
2 a court.

3 \* **Sec. 12.** AS 23.30.082(a) is amended to read:

4 (a) The workers' compensation benefits guaranty fund is established in the  
5 general fund to carry out the purposes of this section. The fund is composed of civil  
6 penalty **and interest** payments made by employers under AS 23.30.080, **civil penalty**  
7 **payments under AS 23.30.085**, income earned on investment of the money in the  
8 fund, money deposited in the fund by the department, and appropriations to the fund,  
9 if any. However, money appropriated to the fund does not lapse. Amounts in the fund  
10 may be appropriated for claims against the fund, for expenses directly related to fund  
11 operations and claims, and for legal expenses.

12 \* **Sec. 13.** AS 23.30.085 is repealed and reenacted to read:

13 **Sec. 23.30.085. Duty of employer or insurer to file evidence of compliance.**

14 (a) An employer or insurer subject to this chapter shall, not later than 30 days after  
15 acquiring insurance, initially file with the division, in the format prescribed by the  
16 director, evidence of compliance with the insurance provisions of this chapter. The  
17 employer or insurer also shall, not later than 30 days after the expiration or  
18 termination, file evidence of compliance by expiration or cancellation of the  
19 employer's insurance. The requirements in this section do not apply to an employer  
20 who has certification from the division of the employer's financial ability to pay  
21 compensation directly without insurance.

22 (b) If an employer or insurer fails, refuses, or neglects to comply with this  
23 section, the employer or insurer is subject to a civil penalty of \$100 for each day the  
24 employer or insurer is late. Total penalties under this subsection may not exceed  
25 \$1,000 for each late filing and \$10,000 for each employer or insurer each year for late  
26 filings under this section.

27 \* **Sec. 14.** AS 23.30.097(d) is amended to read:

28 (d) An employer shall

29 **(1)** pay **or controvert** an employee's bills for medical treatment under  
30 this chapter, excluding prescription charges or transportation for medical treatment,  
31 **not later than** [WITHIN] 30 days after the date that the employer receives the

1 provider's bill or a completed report as required by AS 23.30.095(c), whichever is  
2 later;

3 (2) authorize or controvert medical treatment or services,  
4 excluding prescription charges or transportation for medical treatment, not later  
5 than 60 days after the date that the employer receives the provider's written  
6 request for authorization for medical treatment that includes the estimated fee or  
7 charge for the medical treatment and does not exceed the maximum  
8 reimbursement allowed under this section.

9 \* Sec. 15. AS 23.30.098 is amended to read:

10 **Sec. 23.30.098. Regulations.** Under AS 44.62.245(a)(2), in adopting or  
11 amending regulations under this chapter, the department may incorporate future  
12 amended versions of a document or reference material incorporated by reference if the  
13 document or reference material is one of the following:

14 (1) Current Procedural Terminology Codes, produced by the American  
15 Medical Association;

16 (2) Healthcare Common Procedure Coding System, produced by the  
17 **federal Centers for Medicare and Medicaid Services** [AMERICAN MEDICAL  
18 ASSOCIATION];

19 (3) International Classification of Diseases, published by the **World**  
20 **Health Organization** [AMERICAN MEDICAL ASSOCIATION];

21 (4) Relative Value Guide, produced by the American Society of  
22 Anesthesiologists;

23 (5) Diagnostic and Statistical Manual of Mental Disorders, produced  
24 by the American Psychiatric Association;

25 (6) Current Dental Terminology, published by the American Dental  
26 Association;

27 (7) Resource-Based Relative Value Scale, produced by the federal  
28 Centers for Medicare and Medicaid Services;

29 (8) Ambulatory Payment Classifications, produced by the federal  
30 Centers for Medicare and Medicaid Services; [OR]

31 (9) Medicare Severity Diagnosis Related Groups, produced by the

1 federal Centers for Medicare and Medicaid Services;

2 (10) International Classification of Diseases, Tenth Revision,  
3 Clinical Modification, developed by the National Center for Health Statistics;

4 (11) Clinical Diagnostic Laboratory Services, produced by the  
5 federal Centers for Medicare and Medicaid Services;

6 (12) Durable Medical Equipment, Prosthetics, Orthotics, and  
7 Supplies, produced by the federal Centers for Medicare and Medicaid Services;

8 (13) Payment Allowance Limits for Medicare Part B Drugs,  
9 Average Sale Price, produced by the federal Centers for Medicare and Medicaid  
10 Services;

11 (14) Ambulance Fee Schedule, produced by the federal Centers for  
12 Medicare and Medicaid Services;

13 (15) Hospital Outpatient Prospective Payment System, produced  
14 by the federal Centers for Medicare and Medicaid Services; or

15 (16) Ambulatory Surgical Center Payment System, produced by  
16 the federal Centers for Medicare and Medicaid Services.

17 \* **Sec. 16.** AS 23.30.110(c) is repealed and reenacted to read:

18 (c) The board shall schedule a prehearing not later than 30 days after a claim  
19 is filed. At the prehearing, the board or the board's designee shall issue a scheduling  
20 order that includes a discovery plan, appropriate deadlines, and the hearing date. The  
21 board or the board's designee may modify the scheduling order, including changing  
22 the hearing date, on the board's own motion or upon a showing of good cause by the  
23 party seeking the modification. The board shall serve notice on each party at least 10  
24 days before the hearing.

25 \* **Sec. 17.** AS 23.30.110(d) is repealed and reenacted to read:

26 (d) At the hearing, each party may present evidence with respect to the claim  
27 and may be self-represented, represented by an attorney licensed to practice law in this  
28 state, or by a parent of a minor, guardian, or court-appointed representative.

29 \* **Sec. 18.** AS 23.30.110 is amended by adding a new subsection to read:

30 (i) The board shall file its decision not later than 30 days after the hearing  
31 record closes.

1 \* **Sec. 19.** AS 23.30.155(a) is amended to read:

2 (a) Compensation under this chapter shall be paid periodically, promptly, and  
3 directly to the person entitled to it, without an award, except where liability to pay  
4 compensation is controverted by the employer. To controvert a claim, the employer  
5 must file a notice, **in a format** [ON A FORM] prescribed by the director, stating

6 (1) that the right of the employee to compensation is controverted;

7 (2) the name of the employee;

8 (3) the name of the employer;

9 (4) the date of the alleged injury or death; and

10 (5) the type of compensation and all grounds **on** [UPON] which the  
11 right to compensation is controverted.

12 \* **Sec. 20.** AS 23.30.155(b) is amended to read:

13 (b) The first installment of compensation, **excluding medical benefits, shall**  
14 **be paid** [BECOMES DUE] on **or before** the **21st** [14TH] day after the employer has  
15 knowledge of the injury or death. [ON THIS DATE ALL COMPENSATION THEN  
16 DUE SHALL BE PAID.] Subsequent compensation, **excluding medical benefits,**  
17 shall be paid in installments, every **21** [14] days, except where the board determines  
18 that payment in installments should be made monthly or at some other period.  
19 **Medical benefits shall be paid in accordance with AS 23.30.095 and 23.30.097.**

20 \* **Sec. 21.** AS 23.30.155(c) is amended to read:

21 (c) The insurer or adjuster shall notify the division **in a format** [AND THE  
22 EMPLOYEE ON A FORM] prescribed by the director that the payment of  
23 compensation has begun or has been increased, decreased, suspended, terminated,  
24 resumed, or changed in type. An initial report shall be filed **not later than** [WITH  
25 THE DIVISION AND SENT TO THE EMPLOYEE WITHIN] 28 days after the date  
26 of issuing the first payment of compensation. If, at any time, 21 days or more pass and  
27 no compensation payment is issued, a report notifying the division [AND THE  
28 EMPLOYEE] of the termination or suspension of compensation shall be filed **not**  
29 **later than** [WITH THE DIVISION AND SENT TO THE EMPLOYEE WITHIN] 28  
30 days after the date the last compensation payment was issued. A report shall also be  
31 filed **not later than** [WITH THE DIVISION AND SENT TO THE EMPLOYEE

1 WITHIN] 28 days after the date of issuing a payment increasing, decreasing,  
 2 resuming, or changing the type of compensation paid. **When the insurer or adjuster**  
 3 **files a report, the division shall notify the employee of the payment or change in**  
 4 **payment of compensation.** If the division is [AND THE EMPLOYEE ARE] not  
 5 notified within the 28 days prescribed by this subsection for reporting, the insurer or  
 6 adjuster shall pay a civil penalty of \$100 for the first day plus \$10 for each day after  
 7 the first day that the notice was not given. Total penalties under this subsection may  
 8 not exceed \$1,000 for a failure to file a required report. Penalties assessed under this  
 9 subsection are eligible for reduction under (m) of this section. A penalty assessed  
 10 under this subsection after penalties have been reduced under (m) of this section shall  
 11 be increased by 25 percent and shall bear interest at the rate established under  
 12 AS 45.45.010.

13 \* **Sec. 22.** AS 23.30.155(d) is amended to read:

14 (d) If the employer controverts the right to compensation, the employer shall  
 15 file with the division, **in a format prescribed by the director,** [AND SEND TO THE  
 16 EMPLOYEE] a notice of controversion on or before the 21st day after the employer  
 17 has knowledge of the alleged injury or death. If the employer controverts the right to  
 18 compensation, **excluding medical benefits,** after payments have begun, the employer  
 19 shall file with the division, **in a format prescribed by the director,** [AND SEND TO  
 20 THE EMPLOYEE] a notice of controversion **not later than the date** [WITHIN  
 21 SEVEN DAYS AFTER] an installment of compensation payable without an award is  
 22 due **under (b) of this section. If the employer controverts medical treatment, the**  
 23 **employer shall file with the division, in a format prescribed by the director, a**  
 24 **notice of controversion not later than the date the payment, reimbursement, or**  
 25 **authorization for medical treatment is due under AS 23.30.097. When the**  
 26 **employer files a notice of controversion, the division shall notify the employee if**  
 27 **an employer controverts the employee's right to compensation.** When payment of  
 28 temporary disability benefits is controverted solely on the grounds that another  
 29 employer or another insurer of the same employer may be responsible for all or a  
 30 portion of the benefits, the most recent employer or insurer who is party to the claim  
 31 and who may be liable shall make the payments during the pendency of the dispute.

1 When a final determination of liability is made, any reimbursement required, including  
2 interest at the statutory rate, and all costs and attorney fees incurred by the prevailing  
3 employer, shall be made **not later than** [WITHIN] 14 days after the determination.

4 \* **Sec. 23.** AS 23.30.155(e) is amended to read:

5 (e) If any installment of compensation, **excluding medical benefits,** payable  
6 without an award is [NOT] paid **late** [WITHIN SEVEN DAYS AFTER IT  
7 BECOMES DUE], as provided in (b) of this section, there shall be added to the unpaid  
8 installment an amount equal to 25 percent of the installment. **If a bill for medical**  
9 **treatment, including prescription charges or transportation for medical**  
10 **treatment, is paid or reimbursed late, or a request for medical treatment is not**  
11 **timely authorized under AS 23.30.097, there shall be added an amount equal to**  
12 **25 percent of the bill, reimbursement, or estimated fee or charge for the**  
13 **requested medical treatment.** This additional amount shall be paid at the same time  
14 as, and in addition to, the installment, **bill, or reimbursement, or sent with**  
15 **authorization for medical treatment,** unless notice is filed under (d) of this section  
16 or unless the nonpayment **or late authorization** is excused by the board after a  
17 showing by the employer that, owing to conditions over which the employer had no  
18 control, the installment, **bill, or reimbursement** could not be paid **or the request**  
19 **could not be authorized** within the period prescribed for the payment **or**  
20 **authorization.** The additional amount shall be paid directly to the recipient to whom  
21 the unpaid installment, **bill, or reimbursement** was to be paid **or, if authorization of**  
22 **medical treatment was requested, to the employee seeking the medical treatment.**

23 \* **Sec. 24.** AS 23.30.155(m) is amended to read:

24 (m) On or before March 1 of each year, the insurer or adjuster shall file a  
25 verified annual report **in a format** [ON A FORM] prescribed by the director stating  
26 the total amount of all compensation by type, the number of claims received and the  
27 percentage controverted, medical and related benefits, vocational rehabilitation  
28 expenses, legal fees, including a separate total of fees paid to attorneys and fees paid  
29 for the other costs of litigation, and penalties paid on all claims during the preceding  
30 calendar year. If the annual report is timely and complete when received by the  
31 division and provides accurate information about each category of payments, the

1 director shall review the timeliness of the insurer's or adjuster's reports filed during the  
2 preceding year under (c) of this section. If, during the preceding year, the insurer or  
3 adjuster filed at least 99 percent of the reports on time, the penalties assessed under (c)  
4 of this section shall be waived. If, during the preceding year, the insurer or adjuster  
5 filed at least 97 percent of the reports on time, 75 percent of the penalties assessed  
6 under (c) of this section shall be waived. If, during the preceding year, the insurer or  
7 adjuster filed 95 percent of the reports on time, 50 percent of the penalties assessed  
8 under (c) of this section shall be waived. If, during the preceding year, the insurer's or  
9 adjuster's reports have not been filed on time at least 95 percent of the time, none of  
10 the penalties assessed under (c) of this section shall be waived. The penalties that are  
11 not waived are due and payable when the insurer or adjuster receives notification from  
12 the director regarding the timeliness of the reports. If the annual report is not filed by  
13 March 1 of each year, the insurer or adjuster shall pay a civil penalty of \$100 for the  
14 first day the annual report is late and \$10 for each additional day the report is late. If  
15 the annual report is incomplete when filed, the insurer or adjuster shall pay a civil  
16 penalty of \$1,000.

17 \* **Sec. 25.** AS 23.30.165(a) is amended to read:

18 (a) **If an [EACH] employee, a [AND] beneficiary, or the workers'**  
19 **compensation benefits guaranty fund (AS 23.30.082) is** entitled to compensation  
20 under the provisions of this chapter, **the person or the fund** has a lien for the full  
21 amount of the compensation the person **or the fund** is entitled to, including costs and  
22 disbursements of suit and attorney fees allowed, **on** [UPON] all of the property in  
23 connection with the construction, preservation, maintenance, or operation of which the  
24 work of the employee was being performed at the time of the injury or death. For  
25 example, [:] in the case of an employee injured or killed while engaged in mining or in  
26 work connected with mining, the lien extends to the entire mine and all property used  
27 in connection with it; and, in the case of an employee injured or killed while engaged  
28 in fishing or in the packing, canning, or salting of fish, or other branch of the fish  
29 industry, the lien extends to the entire packing, fishing, salting, or canning plant or  
30 establishment and all property used in connection with it; and this is the case with  
31 other businesses, industries, works, occupations, and employments. **If the workers'**

1 compensation benefits guaranty fund (AS 23.30.082) is entitled to a civil penalty  
 2 assessed under AS 23.30.080, the fund has a lien for the full amount of the civil  
 3 penalty on all of the property in connection with the construction, preservation,  
 4 maintenance, or operation of the uninsured or underinsured employer.

5 \* Sec. 26. AS 23.30.165(d) is amended to read:

6 (d) A person or the workers' compensation benefits guaranty fund  
 7 (AS 23.30.082) claiming a lien under this chapter shall, not later than [WITHIN] one  
 8 year after the person or the fund has knowledge [DATE] of the injury or death  
 9 [FROM WHICH THE CLAIM OF COMPENSATION ARISES], record in the office  
 10 of the recorder of the recording district in which the property affected by the lien is  
 11 located, a notice of lien signed and verified by the claimant, or someone on behalf of  
 12 the claimant or the fund, and stating [, IN SUBSTANCE,] the name of the person  
 13 injured or killed out of which injury or death the claim of compensation arises, the  
 14 name of the employer of the injured or deceased person at the time of the injury or  
 15 death, a description of the property affected or covered by the lien, and the name of  
 16 the owner or reputed owner of the property. In claiming a lien for a civil penalty  
 17 under AS 23.30.080, the workers' compensation benefits guaranty fund  
 18 (AS 23.30.082) shall, not later than one year after the date of a declaration of  
 19 default, record in the office of the recorder of the recording district in which the  
 20 property affected by the lien is located a signed and verified notice of lien stating  
 21 the name of the employer assessed a civil penalty under AS 23.30.080, a  
 22 description of the property affected or covered by the lien, and the name of the  
 23 owner or reputed owner of the property.

24 \* Sec. 27. AS 23.30.205 is amended by adding a new subsection to read:

25 (g) Claims for reimbursement may not be submitted to the second injury fund  
 26 on or after September 1, 2017. The fund shall continue to make reimbursement  
 27 payments on claims accepted before July 1, 2018, or ordered by the board, until the  
 28 fund's liabilities for the claim are extinguished.

29 \* Sec. 28. AS 23.30.230(a) is amended to read:

- 30 (a) The following persons are not covered by this chapter:  
 31 (1) a part-time baby-sitter;

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(2) a cleaning person;  
(3) harvest help and similar part-time or transient help;  
(4) a person employed as a sports official on a contractual basis and who officiates only at sports events in which the players are not compensated; in this paragraph, "sports official" includes an umpire, referee, judge, scorekeeper, timekeeper, organizer, or other person who is a neutral participant in a sports event;

(5) a person employed as an entertainer on a contractual basis;  
(6) a commercial fisherman, as defined in AS 16.05.940;

(7) an individual who drives a taxicab whose compensation and written contractual arrangement is as described in AS 23.10.055(a)(13), unless the hours worked by the individual or the areas in which the individual may work are restricted except to comply with local ordinances;

(8) a participant in the Alaska temporary assistance program (AS 47.27) who is engaged in work activities required under AS 47.27.035 other than subsidized or unsubsidized work or on-the-job training;

(9) a person employed as a player or coach by a professional hockey team if the person is covered under a health care insurance plan provided by the professional hockey team, the coverage is applicable to both work-related and nonwork-related injuries, and the coverage provides medical and related benefits as required under this chapter, except that coverage may not be limited to two years from the date of injury as described under AS 23.30.095(a); in this paragraph, "health care insurance" has the meaning given in AS 21.12.050; [AND]

(10) a person working as a qualified real estate licensee who performs services under a written contract that provides that the person will not be treated as an employee for federal income tax or workers' compensation purposes; in this paragraph, "qualified real estate licensee" means a person who is required to be licensed under AS 08.88.161 and whose payment for services is directly related to sales or other output rather than the number of hours worked; **and**

**(11) a person employed as an independent contractor; a person is an independent contractor for the purposes of this chapter only if the person**

**(A) has an express contract to perform the services;**

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(B) is free from direction and control over the means and manner of providing services, subject only to the right of the individual for whom, or entity for which, the services are provided to specify the desired results, completion schedule, or range of work hours, or to monitor the work for compliance with contract plans and specifications, or federal, state, or municipal law;

(C) incurs most of the expenses for tools, labor, and other operational costs necessary to perform the services, except that materials and equipment may be supplied;

(D) has an opportunity for profit and loss as a result of the services performed for the other individual or entity;

(E) is free to hire and fire employees to help perform the services for the contracted work;

(F) has all business, trade, or professional licenses required by federal, state, or municipal authorities for a business or individual engaging in the same type of services as the person;

(G) follows federal Internal Revenue Service requirements  
by

(i) obtaining an employer identification number, if required;

(ii) filing business or self-employment tax returns for the previous tax year to report profit or income earned for the same type of services provided under the contract; or

(iii) intending to file business or self-employment tax returns for the current tax year to report profit or income earned for the same type of services provided under the contract if the person's business was not operating in the previous tax year; and

(H) meets at least three of the following criteria:

(i) the person maintains liability insurance or other insurance policies necessary to protect the employees, financial interests, and customers of the person's business;

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(ii) the person maintains a business location separate from the location of the individual for whom, or the entity for which, the services are performed;

(iii) the person engages in business advertising, solicitation, or other marketing efforts reasonably calculated to obtain new contracts to provide similar services;

(iv) the person holds a bank account in the name of the business entity for the purpose of paying business expenses or expenses related to the work or services performed;

(v) the person engages in a trade, occupation, profession, or business to provide services that are outside the usual course of business for the individual for whom, or the entity for which, the services are performed.

\* Sec. 29. AS 23.30.240 is repealed and reenacted to read:

**Sec. 23.30.240. Officers of corporations, municipal corporations, and nonprofit corporations, and members of limited liability companies as employees.**

(a) Except as provided in (b) of this section, an executive officer elected or appointed and empowered in accordance with the charter and bylaws of a corporation or a member of a limited liability company organized under AS 10.50 is not an employee of the business entity under this chapter if the executive officer or member owns at least 10 percent of the business entity. Except as provided in (b) of this section, an executive officer of a municipal corporation or charitable, religious, educational, or other nonprofit corporation is not an employee of the corporation under this chapter.

(b) Any type of corporation or limited liability company may bring an executive officer or a member exempted under (a) of this section within the coverage of the business entity's insurance contract by specifically including the executive officer or member in the contract of insurance. The election to bring the executive officer or member within the business entity's coverage continues in force for the period during which the contract of insurance is in effect. During that period, an executive officer or a member brought within the coverage of the insurance contract is an employee of the business entity under this chapter.

1 \* **Sec. 30.** AS 23.30.247(c) is amended to read:

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

9 \* **Sec. 31.** AS 23.30.250(a) is amended to read:

10 (a) A person who (1) knowingly makes a false or misleading statement,  
11 representation, or submission **or knowingly fails to report a material fact** related to  
12 a benefit under this chapter; (2) knowingly assists, abets, solicits, or conspires in  
13 making a false or misleading submission affecting the payment, coverage, or other  
14 benefit under this chapter; (3) knowingly misclassifies employees or engages in  
15 deceptive leasing practices for the purpose of evading full payment of workers'  
16 compensation insurance premiums; or (4) employs or contracts with a person or firm  
17 to coerce or encourage an individual to file a fraudulent compensation claim is civilly  
18 liable to a person adversely affected by the conduct, is guilty of theft by deception as  
19 defined in AS 11.46.180, and may be punished as provided by AS 11.46.120 -  
20 11.46.150. **The division may assess a civil penalty as provided in AS 23.30.080**  
21 **against an employer that misclassifies employees or engages in deceptive leasing**  
22 **practices.**

23 \* **Sec. 32.** AS 23.30.250(b) is amended to read:

24 (b) If the board, after a hearing, finds that a person has obtained compensation,  
25 medical treatment, or another benefit provided under this chapter, or that a provider  
26 has received a payment, by knowingly making a false or misleading statement or  
27 representation **or knowingly failing to report a material fact** [FOR THE PURPOSE  
28 OF OBTAINING THAT BENEFIT], the board shall order that person to make full  
29 reimbursement of the cost of all benefits obtained. Upon entry of an order authorized  
30 under this subsection, the board shall also order that person to pay all reasonable costs  
31 and attorney fees incurred by the employer and the employer's carrier in obtaining an

1 order under this section and in defending any claim made for benefits under this  
2 chapter. If a person fails to comply with an order of the board requiring reimbursement  
3 of compensation and payment of costs and attorney fees, the employer may declare the  
4 person in default and proceed to collect any sum due as provided under  
5 AS 23.30.170(b) and (c).

6 \* **Sec. 33.** AS 23.30.250 is amended by adding new subsections to read:

7 (d) While receiving compensation provided under this chapter, an employee  
8 shall inform the employer or insurer of the employee's receipt of any unemployment  
9 or disability benefits other than the compensation provided under this chapter, and  
10 shall report any employment other than work for the employer providing the  
11 compensation under this chapter. An employee knowingly fails to report a material  
12 fact under (a) and (b) of this section if the employee does not disclose the receipt of  
13 unemployment or other disability benefits or other employment, and the employee  
14 knowingly receives compensation under this chapter to which the employee is not  
15 entitled because of the receipt of the other benefits or other employment. In this  
16 subsection, "employment" means any type of work, whether paid or unpaid.

17 (e) An employer misclassifies employees or engages in deceptive leasing  
18 practices under (a) of this section if, for the purpose of evading full payment of  
19 workers' compensation insurance premiums, the employer knowingly falsifies or  
20 misrepresents the

21 (1) job duties of employees;

22 (2) payments made to employees, including concealing payment by not  
23 reporting or underreporting wages or payments made in kind;

24 (3) true identity of the employer;

25 (4) nature of the employer's business;

26 (5) employer's history of injuries or deaths covered under this chapter;

27 or

28 (6) number of employees, including by misclassifying a worker as an  
29 independent contractor as described in AS 23.30.230(a)(11), or as a nonemployee,  
30 when that worker is an employee covered under this chapter as provided in  
31 AS 23.30.230, 23.30.239, or 23.30.240.

1 \* **Sec. 34.** AS 23.30.255(a) is amended to read:

2 (a) An employer required to secure the payment of compensation under this  
3 chapter who fails to do so is guilty of a class B felony if the amount involved exceeds  
4 \$25,000 or a class C felony if the amount involved is \$25,000 or less. If the employer  
5 is a **limited liability company, limited liability partnership, or** corporation, **a**  
6 **person who, at the time of an employee's injury or death, has at least a 10 percent**  
7 **ownership in the business entity, is actively in charge of the operations of the**  
8 **business entity, or has the authority to insure the business entity or apply for a**  
9 **certificate of self insurance, is** [ITS PRESIDENT, SECRETARY, AND  
10 TREASURER ARE ALSO] severally liable **with the business entity for** [TO] the  
11 fine or imprisonment imposed for the failure of the **business entity**  
12 [CORPORATION] to secure the payment of compensation. [THE PRESIDENT,  
13 SECRETARY, AND TREASURER ARE SEVERALLY PERSONALLY LIABLE,  
14 JOINTLY WITH THE CORPORATION, FOR THE COMPENSATION OR OTHER  
15 BENEFIT WHICH ACCRUES UNDER THIS CHAPTER IN RESPECT TO AN  
16 INJURY THAT HAPPENS TO AN EMPLOYEE OF THE CORPORATION WHILE  
17 IT HAS FAILED TO SECURE THE PAYMENT OF COMPENSATION AS  
18 REQUIRED BY AS 23.30.075.]

19 \* **Sec. 35.** AS 23.30.255(b) is amended to read:

20 (b) An employer who knowingly transfers, sells, encumbers, assigns, or in any  
21 manner disposes of, conceals, secretes, or destroys any property after one of the  
22 employer's employees has been injured within the scope of this chapter, with intent to  
23 avoid the payment of compensation under this chapter to the employee or the  
24 employee's dependents, is guilty of a class B felony if the amount involved exceeds  
25 \$25,000 or a class C felony if the amount involved is \$25,000 or less. If the employer  
26 is a **limited liability company, limited liability partnership, or** corporation, **a**  
27 **person who, at the time of an employee's injury or death, has at least a 10 percent**  
28 **ownership in the business entity, is actively in charge of the operations of the**  
29 **business entity, or has the authority to insure the business entity or apply for a**  
30 **certificate of self insurance, is** [ITS PRESIDENT, SECRETARY, AND  
31 TREASURER ARE ALSO] severally liable **with the business entity for** [TO] the

1 penalty of imprisonment as well as jointly liable with the business entity  
2 [CORPORATION] for the fine.

3 \* **Sec. 36.** AS 23.30.260 is amended by adding a new subsection to read:

4 (c) Notwithstanding AS 23.30.145 and (a) of this section, approval of a fee is  
5 not required if the parties who reach an agreement in regard to a claim for injury or  
6 death under this chapter agree to the payment of attorney fees, and the agreement in  
7 regard to a claim for injury or death does not require board approval under  
8 AS 23.30.012.

9 \* **Sec. 37.** AS 23.30.395(19) is repealed and reenacted to read:

10 (19) "employee" means a person who is not an independent contractor  
11 as described in AS 23.30.230 and who, under a contract of hire, express or implied, is  
12 employed by an employer as defined in (20) of this section;

13 \* **Sec. 38.** AS 23.30.040(f), 23.30.080(d), 23.30.110(h), and 23.30.155(q) are repealed.

14 \* **Sec. 39.** The uncodified law of the State of Alaska is amended by adding a new section to  
15 read:

16 APPLICABILITY. (a) Notwithstanding AS 23.30.075(b), as repealed and reenacted  
17 by sec. 7 of this Act, AS 23.30.080(e), as amended by sec. 8 of this Act, AS 23.30.080(f), as  
18 repealed and reenacted by sec. 9 of this Act, AS 23.30.080(g), as amended by sec. 10 of this  
19 Act, AS 23.30.080(h) - (k), added by sec. 11 of this Act, and the repeal of AS 23.30.080(d) by  
20 sec. 38 of this Act, petitions of the division of workers' compensation against employers for a  
21 failure to insure for workers' compensation liability that are pending before the Alaska  
22 Workers' Compensation Board before the effective date of secs. 7 - 11 and 38 of this Act shall  
23 be continued and completed under AS 23.30.075(b) and 23.30.080, as those statutes read on  
24 the day before the effective date of secs. 7 - 11 and 38 of this Act.

25 (b) AS 23.30.110(c), as repealed and reenacted by sec. 16 of this Act,  
26 AS 23.30.110(d), as repealed and reenacted by sec. 17 of this Act, and the repeal of  
27 AS 23.30.110(h) by sec. 38 of this Act apply to claims filed on or after the effective date of  
28 secs. 16, 17, and 38 of this Act. Claims pending on the effective date of secs. 16, 17, and 38 of  
29 this Act shall be continued and completed under AS 23.30.110(c), (d), and (h), as those  
30 statutes read on the day before the effective date of secs. 16, 17, and 38 of this Act.

31 (c) Notwithstanding AS 23.30.240, as repealed and reenacted by sec. 29 of this Act,

1 the terms of an insurance policy or contract in effect before the effective date of sec. 29 of this  
 2 Act shall comply with AS 23.30.240, as that section read on the day before the effective date  
 3 of sec. 29 of this Act. AS 23.30.240, as repealed and reenacted by sec. 29 of this Act, applies  
 4 to an insurance policy or contract entered into or renewed on or after the effective date of sec.  
 5 29 of this Act.

6 \* **Sec. 40.** The uncodified law of the State of Alaska is amended by adding a new section to  
 7 read:

8       TRANSITION: SATISFACTION OF SECOND INJURY FUND CLAIMS. Subject to  
 9 appropriation, the balance of the second injury fund created under AS 23.30.040 lapses into  
 10 the general fund when all liability for accepted claims under AS 23.30.205 to the second  
 11 injury fund and claims ordered to be paid from that fund have been satisfied.

12 \* **Sec. 41.** The uncodified law of the State of Alaska is amended by adding a new section to  
 13 read:

14       TRANSITION: REGULATIONS. The Department of Labor and Workforce  
 15 Development and the Alaska Workers' Compensation Board may adopt regulations to  
 16 implement this Act. The regulations take effect under AS 44.62 (Administrative Procedure  
 17 Act), but not before the effective date of the law implemented by the regulation.

18 \* **Sec. 42.** Section 41 of this Act takes effect immediately under AS 01.10.070(c).

19 \* **Sec. 43.** Section 30 of this Act takes effect July 1, 2018.

20 \* **Sec. 44.** Section 29 of this Act takes effect August 1, 2018.

30-GH1789\O

3/22/17

AMENDMENT #1

OFFERED IN THE HOUSE

BY REPRESENTATIVE KNOPP

TO: HB 79

Eliminate Section 28 (11) beginning on page 15 line 29 through page 17 line 13.

(For definition refer to AS 23.20.525- Employment Defined)

Amend #1  
withdrawn  
Amend #2  
Failed

AMENDMENT #2

OFFERED IN THE HOUSE

BY REPRESENTATIVE KNOPP

TO: HB 79

Section 28

Page 16, line 4, following "results", delete, "completion schedule, or range of work hours..."

Page 16, line 6, following "or", add, "to comply with"

Page 16, line 7, following "incurs" add, "or is ultimately responsible for"

Page 16, line 17, insert before "follows" "is responsible pursuant to contract to"

Page 16, line 17, change "follows" to "follow"

Page 17, line 1, delete, "maintains a business location separate from the location of the individual for whom the entity for the services are performed"

Page 17, line 1, insert before, "the person", "except for an agreement with other individual or entity relating to the completion schedule or range of work hours," insert, after "the person", "has control over the time the work is performed"

Page 17, line 4, delete, "engages in business advertising, solicitation, or other marketing efforts reasonably calculated to obtain new contract to provide similar services;" insert following, "the person", "is not required to work exclusively for on principal unless;

- (a) A law, regulation, or ordinance prohibits the person from providing service to more than on principal; or
- (b) The person has entered into a written contract to provide services to only one principal for a limited period;

## HB 79 OMNIBUS WORKERS' COMPENSATION

### Supporting Documents

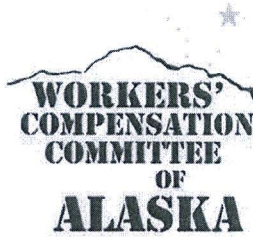
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#### Letters of Support

<b>Page(s)</b>	<b>From</b>	<b>Date</b>
<b>1-2</b>	Workers' Compensation Committee of Alaska	2.17.17
<b>3-10</b>	Alaska Truckers Assoc	2.20.17
<b>11-12</b>	Shelly Erickson	2.20.17
<b>13-14</b>	American Insurance Association	2.27.17
<b>15-16</b>	Marc Grober	3.1.17
<b>17-18</b>	American Insurance Association, National Association of Mutual Insurance Companies, Property Casualty Insurers Association of America	3.14.17
<b>19</b>	JD Wilkderson, Griffard Steel, Inc.	3.13.17
<b>20</b>	Pat Whalen, Whalen Construction	3.14.17

#### Letters of Opposition

<b>Page(s)</b>	<b>From</b>	<b>Date</b>
<b>1-2</b>	National Federation of Independent Business/Alaska	2.17.17
<b>3-4</b>	National Federation of Independent Business/Alaska	3.5.17
<b>5-7</b>	Kevin Barry, Alaska Surgery Center	3.14.17



P.O. BOX 241911 | ANCHORAGE, ALASKA 99524 | E-MAIL: [INFO@WCCAK.ORG](mailto:INFO@WCCAK.ORG)

February 17, 2017

Representative Sam Kito  
House Labor & Commerce Committee Chair  
State Capitol, Room 403  
Juneau, AK 99801

RE: Senate Bill 40/House Bill 79

Dear Representative Kito:

The Workers' Compensation Committee of Alaska (WCCA) is an employer advocacy group dedicated to helping educate and advocate for Alaska employers on issues regarding workers' compensation. We thank the governor for taking an interest in the workers' compensation system and introducing legislation meant to improve the delivery of benefits to injured workers, deter workers' compensation fraud, ensure compliance with the requirement to carry workers' compensation insurance, and provide adequate funding for administration of the system.

WCCA has reviewed the bill and we would like to share some of our thoughts with you:

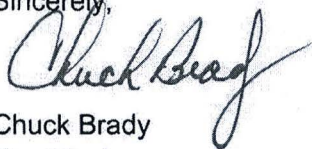
- We welcome efforts at speeding up dispute resolution before the Workers' Compensation Board. Although setting a hearing within 30 days after a claim is filed would move things along, it may not allow sufficient time for employers to do a proper investigation. We think there should also be a provision for mandatory mediation.
- Ending the practice of allowing non-attorneys to represent parties before the Board is a good move, but we would like to see the language amended to allow paralegals under the direct supervision of an attorney to represent parties.
- We oppose eliminating the statute of limitations under AS 23.30.110 (c).
- Eliminating Board approval of attorney fees on settlements that are effective upon filing (don't require Board approval) is a positive step.
- The bill's attempt to speed up medical care is well-intended, but the requirement to authorize or controvert treatment within 60 days of receipt of a provider's written request is problematic for employers and will likely result in a significant increase in controversions and litigation, further

delaying the delivery of medical care. We would rather see the bill state that pre authorization of treatment is allowed, but not required.

- We applaud the bill's effort to prevent workers' compensation fraud. We support the affirmative duty of injured workers to report the receipt of wages and other types of wage-replacement benefits.
- Regarding the misclassification of employees, the WCCA agrees that employers should not attempt to defraud insurance carriers by misclassifying employees, but there should be safeguards against pursuing employers who inadvertently misclassify employees without malicious intent.
- The WCCA agrees with the bill's intent to further clarify the definition of "independent contractor," but we are concerned that the proposed definition is too limiting. Some of the language ignores the economic realities of certain sole proprietors and owner-operators and would result in the disruption of accepted business practices that have been in place in Alaska and around the country for decades.
- The WCCA agrees with the bill's intent to limit civil penalties against uninsured employers to three times the amount of the workers' compensation premium that would have been paid.
- We agree with the bill's intent to reduce administrative costs by allowing payment of benefits electronically, mandating electronic filing of certain reports, and eliminating the requirement that corporate officers get Division approval to opt out of workers' compensation coverage for themselves. We also agree with incorporating medical publications and amended future versions into Department regulations. We do not support the imposition of a penalty for employers and insurers who don't file timely proof-of-insurance.
- The WCCA at this time is not taking a position on the phasing out of the Second Injury Fund. However, we are concerned about what happens to any surplus funds once all claims are paid and closed. Because this money is paid directly by employers and insurance companies specifically for the purpose of paying claims against the Fund, any surplus should either be returned to employers and insurance carriers or applied to some other purpose that would result in a reduction of premium taxes or WSCAA assessments.
- The WCCA doesn't necessarily oppose a greater percentage of the annual service fees going to fund the Department of Labor and Workforce Development. However, we maintain that the Department of Labor and Workforce Development still needs to implement efficiencies and reform measures designed to reduce costs, such as repealing AS 23.30.005 in whole or in part, before WCCA members are willing to support a change.

As always, the WCCA is available to provide input and guidance on workers' compensation issues. The WCCA believes that comprehensive workers' compensation reform is what Alaska employers need...desperately! Please let us know how we can help.

Sincerely,



Chuck Brady  
President

cc: Commissioner Heidi Drygas  
Alaska Department of Labor & Workforce Development  
P.O. Box 111149  
Juneau, AK 99811

## ***Alaska Trucking Association, Inc.***

3443 Minnesota Drive · Anchorage, Alaska 99503 · Phone (907) 276-1149 · Fax (907) 274-1946

[www.aktrucks.org](http://www.aktrucks.org)

*The authoritative voice of the trucking industry in Alaska*

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### **HB79 OMNIBUS WORKERS' COMPENSATION**

House Labor and Commerce Committee

3:15 pm, February 20, 2017

Aves D. Thompson, Executive Director

Alaska Trucking Association

Thank you. Mr. Chair and members of the committee, I am Aves Thompson, Executive Director of the Alaska Trucking Association. The Alaska Trucking Association is a state wide organization representing the interests of our nearly 200 member companies from Barrow to Ketchikan. Freight movement represents a large chunk of our economy and impacts all of us each and every day. The simple truth is that “if you got it, a truck brought it.”

HB79 proposes changes in AS 23.30.230(a)(11) to add language to define the “tests” to determine when a person is an independent contractor for purposes of workers compensation coverage. The Alaska Trucking Association has some concerns about these tests. The independent contractor or owner operators business model has played an important role in the trucking industry for decades.

Owner-operators serve a valued function within the trucking industry. They are small business owners who rely on their own prudent decision-making and hard work to earn a living and build a business. They offer



*If you got it, a truck brought it...*

---

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professionally-staffed hauling and delivery capacity to motor carriers. Their revenues and profit are directly tied to their level of effort and business judgments – that is, choosing the right truck (make, model and condition) for their operations; deciding how best to finance that truck; selecting repair and maintenance vendors; and deciding whether to hire drivers and substitute drivers. But those initial decisions are only the tip of the iceberg, ongoing business decisions must be made regarding fueling times and vendors; software use including routing programs; insurance coverages, and a wide variety of other needed products-and-services. One of the most critical decisions that owner-operators make is their selection of a motor carrier partner. They must select a carrier whose operations and procedures fit the contractor's business plan. Then as the business grows, the owner-operator must decide the utility of acquiring additional trucks and hiring more drivers and decide whether to partner with multiple carriers.

Motor carriers can rely on the owner-operator's independent motivation and business skills without having to apply the constant and detailed control necessary with the carriers' employee-drivers. The basic bargain the owner-operator strikes with each of its motor-carrier customers turns on the potential for mutual profit. If the owner-operator works hard and makes smart business decisions, he or she profits. The motor carrier profits by the professional, timely, and efficient delivery of freight by this self-motivated independent contractor. The motor carrier can conserve its management resources for other key tasks such as business generation, customer service and financial management.



*If you got it, a truck brought it...*

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Owner operators are an effective method for the industry to quickly respond to changing customer or market demands by allowing expansion and contraction of the work force.

It is also important to note that equipment and driver leasing in the trucking business is heavily regulated by both Federal Statute, 49 USC 14102, Leased Motor Vehicles and US DOT regulation, 49 CFR part 376, Lease and Interchange of Vehicles.

The proposed changes to the WC statute essentially preclude the use of owner operators in the trucking business in a number of different ways. The rules or tests proposed in HB79 dealing with economic reality in (11)(A) rules out an owner operator who works primarily for one motor carrier although the owner operator may work occasionally for other motor carriers. The second instance is in (11)(E), which leaves open interpretation of “direction of the motor carrier to the contractor” or owner operator and does not clearly specify that many times direction is given to the owner operator that results from customer demands or the requirement of some level of governmental law or regulation. The third instance is found in (11)(F) that prohibits a motor carrier from hiring an owner operator to haul a load of freight.

Our first recommendation is to provide an exemption in AS 23.30.230(a) that will exempt truck drivers from the provisions of this act in the same way that taxi drivers and network transportation drivers are exempted in current law and in SB14. This will clearly establish the truck driver owner operator business model in Alaska law.



*If you got it, a truck brought it...*

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Our second recommendation (ATA#1) is the adoption of a distinct truck driver independent contractor/owner operator definition and set of tests. We have provided specific language to the Commissioner of the Department of Labor and Workforce Development to accomplish our recommendation.

Thirdly, we have provided proposed changes to the language contained in HB79 that will help to address our issues but not as effectively as our first recommendation. (ATA #2)

We are happy to work with the proposers of the changes to assist in clarifying the issues.

Thank you for your time and I will try to answer any questions.

Aves Thompson  
Executive Director



*If you got it, a truck brought it...*

ATA  
#1

*American Trucking Associations*  
**INDEPENDENT CONTRACTOR MODEL DEFINITION LANGUAGE**

**PROPOSED BLANKET EXEMPTION**

General Exemption:

An independent contractor is an individual who owns or holds under a bona fide lease a motor vehicle which the individual leases to a motor carrier and who personally operates such leased equipment under a written agreement with the motor carrier that specifies that such operations involve an independent contractor relationship.

**PROPOSED FACTOR TEST**

**Independent Contractor Determination**

A person operating a motor vehicle for a carrier of property under this chapter shall be considered an independent contractor and not an employee if each of the following factors is substantially present:

- a. The person makes a material investment or incurs a material obligation related to equipment contracted to the carrier and used in performing service.
- b. The person has direction and control in meeting and performing contract obligations subject to conformance with governmental dictates, lawful requirements of third parties relative to the transport or other contractual obligations undertaken, and any reasonable administrative and clerical procedures needed for contract administration.
- c. The person has the principal burden of the operating costs and personal expenses related to contract work.
- d. The person's compensation is based primarily on factors related to contract work and not on the number of hours worked and affords the person the opportunity to realize a profit or loss based on the relationship of business receipts and expenditures.
- e. The person is responsible for hiring or otherwise engaging and paying the necessary personnel to operate the equipment and meet any contract obligations related to it.
- f. A written contract governs the relationship and specifies the relationship of the parties to be that of independent contractor and not an employer-employee relationship.

Alaska HB79/SB40 (bills deal with WC)

ATA  
#2

9 \* Sec. 31. AS 23.30.230(a) is amended to read:

10 (a) The following persons are not covered by this chapter:

Al

12 (2) a cleaning person;

13 (3) harvest help and similar part-time or transient help;

14 (4) a person employed as a sports official on a contractual basis and  
15 who officiates only at sports events in which the players are not compensated; in this  
16 paragraph, "sports official" includes an umpire, referee, judge, scorekeeper,  
17 timekeeper, organizer, or other person who is a neutral participant in a sports event;

18 (5) a person employed as an entertainer on a contractual basis;

19 (6) a commercial fisherman, as defined in AS 16.05.940;

20 (7) an individual who drives a taxicab whose compensation and written  
21 contractual arrangement is as described in AS 23.10.055(a)(13), unless the hours  
22 worked by the individual or the areas in which the individual may work are restricted  
23 except to comply with local ordinances;

24 (8) a participant in the Alaska temporary assistance program

25 (AS 47.27) who is engaged in work activities required under AS 47.27.035 other than  
26 subsidized or unsubsidized work or on-the-job training;

27 (9) a person employed as a player or coach by a professional hockey

28 team if the person is covered under a health care insurance plan provided by the

29 professional hockey team, the coverage is applicable to both work related and

30 nonwork related injuries, and the coverage provides medical and related benefits as

31 required under this chapter, except that coverage may not be limited to two years from

1 the date of injury as described under AS 23.30.095(a); in this paragraph, "health care  
2 insurance" has the meaning given in AS 21.12.050; [AND]

3 (10) a person working as a qualified real estate licensee who performs  
4 services under a written contract that provides that the person will not be treated as an  
5 employee for federal income tax or workers' compensation purposes; in this  
6 paragraph, "qualified real estate licensee" means a person who is required to be  
7 licensed under AS 08.88.161 and whose payment for services is directly related to  
8 sales or other output rather than the number of hours worked; and

9 (11) a person employed as an independent contractor; a person is  
10 an independent contractor only if the person

11 (A) maintains a licensed business; [, THE SUCCESS OR  
12 PROFITABILITY OF WHICH DOES NOT DEPEND EXCLUSIVELY OR PRIMARILY ON THE  
13 INDIVIDUAL FOR WHOM OR THE ENTITY FOR WHICH SERVICES ARE PERFORMED; ]

14 (B) has a federal employer identification number issued by  
15 the Internal Revenue Service or has filed business or self-employment  
16 income tax returns with the Internal Revenue Service the previous tax  
17 year, or, for a new business that was not operating in the previous tax  
18 year, intends to file business or self-employment tax returns with the  
19 Internal Revenue Service;

20 (C) has an express contract to perform the services;

21 (D) maintains liability insurance or other insurance policies  
22 necessary to protect the employees, financial interests, and customers of  
23 the person's business;

24 (E) is free from direction and control over the means and  
25 manner of providing services, subject only to the right of the individual  
26 for whom or entity for which the services are provided to specify the  
27 desired results, completion schedule, or range of work hours[;] and any work rules provided  
by any governmental rule, statute or regulation;

28 [ (F) IS ENGAGED IN A TRADE, OCCUPATION, PROFESSION, OR  
29 BUSINESS TO PROVIDE SERVICES THAT ARE OUTSIDE THE USUAL COURSE OF BUSINESS  
30 FOR THE INDIVIDUAL FOR WHOM OR THE ENTITY FOR WHICH THE SERVICES ARE  
31 PERFORMED; ]

2 [(G)] (F) incurs most of the expenses for materials, tools,  
3 equipment, labor, and other operational costs necessary for the person's  
4 business;

5 [(H)] (G) has the opportunity for profit and may suffer loss based  
6 on the management of revenue and expenses with the person's business;

7 [(I)] (H) does not work as part of a team of individuals or entities  
8 on a singular task, such as painting a building or installing a roof, where  
9 the work performed by the person cannot be clearly isolated from the  
10 work performed by other individuals or entities;

11 [(J)] (I) hires, pays, controls, and fires any employees required  
12 to perform the work for which the person was hired; and

13 [(K)] (J) maintains a business location separate from the  
14 location of the individual for whom or the entity for which services are  
performed.

## 2017 Workman's' Comp Issues

I am Shelly Erickson, a small family business owner of multiple business types. I have been the recipient of claims against my workman's comp policies. It has been frustrating that the State of Alaska laws in this area are all written in favor of the employee, no matter what the situation.

Please address the following as you are working on issues with SB29 and HB69  
Repeal Workers' Comp Appeals Commission:

1. New Hires need to reveal or release workman's comp records
  - a. Problem
    - i. New hire physicals are expensive
    - ii. The applicant can and will lie to the medical world
    - iii. Repeat workman's comp claimants continue to abuse the system and employers because of lack of accountability by the law
2. There needs to be laws in place to protect the small businesses from the abuse of employees not following the policies for safety set in place or using the safety gear they are instructed to use.
  - a. The law assumes that the business is irresponsible.
  - b. There is no accountability for the employee in the law who disobey the safety rules repeatedly or intentionally.
  - c. Many small businesses in Homer can share similar complaints.
  - d. Insurance agents have to deal with the FRAUD yearly. There are many examples around Homer and the State of Alaska.
3. Boat owners are assumed to be negligent.

The law is in the deckhands favor – doesn't matter what the deckhand does, the boat owner is negligent.

Insurance has to cave to the fraud because of the law, even when they know there is fraudulent case.
4. Workman's Comp Insurance rates

- a. A very costly system for a small business owner, as the insurance has to settle for amounts in extreme of the problem.
  - b. FRAUD is the cause of high insurance rates
5. There needs to be fair consequences to anyone on either side – employer/employee. This one sided system is wrong and the more desperate people are in their private lives, the more they are looking at ways to get around the law and find money. The State needs to have a place to bring these fraudulent cases to and have them dealt with in a fair way for both the employer and employee. If the law cannot be written so these issues can be fixed within the insurance industry, then the state needs to provide a place for the abuse that is happening within the law to be addressed and make it fair for both sides.
6. People need to buy disability insurance so if they get hurt off the job and become disabled, they use that instead of using workman's comp.

Please include this in your public testimony. I would be more than happy to talk with you or look for creative solutions to improve the workman's comp laws. I know that other business owners and insurance industry would too. This cannot be a political issue, because it is literally about the health and wealth of our small businesses.

Shelly Erickson

PO Box 3695

Homer, AK 99603



WESTERN REGION

1201 K Street

Suite 1850

Sacramento, CA 95814

916-442-7617

[www.aiadc.org](http://www.aiadc.org)

To: The Honorable Governor Bill Walker

From: Katherine Pettibone, Vice President Western Region  
American Insurance Association

Re: SB 40 and HB 79 Worker's Compensation Bills

Position: **SUPPORT**

---

The American Insurance Association is pleased to support SB 40 and HB 79, which streamline procedures in the worker's compensation and reduce the occasions of employees going without coverage. The measures, among other things, eliminate the second injury fund on a prospective basis, provide more clarity in defining a worker as an employee or independent contractor, allow payments by debit card or electronic funds transfer, strengthen penalties on premium fraud and misclassification of employees, and clarify a medical provider's requirement to provide a written request for medical treatment. These measures provide notable improvements to Alaska's worker's compensation system that alleviate unnecessary friction and costs in the system.

The bills contain various improvements helping to provide accountability and adequate coverage for employees. Among other changes, the measures will reduce potential for misclassification of employees and questionable leasing practices, which unfortunately some employers have used to reduce coverage requirements. AIA is very supportive of the independent contractor test contained in the bill, as carriers seek clarity on whether an individual is an employee or an independent contractor.

The legislation also strengthens requirements for employees to report wages they receive while receiving workers' compensation benefits, as well as expanding liability among those employers who are shown to be evading workers' compensation requirements. Helping transparency and accountability will help make sure that both sides of the equation are being accounted for.

Other benefits include streamlining dispute resolution by speeding up the hearings and ending a practice of allowing non-attorneys to represent claimants in hearings. Employers must also authorize medical treatment for an injured worker on a providers' request and the bill ends uncertainty following a 2014 state Supreme Court decision over when treatment must be authorized by employers.

Finally, we endorse the elimination of the Second Injury Fund. The measures would eliminate the second injury fund on a going forward basis. Second injury funds are inconsistent with the

principle that costs should be internalized and, instead, require that all employers subsidize, via the assessment, benefits paid to claimants who were injured at another employer's workplace. Second injury funds tend to generate transaction costs and disputes as questions arise whether a claim properly belongs in the second injury fund. In addition, second injury funds often accumulate large unfunded deficits as the funds' are financed on a pay as you go process through assessments for current benefit payments.

For these reasons, we are pleased to support these measures and thank you for your efforts to improve the worker's compensation system.

Dear Committee Members,

I have been a member of the Alaska Bar since 1977. Some years ago I became aware of a rather chilling practice in the Workers Compensation process that I found inexcusable, and I have been pursuing a "fix" with my local Anchorage Representatives since. Representatives Gara and Spohnholz have been very gracious with their time in addressing this matter with me and the Administration and HB79 would provide minimal resolution of the problem.

Specifically, some Alaska Workers Compensation insurers have refused to provide medical service providers preauthorization for medical services after a claim has been accepted, and this has resulted in employees not receiving medical major procedures for months. Consider the following example. Janet is injured in the workplace and files an uncontested workers comp. claim. Her doctors order shoulder surgery. The doctors' office contacts the insurer and requests preauthorization as they would with respect to any other insurer. The insurer orders a second medical opinion but refuses to provide preauthorization. The doctors will not proceed with the treatment without the preauthorization, and the insurer, claiming no actual legal obligation to provide a preauthorization, refuses to provide one.

The insurers argue that since bills for accepted claims must be paid, and there is no specific requirement that preauthorization be provided, preauthorization is not necessary. This results in medical providers refusing to provide services as they are concerned that the insurer may refuse to pay for services after the service is provided, despite the provisions of the law that the bill must be paid. Second opinions are usually obtained through out-of-state itinerant doctors and may take months to obtain, and even then, insurers will not issue preauthorization. In other words, while purporting to have accepted the claim, the insurer/employer is in fact intimidating and/or chilling medical providers into not providing services for fear that the bills will not be paid.

This practice has been the subject of numerous cases and most recently the Alaska Supreme Court has agreed with the Alaska Workers Compensation Board that this practice is unlawful and amounts to a controversion because payments for medical services are essentially payable under Alaska law at the time the services are prescribed. Nevertheless, insurers continue to engage in these practices, and the worst bit is that faced with the fact that these companies are simply thumbing their noses at Alaskan workers, the previous Administration knowingly determined to take no action with respect to this conduct.

The current Administration argued that any solution should be statutory, and with the Supreme Court decision in Bockus (attached), the Department included in this session's Omnibus Bill, HB79) a provision that would require preauthorization where the claim is not contested. This modest correction of our statutes is critical in order to ensure that the intent of the underlying law is addressed. The current loophole affords insurers an unholy and wholly unacceptable opportunity to delay treatment, in the ghoulish anticipation that treatment will become unnecessary (death comes to us all, eventually).

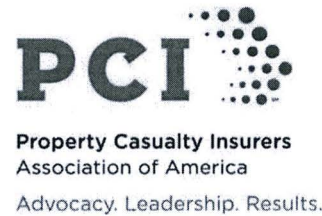
Fix this, please.

Marc Grober, Esq.

p.s. I have also made the attachments available here:

<http://alaskapolicy.net/PublicRecords/HB79/>

This directory includes the Workers Comp Board Bockus decision and the eventual Supreme Court ruling on it, the Kamitchis Board decision and the M-K River Supreme Court decision, all pertinent to any discussion of the preauthorization issue.



To: The Honorable Governor Bill Walker

From: American Insurance Association  
National Association of Mutual Insurance Companies  
Property Casualty Insurers Association of America

Re: SB 40 and HB 79 Worker's Compensation Bills

Position: **SUPPORT**

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The above-named trades are pleased to support SB 40 and HB 79, which streamline procedures in the worker's compensation and reduce the occasions of employees going without coverage. The measures, among other things, eliminate the second injury fund on a prospective basis, provide more clarity in defining a worker as an employee or independent contractor, allow payments by debit card or electronic funds transfer, strengthen penalties on premium fraud and misclassification of employees, and clarify a medical provider's requirement to provide a written request for medical treatment. These measures provide notable improvements to Alaska's worker's compensation system that alleviate unnecessary friction and costs in the system.

The bills contain various improvements helping to provide accountability and adequate coverage for employees. Among other changes, the measures will reduce potential for misclassification of employees and questionable leasing practices, which unfortunately some employers have used to reduce coverage requirements. AIA is very supportive of the independent contractor test contained in the bill, as carriers seek clarity on whether an individual is an employee or an independent contractor.

The legislation also strengthens requirements for employees to report wages they receive while receiving workers' compensation benefits, as well as expanding liability among those employers who are shown to be evading workers' compensation requirements. Helping transparency and accountability will help make sure that both sides of the equation are being accounted for.

Other benefits include streamlining dispute resolution by speeding up the hearings and ending a practice of allowing non-attorneys to represent claimants in hearings. Employers must also authorize medical treatment for an injured worker on a providers' request and the bill ends uncertainty following a 2014 state Supreme Court decision over when treatment must be authorized by employers.

Finally, we endorse the repeal of the Alaska Second Injury Fund. The legislation would repeal the second injury fund on a going forward basis. Second injury funds are inconsistent with the

principle that costs should be internalized and, instead, require that all employers subsidize, via the assessment, benefits paid to claimants who were injured at another employer's workplace.

The trades would note that under the bill Sec 32. AS 23.30.240 appears to change the existing language that makes officers considered employees until opting *out*, to instead flipping the presumption that officers are not employees if they have at least 10% and otherwise have to opt *in*. The trades are fine with the change, however, because of operational requirements, such as the need to change forms, programming and procedures to reflect this change, there is a risk of impacting existing policies mid-term. Therefore, we would ask for a delayed implementation date of a year and ensure it applies to renewals or new policies. We have seen significant problems when similar changes have taken place in other states without an implementation period.

For these reasons, we are pleased to support these measures and thank you for your efforts to improve the worker's compensation system.

# GRIFFARD STEEL, INC.

*Specializing in Steel Erection and Fabrication since 1977!*

PO Box 71416  
2650 Phillips Field Rd.  
Fairbanks, AK 99707-1416  
Phone 907.479.2972  
Fax 907.479.0635  
B.L.#085768  
Cont. Lic. #AA18632



March 13, 2017

House of Labor and Commerce,

I am writing to you in support of HB79. I am a Structural Steel contractor that has been in business in Fairbanks, AK for 40years. In this time, I have noticed that through the bidding process, "independent contracts" seem to have an unfair advantage in times of economic downturn. I believe the reason for this is that they are not reporting their employee's worker compensation classifications correctly.

After review of HB79 I feel that the language in this bill would make it fair for construction contractors state wide because the misclassification through "independent contractors" is so staggering. The HB79 gives the fitting consequences to anyone that would want to misclassify their workers as "independent Contractors". With the financial crisis that the state is in, this bill would help bring in revenue that should be going to the state anyway.

Sincerely,

JD Wilkerson  
President  
Griffard Steel, Inc.



To: House Labor and Commerce Committee  
RE: HB79

I am a state wide General Contractor in Alaska. I am in support of HB79 for the following reasons:

HB79 will level the playing field when it comes to competitive bidding and contractors having and bidding with the correct worker's comp rate.

The enforcing agents need the tools to enforce the law as well as the proper protocol for punishment befitting the crime. I have witnessed less than lackluster contractors under bid substantially with the idea of turning around and misclassifying their employees as Independent contractors. This eliminates the Workers comp rate completely. In the line of work that I am in, structural steel erection is th 5<sup>th</sup> most dangerous job every year. The idea that men and women might be doing this work without worker's comp is mind boggling to me. Once again, I am in support of this bill.

Pat Whalen  
President  
Whalen Construction, INC.

A handwritten signature in black ink that reads 'Pat Whalen'.

# NFIB

The Voice of Small Business.®

ALASKA

February 17, 2017

The Honorable Sam Kito, Chair  
House Labor & Commerce Committee  
State Capitol Building  
Juneau, Alaska 99801-1182

RE: House Bill 79

Dear Representative Kito:

On behalf of the National Federation of Independent Business/Alaska, I wish to respectfully share our opposition to House Bill 79. The National Federation of Independent Business is the largest small-business advocacy group in Alaska.

House Bill 79 attempts to craft a definition of an independent contractor for purposes of the workers compensation program. We believe it is far too narrow and prevents many Alaskan entrepreneurs functioning as the independent contractors they truly are. The proposed definition in Section 31, adding AS 23.30.230(a)(11) will lead to many more specific exemptions to the current law as it does not allow the flexibility necessary for small businesses and independent contractors to function in a customary and reasonable manner in Alaska.

Small businesses often contract with individuals to work as part of a team for a limited time to address a task or proposal when the small business may not have a specific expertise. Often they will contract with an individual that, in the same course of business, may have expertise to add to a project, such as preparing a contract bid. And many times independent individuals may maintain offices in the same location, perhaps even sharing rent in a suite of offices.

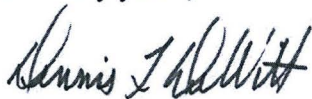
The Internal Revenue Service (IRS) has had a standard dealing with the definition of an independent contractor for many years. It has been litigated and is a fairly well understood standard. We suggest that Alaska use that standard for purposes of workers compensation coverage. I have attached information on that standard for your review.

The IRS standard also has a safe harbor found in Section 530. We believe that Alaska should also have a safe harbor process to accommodate new industries as our employment market changes. An example is current legislation that deals with transportation network company drivers.

The Honorable Sam Kito  
February 17, 2017  
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We appreciate your consideration of our concerns.

Sincerely yours,



Dennis L. DeWitt  
Alaska State Director

Cc: NFIB/AK Leadership Council  
House Labor & Commerce Committee  
Commissioner Drygas, Department of Labor and Workforce Development

Attachments

# NFIB

The Voice of Small Business.®

ALASKA

March 5, 2017

The Honorable Heidi Drygas  
Department of Labor & Workforce Development  
P.O. Box 111149  
Juneau, Alaska 99811-1149

RE: Definition of Independent Contractor

Dear Commissioner Drygas:

On behalf of the National Federation of Independent Business/Alaska, I want to thank you for taking the time to meet with Chris Nettels and me to discuss the proposed definition of an independent contractor for purposes of the workers compensation program. The National Federation of Independent Business is the largest small-business advocacy group in Alaska.

We appreciate your desire to have a simple and concise definition of an independent contractor. As we have agreed, it is not a simple task. The definition proposed in HB 79 and SB 40 would include many valid independent contractors under its terms. Simply, it is far too broad.

Last fall, NFIB/Alaska polled its membership. Approximately 60% of our members objected to any type of legislation that might more tightly define what constitutes an independent contractor for purposes of workers compensation. We asked this question in response to HB 307 introduced in the 29<sup>th</sup> Legislature that included a similar definition to the one found in the above noted bills.

After discussions with the NFIB/Alaska Leadership Council, we request that you recommend deleting the definition from HB 79 and SB 40.

If that is not possible, we recommend the following to replace the current language proposed in Section 31:

An independent contractor generally

- Maintains a business license
- Maintains a contract governing the relationship between parties
- Files or intends to file business or self-employed income tax returns
- Maintains freedom to seek out other business opportunities
- Has direct control in meeting and performing contract obligations
- Compensation is based on factors relating to contract work

Commissioner Drygas

March 5, 2017

Page 2

- Maintains ability to hire, fire, control and provide benefits to persons required to perform the work for which the person has contracted.
- Has the opportunity to realize a profit or loss based on the relationship of business receipts and expenses
- Functions consistent with industry practices

We believe these criteria will offer a reasonable guide without forcing independent contractors to surrender their freedom and become employees. It will also assist small businesses that use independent contractors to expand their capabilities to remain competitive in the marketplace.

Sincerely yours,



Dennis L. DeWitt  
Alaska State Director

Cc: NFIB/AK Leadership Council  
House Labor & Commerce Committee  
Senate Labor & Commerce Committee

March 14, 2017

The Honorable Sam Kito III  
Alaska House of Representatives  
Alaska State Capital Building  
Juneau, Alaska

Subject: HB79, workers' compensation

Dear Representative Kito:

This letter is offer written testimony in regards to HB79, the omnibus workers' compensation bill pending in the House Labor & Commerce Committee. As the Facility Administrator for the Alaska Surgery Center, please know my appreciation for your consideration of these comments.

Section 17 of HB79 contains language that adds additional reference guides from the federal Centers for Medicare and Medicaid Services. We are concerned about the inclusion of the references for both the Hospital Outpatient Prospective Payment System and the Ambulatory Surgical Center Payment System. Our request is that these two references be removed from the bill, and I would like to explain why.

First, basing workers' compensation medical compensation rates on Medicare and Medicaid is fundamentally flawed. Medicare and Medicaid are governmental programs for patients who are generally elderly, frail, physically challenged, or with special needs. Their medical needs are focused generally on long-term care for chronic conditions. These patients are deserving of care, and we are committed to helping them.

Workers' compensation patients are individuals covered under commercial insurance rates, but have been injured in the course of their employment. Based on their commercial insurance coverage, the expectation is that they will receive medical procedures for as full of a

recovery as possible in order for them to return to work. This is an entirely different set of patients than Medicare and Medicaid.

Second, Section 17 has been presented by the Department of Labor as a way to update the medical reimbursement regulations without going through the public process of hearings and review. While this may offer some efficiency in making changes, the entire medical system in Alaska is still adjusting to the new reimbursement system that has existed barely one year.

A major change in workers' compensation for medical providers was enacted in 2014 with the passage of HB316, which changed the entire reimbursement system. HB316 shifted reimbursement rates from a legislatively controlled statute rate over to a regulatory system within the Department of Labor. The new regulations for the medical fee schedule became permanent in March 2016.

An annual system of review was enacted by HB316, and this has yet to occur for the newly adopted regulations. Before making further changes in statute to the workers' compensation medical reimbursement system with more Medicare and Medicaid reference materials, it would help to first complete a discussion and review of the impacts from the new regulatory system.

These new regulations have lowered rates for medical reimbursement in workers' compensation. Last summer my public testimony to the Medical Services Review Committee (MSRC) estimated a loss of over \$2 million per year. We are all seeing significant reductions, and we have yet to fully realize what impact this will have on the availability of medical services for injured workers.

Again, our request is that Section 17 be amended to remove the addition of Medicare and Medicaid references for Hospital Outpatient Prospective Payment System and Ambulatory Surgical Center Payment System. Until there is a review of the current system and its impacts, our fear is that we are only further institutionalizing more complexities and flawed premises into a system that is still adjusting to recent changes.

The Alaska Surgery Center is committed to working with the Legislature and the Department of Labor on creating affordable and responsive medical services for our state's workers' compensation system. We are dedicated members of the community, and we ask that you consider our concerns.

Thank you for this opportunity to offer comment.

Sincerely,

A handwritten signature in cursive script, appearing to read "Kevin Barry".

Kevin Barry, Facility Administrator  
Alaska Surgery Center

CC: Commissioner Heidi Drygas