

ALASKA LEGISLATURE

HOUSE and SENATE FINANCE COMMITTEE FILES, 2005-2006 3007

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FISCAL NOTE #10

STATE OF ALASKA
2005 LEGISLATIVE SESSION

BILL VERSION: HCS CSSB 130(JUD)

ANALYSIS: (continued)

Personal Services:

A new position (WC Officer II) is requested to allow the reemployment benefits section to increase the amount of outreach and counseling to injured workers potentially eligible for retraining (cost \$71.1).

Six new positions (Investigator IV, 2 Investigators III, 2 Investigators II, and an Administrative Clerk III) will form a fraud investigation unit (cost \$397.2).

Travel:

Funding of \$30.0 is necessary for travel and per-diem for the staff and members of the medical review committee. An additional \$5.0 is requested in FY06 to attend the legislative task force meetings. On-going funding of \$60.0 is necessary for the travel, per diem and hotel costs to enable the fraud investigators to travel throughout the state.

Contractual:

Funds of \$100.0 for a consultant and other costs associated with the Medical Services Review Committee are included in the first year for the committee to study the medical delivery system for workers' compensation and \$35.0 thereafter. On-going contractual services funding of \$35.0 for rehabilitation program outcome tracking by the Labor Market Information component is required. Contractual services for the new positions include lease costs (\$56.7); mail (\$8.7); administrative support costs (\$83.2); transcripts, copies, printing, etc (\$16.7), training for the fraud investigators (\$15.0). The establishment of a toll free line is estimated to cost \$15.0.

Commodities: Funding of \$25.5 for supplies for the new positions is required.

Equipment: One time funding for office equipment for the new positions of \$70.0 is requested.

New Fees/Fines:

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

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

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: 11
Bill Version: HCS CSSB 130(JUD)
(H) Publish Date: 5/6/05

Revision Date/Time (Note if correction): _____ Dept. Affected: LAW
Title: "An Act relating to a special deposit for workers' compensation and employers' liability insurers..." RDU: CIVIL
Sponsor: Rules Committee Component: Office of Special Prosecutions and Appeals
Requester: Governor Component No: 2203

Expenditures/Revenues (Thousands of Dollars)

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

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

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

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

Estimate of any current year (FY2005) cost: 00

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

POSITIONS

Full-time	1	1	1	1	1	1
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill amends AS 21 and AS 23 in order to increase the efficiency and flexibility of the current workers' compensation system. This fiscal note addresses Section 64 of the bill which requires that the Department of Law designate at least one-half an attorney positions for the purpose of prosecuting actions for fraudulent acts related to workers' compensation. The Department prefers to add a full-time position which it may very well need to fill half-time. Given that the number of prosecutions the designated position would need to handle is not known, a full time position may be necessary.

The cost associated with a half time attorney is in accordance with the Department of Law's FY 2006 timekeeping and billing rate and includes overhead costs and equipment consistent with the addition of a new attorney position in the Department of Law.

Prepared by: Kathryn A. Daughheteo, Director Phone 465-3673
Division: Administrative Services Division Date/Time 5/5/05 10:53 AM
Approved by: Kathryn Daughheteo for David Márquez, Attorney General Date 5/5/2005
Agency: Department of Law

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: 12
Bill Version: HCS CSSB 130(JUD)
(H) Publish Date: 5/6/05

Revision Date/Time (Note if correction): _____ Dept. Affected: LAW
Title: "An Act relating to a special deposit for workers' compensation and employers' liability insurers..." RDU: CIVIL
Sponsor: Rules Committee Component: Collections and Support
Requester: Governor Component No.: 2210
Appeals: _____

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services	16.2	16.2	16.2	16.2	16.2	16.2
Travel						
Contractual	2.0	2.0	2.0	2.0	2.0	2.0
Supplies	0.2	0.2	0.2	0.2	0.2	0.2
Equipment	1.6	1.6	1.6	1.6	1.6	1.6
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	20.0	20.0	20.0	20.0	20.0	20.0

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

1002 Federal Receipts						
1003 GF Match						
1004 GF	20.0	20.0	20.0	20.0	20.0	20.0
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type—Do not abbreviate)						
TOTAL	20.0	20.0	20.0	20.0	20.0	20.0

Estimate of any current year (FY2005) cost: 0.0

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

POSITIONS

Full-time						
Part-time	1	1	1	1	1	1
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill amends AS 21 and AS 23 in order to increase the efficiency and flexibility of the current workers' compensation system. This fiscal note addresses Sections 25 and 26 of the bill. Section 25 allows the workers' compensation board to assess a civil penalty of \$1,000 per day if an employer fails to comply with a stop order prohibiting the use of employee labor by the employer until the employer insures. A further penalty of \$1,000 per employee per day may be assessed against any employer who fails to insure. Any employer who fails to pay the civil penalty order issued within seven days will have a court judgment and the duty to collect that judgment will fall on the Collections and Support Unit. Section 26 creates the Workers' compensation benefits guaranty fund and allows appropriations from that fund to pay for legal expenses. Furthermore, this section would make the fund liable for amounts owed to employee for compensation and benefits under the Workers' Compensation Act. In instances

Prepared by: Kathryn A. Daughetee, Director Phone 465-3673
Division: Administrative Services Division Date/Time 5/5/05 10:53 AM
Approved by: Kathryn Daughetee for David Márquez, Attorney General Date 5/5/2005
Agency: Department of Law

FISCAL NOTE #12

STATE OF ALASKA
2005 LEGISLATIVE SESSION

BILL NO. HCS CSSB 130(JUD)

ANALYSIS CONTINUATION

where the fund subrogates to the employee's right to payment, the Collections Unit would be responsible for making sure that if there were any funds available from the employer, that money could be collected to offset amounts paid to the employee under subrogation. This fiscal note assumes the primary duty of the fund is to make employees whole, not to pay for all the legal services provided to the Worker's Compensation Division to prosecute fraud, render advice, draft regulations, and collect penalties and subrogation.

This fiscal note anticipates that approximately 250 hours of additional paraprofessional time will be needed each year to conduct bank sweeps and research the availability of money from employers who default of compensation and benefits and/or owe civil penalties to the State.

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: 13
Bill Version: HCS CSSB 130(JUD)
(H) Publish Date: 5/6/05

Revision Date/Time (Note if correction): _____ Dept. Affected: LAW
Title: "An Act relating to a special deposit for workers' RDU: CIVIL
compensation and employers' liability insurers..." Component: Labor & State Affairs
Sponsor: Rules Committee Appeals: _____
Requester: Governor Component No: 2718

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services	104.4	104.4	104.4	104.4	104.4	104.4
Travel	0.3	0.3	0.3	0.3	0.3	0.3
Contractual	12.3	12.3	12.3	12.3	12.3	12.3
Supplies	1.6	1.6	1.6	1.6	1.6	1.6
Equipment	7.4	7.4	7.4	7.4	7.4	7.4
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	126.0	126.0	126.0	126.0	126.0	126.0

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

1002 Federal Receipts						
1003 GF Match						
1004 GF	126.0	126.0	126.0	126.0	126.0	126.0
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type-Do not abbreviate)						
TOTAL	126.0	126.0	126.0	126.0	126.0	126.0

Estimate of any current year (FY2005) cost: 00

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

POSITIONS

Full-time	1	1	1	1	1	1
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*

This bill amends AS 21 and AS 23 in order to increase the efficiency and flexibility of the current workers' compensation system. This fiscal note addresses Section 4 which changes the number of panels that hear workers' compensation matters and requires regulations. Similarly, Section 6 related to the Commissioner of Labor or a designee to hear and decide matters will also require new regulations. Section 26 creates the Workers' Compensation benefits Guaranty Fund and allows subrogation of the fund when employers default on benefits and compensation owed to employees. This section will result in the pursuit of civil claims and subrogation claims on behalf of the fund and defense against improper claims. Section 32 will also require new regulations to establish fees for medical treatment and services under worker's compensation. Additionally, Section 60 of the bill establishes an investigation section within the workers compensation division and Section 29 requires a medical

Prepared by: Kathryn A. Daughhete, Director Phone 465-3673
Division: Administrative Services Division Date/Time: 5/5/05 10:53 AM
Approved by: Kathryn Daughhete for David Marquez, Attorney General Date: 5/5/2005
Agency: Department of Law

FISCAL NOTE #13

STATE OF ALASKA
2005 LEGISLATIVE SESSION

BILL NO. HCS CSSB 130(JUD)

ANALYSIS CONTINUATION

services review committee be established. These newly established units would need require a certain amount of legal advice. It is estimated that the services of three quarters of an attorney would be needed for the previously discussed changes. The Department prefers to add a full-time position which it may very well need to fill part-time. These services cannot be paid

The cost associated with a three-quarters time attorney is in accordance with the Department of Law's FY 2006 timekeeping and billing rate and includes overhead costs and equipment consistent with the addition of a new attorney position in the Department of Law. Given that the number of issues the designated position would need to handle is not known, a full time position may be necessary.

The cost associated with a half time attorney is in accordance with the Department of Law's FY 2006 timekeeping and billing rate and includes overhead costs and equipment consistent with the addition of a new attorney position in the Department of Law.

SB

130

SFIN

FILE

SENATE FINANCE COMMITTEE REPORT

REPORTED OUT
APR 11 2005
SENATE FINANCE
COMMITTEE

DATE: 4/8/05

FURTHER:

DATE TURNED
IN TO OFFICE: 4/11/05

Finance Committee considered

SENATE BILL NO. 130

SB 130 WORKERS' COMPENSATION

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

and recommends:

- be replaced with _____ CS SB 130 (FIN)
- adopt previous _____ CS CS FORTHCOMING (_____)
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to _____ Committee

CS Senate Bill:
 Same Title
 New Title

SCS House Bill:
 Same Title
 Technical Title Change
 New Title w/ SCR # _____

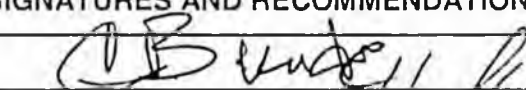
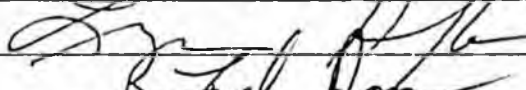
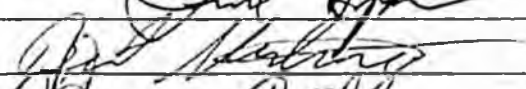
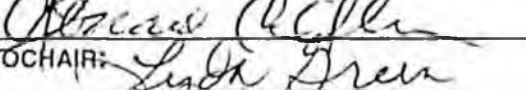
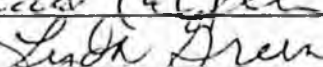

NEW FISCAL NOTE(S):

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Ind.	Zero	FN#
LWF	4/9/05	420.2			
Leg Affairs	4/11/05			✓	

Department	Date	Fiscal	Ind.	Zero	FN#
LED	4/4/05			✓	7
CRT	4/1/05			✓	5

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	DO PASS	DO NOT PASS	NO REC	AMEND
	✓			
			✓	
				
				✓
COCHAIR: 	✓			
COCHAIR: 	✓			

APR 11 2005

SENATE FINANCE
COMMITTEE

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: 7
Bill Version: CSSB 130(JUD)
(S) Publish Date: 4/8/05

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

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

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

Estimate of any current year (FY2005) cost: 0.0

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

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

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

Prepared by: Linda S. Hall, Director
Division: Insurance
Approved by: Edgar Blatchford, Commissioner
Agency: Commerce, Community & Economic Development

Phone: 907-269-7900
Date/Time: 4/4/05 5:09 PM
Date: 4/4/2005

FISCAL NOTE

REPORTED OUT
APR 11 2005
SENATE FINANCE
COMMITTEE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

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

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

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

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

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

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)
 The court system does not anticipate any fiscal impact from the passage of CSSB 130 (L&C).

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

APR 11 2005

SENATE FINANCE
COMMITTEE

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: _____
Bill Version: CSSB 130(JUD)
() Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Legislature
Title: "An Act relating to a special deposit for BRU Legislative Council
workers' compensation and employers' liability insurers..." Component: Council and Subcommittees
Sponsor: "Senate Rules Committee by Request..."
Requestor: Senate Judiciary Component No. 783

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel	0.0	0.0	0.0	0.0	0.0	0.0
Contractual	0.0	0.0	0.0	0.0	0.0	0.0
Supplies	0.0	0.0	0.0	0.0	0.0	0.0
Equipment	0.0	0.0	0.0	0.0	0.0	0.0
Land & Structures	0.0	0.0	0.0	0.0	0.0	0.0
Grants & Claims	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

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

Estimate of any current year (FY2004) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

CSSB 130 (JUD) creates a Task Force on Workers' Compensation in the Legislative Branch to address the improvement of the Alaska workers' compensation system. The Task Force is composed of one member from the Senate appointed by the Senate President, and one Representative appointed by the Speaker of the House. The Senate President and the House Speaker will jointly appoint one minority member from either house, and eight public members. Judiciary Committee staff advises that all meetings will be by teleconference and no travel costs will be incurred. The Task Force will meet and submit a report of proposed legislation to the Legislature before December 1, 2005. Teleconference costs and costs for printing the report will be absorbed within existing budgets. The Task Force will terminate on February 1, 2006.

Prepared by: Karla Schofield, Deputy Director
Division: Administrative Services
Approved by: Pamela Varni, Executive Director
Agency: Legislative Affairs Agency

Phone: 465-6626
Date/Time: 4/11/05 8:05 AM
Date: 4/11/2005

FISCAL NOTE

REPORTED OUT

APR 11 2005

SENATE FINANCE
COMMITTEE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: _____
Bill Version: SB130CS-DOLWD-WC-04-08-05
() Publish Date: _____

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

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services	71.1	71.1	71.1	71.1	71.1	71.1
Travel	50.0	45.0				
Contractual	292.6	267.6	167.6	167.6	167.6	167.6
Supplies	0.5	0.5	0.5	0.5	0.5	0.5
Equipment	6.0					
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	420.2	384.2	239.2	239.2	239.2	239.2

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES (1157)	* 0.0	* 0.0	* 0.0	* 0.0	* 0.0	* 0.0
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
1157 Workers' Safety Account	420.2	384.2	239.2	239.2	239.2	239.2
TOTAL	420.2	384.2	239.2	239.2	239.2	239.2

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

POSITIONS

Full-time	1	1	1	1	1	1
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

(See attached.)

Prepared by: Paul F. Lisankie, Director Phone: 465-6059
Division: Workers' Compensation Date/Time: 4/9/05 12:23 PM
Approved by: Greg O'Claray, Commissioner Date: 4/9/2005
Agency: Department of Labor and Workforce Development

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

BILL VERSION: SB130CS-DOLWD-WC-04-08-05

ANALYSIS: (continued)

Personal Services: A new position (WC Officer II) is requested to allow the reemployment benefits section to increase the amount of outreach and counseling to injured workers potentially eligible for retraining (cost \$71.1). This position would also aid injured workers in assessing options of retraining versus job dislocation benefits.

Travel: Funding of \$45.0 is necessary for travel and per-diem for the staff and members of the medical review committee for FY06 and FY 07. An additional \$5.0 is requested to attend the legislative task force meetings.

Contractual: To implement section 9 (contracting with a non-profit organization to provide legal representation for employees) \$75.0 is requested in FY06 and \$50.0 in FY07 and following years. Funds of \$100.0 for a consultant and other costs associated with the Medical Services Review Committee are included in the first two fiscal years for the committee to study the medical delivery system for workers' compensation (due date 3/1/07). On-going contractual services funding of \$95.0 for fraud detection through an interagency contract with the Employment Security Division (\$60.0) and for rehabilitation program outcome tracking by the Labor Market Information component (\$35.0) is required. Contractual services for the new position include lease costs (\$6.7); mail (\$2.0); and interagency transfers (\$13.9).

Commodities: Funding for supplies for the new position of \$.5.

Equipment: One time funding for office equipment for the new position of \$6.0.

New Fees/Fines:

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

* Penalties may be up to \$1,000.00 per employee per day. In FY04 100 employers were found without workers' compensation insurance; however, the amount of any penalties cannot be determined. Any penalties assessed will be deposited to the Workers' Compensation Guaranty Fund established by this legislation. The Guaranty Fund will use those funds to pay benefits to workers injured while employed by an uninsured employer. The amount of those benefits is also indeterminate.

SENATE FINANCE
COMMITTEE
Amendment Number: #1
Bill Number: SB 130
Sponsor: Green Date: 4/11/09
Logged In By: Mindy

adopted

AMENDMENT

OFFERED IN SENATE FINANCE
COMMITTEE
TO: CSSB 130(JUD)

BY SENATOR GREEN

- 1 Page 21, Delete Section 34.
- 2 Renumber all other sections accordingly.

SENATE FINANCE COMMITTEE
4 / 11 / 2005 COMMITTEE ACTION

Bill Number	SB 130		
Amendment	#1		
Motion	adpt		
<u>Motion by</u>	Wilken		
<u>Objection by</u>	none		
<u>Removed</u>			
<u>Second Objection by</u>			
<u>Committee Member</u>	<u>Y</u>	<u>Vote</u>	<u>N</u>
Senator Bunde			
Senator Dyson			
Senator Hoffman			
Senator Olson			
Senator Stedman			
Co-Chair Wilken			
Co-Chair Green			
<u>Tally</u>			
Yea			
Nay			
Absent			
MOTION	Pass		



Official Business

Alaska State Senate

Senate Finance Committee

Mail Stop 3100
State Capitol
Juneau, Alaska 99801-1182

FAX COVER SHEET

DATE: 11 April 2005 TIME: 9:55am

TO: Legal Services

NUMBER OF PAGES, INCLUDING COVER SHEET: 2

FROM: MINDY ROWLAND
SENATE FINANCE COMMITTEE SECRETARY
PHONE: 465-4935
FAX: 465-2187

NOTES: Final Please

CS SB 130 (FIN) 24-GS1112\F

plus 1 amendment - attached

Call if any questions

Thx
Mindy

* Scheduled for Sen. Floor
on Tues. am

*

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

BY THE SENATE FINANCE COMMITTEE

Offered:
Referred:

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

A BILL

FOR AN ACT ENTITLED

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

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

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

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

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

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

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

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

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

6 (1) \$100,000; or

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

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

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

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

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

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

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

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

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

12 * Sec. 5. AS 23.30 is amended by adding a new section to read:

13 **Sec. 23.30.001. Intent of the legislature and construction of chapter.** It is
 14 the intent of the legislature that

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

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

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

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

24 * Sec. 6. AS 23.30.005(a) is amended to read:

25 (a) The Alaska Workers' Compensation Board consists of a southern panel of
 26 three members sitting for the first judicial district, a northern panel of three members
 27 sitting for the second and fourth judicial districts, four southcentral panels of three
 28 members each sitting for the third judicial district, and one panel of three members
 29 that may sit in any judicial district. Each panel must include the commissioner of
 30 labor and workforce development or a hearing officer designated to represent [THE
 31 DESIGNATED REPRESENTATIVE OF] the commissioner, a representative of

1 industry, and a representative of labor. The latter two members of each panel shall be
 2 appointed by the governor and are subject to confirmation by a majority of the
 3 members of the legislature in joint session. The board shall by regulation provide
 4 procedures to avoid conflicts and the appearance of impropriety in hearings.

5 * Sec. 7. AS 23.30.005(b) is amended to read:

6 (b) The commissioner shall act as chair [CHAIRMAN] and executive officer
 7 of the board and chair [CHAIRMAN] of each panel. The commissioner may
 8 designate a representative to act for the commissioner as chair and executive
 9 officer of the board. The commissioner may designate hearing officers to serve as
 10 chairs of panels for hearing claims [IF THE COMMISSIONER DESIGNATES A
 11 REPRESENTATIVE TO ACT FOR THE COMMISSIONER, THE
 12 REPRESENTATIVE SHALL SERVE IN THAT CAPACITY ON THE BOARD
 13 AND ON EACH PANEL].

14 * Sec. 8. AS 23.30.005 is amended by adding new subsections to read:

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

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

20 * Sec. 9. AS 23.30.012 is amended to read:

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

1 **(b) If the claimant or beneficiary is not represented by an attorney**
 2 **licensed to practice in this state or the beneficiary is a minor or incompetent, the**
 3 **agreement shall be reviewed by a panel of the board.** If approved by the board, the
 4 agreement is enforceable the same as an order or award of the board and discharges
 5 the liability of the employer for the compensation notwithstanding the provisions of
 6 AS 23.30.130, 23.30.160, and 23.30.245. The agreement shall be approved by the
 7 board only when the terms conform to the provisions of this chapter, and, if it involves
 8 or is likely to involve permanent disability, the board may require an impartial medical
 9 examination and a hearing in order to determine whether or not to approve the
 10 agreement. Δ [THE BOARD MAY APPROVE] lump-sum settlement may be
 11 approved [SETTLEMENTS] when it appears to be to the best interest of the
 12 employee or beneficiary or beneficiaries.

13 * Sec. 10. AS 23.30.041(a) is amended to read:

14 (a) The director [BOARD] shall select and employ a reemployment benefits
 15 administrator. The director [BOARD] may authorize the administrator to select and
 16 employ additional staff. The administrator is in the partially exempt service under
 17 AS 39.25.120.

18 * Sec. 11. AS 23.30.041(b) is amended to read:

19 (b) The administrator shall

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

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

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

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

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

1 (A) the estimated and actual cost of each active rehabilitation
2 plan;

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

4 (C) a status report on all individuals requesting, waiving,
5 beginning, completing, or terminating a reemployment benefits program
6 including

7 (i) reasons for denial, waiver, suspension, or
8 termination;

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

10 (iii) other information required by the director

11 [DATE];

12 (D) the cost of reemployment benefits;

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

15 (i) the plan's occupational goal and whether the
16 individual obtained work after completion in the planned or
17 another occupation; and

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

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

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

25 * Sec. 12. AS 23.30.041(c) is repealed and reenacted to read:

26 (c) An employee and an employer may stipulate to the employee's eligibility
27 for reemployment benefits at any time. If an employee suffers a compensable injury
28 and, as a result of the injury, the employee is totally unable, for 45 consecutive days,
29 to return to the employee's employment at the time of injury, the administrator shall
30 notify the employee of the employee's rights under this section within 14 days after the
31 45th day. If the employee is totally unable to return to the employee's employment for

1 60 consecutive days as a result of the injury, the employee or employer may request an
 2 eligibility evaluation. The administrator may approve the request if the employee's
 3 injury may permanently preclude the employee's return to the employee's occupation
 4 at the time of the injury. If the employee is totally unable to return to the employee's
 5 employment at the time of the injury for 90 consecutive days as a result of the injury,
 6 the administrator shall, without a request, order an eligibility evaluation unless a
 7 stipulation of eligibility was submitted. If the administrator approves a request or
 8 orders an evaluation, the administrator shall, on a rotating and geographic basis, select
 9 a rehabilitation specialist from the list maintained under (b)(6) of this section to
 10 perform the eligibility evaluation. If the person that employs a rehabilitation specialist
 11 selected by the administrator to perform an eligibility evaluation under this subsection
 12 is performing any other work on the same workers' compensation claim involving the
 13 injured employee, the administrator shall select a different rehabilitation specialist.

14 * Sec. 13. AS 23.30.041(f) is amended to read:

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

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

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

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

30 (4) ~~(3)~~ at the time of medical stability, no permanent impairment is
 31 identified or expected.

1 * Sec. 14. AS 23.30.041(g) is amended to read:

2 (g) Within 30 [15] days after the employee receives the administrator's
3 notification of eligibility for benefits, an employee [WHO DESIRES TO USE THESE
4 BENEFITS] shall give written notice under oath, on a form provided by the
5 division, to the administrator and the employer of the employee's election to
6 either use the reemployment benefits or to accept a job dislocation benefit under
7 (2) of this subsection. The following apply to an election under this subsection:

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

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

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

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

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

26 (3) the form provided by the division for election must specify that
27 the employee understands the scope of the benefits and rights being waived by
28 the election; the administrator shall serve a copy of the executed election form on
29 the parties within 10 days after receiving the form from the employee; the
30 election and waiver of unchosen benefits is effective upon service to the parties; a
31 waiver and election effective under this subsection discharges the employer's

1 liability for the benefits or rights under this section that were not elected; a
 2 waiver may not be modified under AS 23.30.130; the administrator may not
 3 accept an election to accept a job dislocation benefit by an employee who has not
 4 signed a form that conspicuously notes the benefit being waived.

5 * Sec. 15. AS 23.30.041(j) is amended to read:

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

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

17 (k) Benefits related to the reemployment plan may not extend past two years
 18 from date of plan approval or acceptance, whichever date occurs first, at which time
 19 the benefits expire. If an employee reaches medical stability before completion of the
 20 plan, temporary total disability benefits shall cease, and permanent impairment
 21 benefits shall then be paid at the employee's temporary total disability rate. If the
 22 employee's permanent impairment benefits are exhausted before the completion or
 23 termination of the reemployment process [PLAN], the employer shall provide
 24 compensation equal to 70 percent of the employee's spendable weekly wages, but not
 25 to exceed 105 percent of the average weekly wage, until the completion or termination
 26 of the process [PLAN], except that any compensation paid under this subsection is
 27 reduced by wages earned by the employee while participating in the process [PLAN]
 28 to the extent that the wages earned, when combined with the compensation paid under
 29 this subsection, exceed the employee's temporary total disability rate. If permanent
 30 partial disability or permanent partial impairment benefits have been paid in a lump
 31 sum before the employee requested or was found eligible for reemployment benefits,

1 payment of benefits under this subsection is suspended until permanent partial
 2 disability or permanent partial impairment benefits would have ceased, had those
 3 benefits been paid at the employee's temporary total disability rate, notwithstanding
 4 the provisions of AS 23.30.155(j). A permanent impairment benefit remaining unpaid
 5 upon the completion or termination of the plan shall be paid to the employee in a
 6 single lump sum. An employee may not be considered permanently totally disabled so
 7 long as the employee is involved in the rehabilitation process under this chapter. The
 8 fees of the rehabilitation specialist or rehabilitation professional shall be paid by the
 9 employer and may not be included in determining the cost of the reemployment plan.

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

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

14 (1) unreasonable failure to

15 (A) keep appointments;

16 (B) maintain passing grades;

17 (C) attend designated programs;

18 (D) maintain contact with the rehabilitation specialist;

19 (E) cooperate with the rehabilitation specialist in developing a
 20 reemployment plan and participating in activities relating to reemployability on
 21 a full-time basis;

22 (F) comply with the employee's responsibilities outlined in the
 23 reemployment plan; or

24 (G) participate in any planned reemployment activity as
 25 determined by the administrator; or

26 (2) failure to give written notice to the employer of the employee's
 27 choice of rehabilitation specialists within 30 [15] days after receiving notice of
 28 eligibility for benefits from the administrator as required by (g) of this section.

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

30 (p) When the United States Department of Labor publishes a new edition,
 31 revision, or replacement for the "Selected Characteristics of Occupations Defined in

1 the Revised Dictionary of Occupational Titles" referred to in (e) of this section, the
2 director [BOARD] shall, not later than 90 days after the last day of the month in
3 which the new edition, revision, or replacement standard is published, hold an open
4 meeting under AS 44.62.310 to select the proposed date on which the new edition,
5 revision, or replacement standard will be implemented to make all eligibility
6 determinations required under (e) of this section. The date selected by the
7 department [BOARD] for implementing the new edition, revision, or replacement
8 standard may not be later than 90 days after the last day of the month in which the new
9 edition, revision, or replacement standard is published. After the meeting, the
10 director [BOARD] shall issue a public notice announcing the date selected by the
11 department. The requirements of AS 44.62.010 - 44.62.300 do not apply to the
12 selection or announcement of the date under this subsection.

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

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

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

29 (d) If an employer fails to insure or provide security as required by
30 AS 23.30.075, the board may issue a stop order at the request of the division
31 prohibiting the use of employee labor by the employer until the employer insures or

1 provides security as required by AS 23.30.075. 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 has failed to insure or provide security as required by AS 23.30.075.
4 If an employer fails to comply with a stop order issued under this section, the board
5 shall assess a civil penalty of \$1,000 a [PER] day. The employer may not obtain a
6 public contract with the state or a political subdivision of the state for three years
7 following the violation of the stop order.

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

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

24 (f) If an employer fails to insure or provide security as required by
25 AS 23.30.075, the division may petition the board to assess a civil penalty of up to
26 \$1,000 for each employee for each day an employee is employed while the employer
27 failed to insure or provide the security required by AS 23.30.075. The failure of an
28 employer to file evidence of compliance as required by AS 23.30.085 creates a
29 rebuttable presumption that the employer failed to insure or provide security as
30 required by AS 23.30.075.

31 (g) If an employer fails to pay a civil penalty order issued under (d), (e), or (f)

1 of this section within seven days after the date of service of the order upon the
2 employer, the director may declare the employer in default. The director shall file a
3 certified copy of the penalty order and declaration of default with the clerk of the
4 superior court. The court shall, upon the filing of the copy of the order and
5 declaration, enter judgment for the amount declared in default if it is in accordance
6 with law. Anytime after a declaration of default, the attorney general shall, when
7 requested to do so by the director, take appropriate action to ensure collection of the
8 defaulted payment. Review of the judgment may be had as provided under the Alaska
9 Rules of Civil Procedure. Final proceedings to execute the judgment may be had by
10 writ of execution.

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

12 **Sec. 23.30.082. Workers' compensation benefits guaranty fund.** (a) The
13 workers' compensation benefits guaranty fund is established in the general fund to
14 carry out the purposes of this section. The fund is composed of civil penalty payments
15 made by employers under AS 23.30.080, income earned on investment of the money
16 in the fund, money deposited in the fund by the department, and appropriations to the
17 fund. Money appropriated to the fund does not lapse. Amounts in the fund may be
18 appropriated for claims against the fund, for expenses directly related to fund
19 operations and claims, and for legal expenses.

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

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

29 (d) If the fund pays benefits to an employee under this section, the fund shall
30 be subrogated to all of the rights of the employee to the amount paid, and the
31 employee shall assign all right, title, and interest in that portion of the employee's

1 workers' compensation claim and any recovery under AS 23.30.015 to the fund.
2 Money collected by the division on the claim or recovery shall be deposited in the
3 fund.

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

8 (f) The division may contract under AS 36.30 (State Procurement Code) with
9 a person for the person to adjust claims against the fund. The contract may cover one
10 or more claims.

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

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

14 (c) A claim for medical or surgical treatment, or treatment requiring
15 continuing and multiple treatments of a similar nature is not valid and enforceable
16 against the employer unless, within 14 days following treatment, the physician or
17 health care provider giving the treatment or the employee receiving it furnishes to the
18 employer and the board notice of the injury and treatment, preferably on a form
19 prescribed by the board. The board shall, however, excuse the failure to furnish notice
20 within 14 days when it finds it to be in the interest of justice to do so, and it may, upon
21 application by a party in interest, make an award for the reasonable value of the
22 medical or surgical treatment so obtained by the employee. When a claim is made for
23 a course of treatment requiring continuing and multiple treatments of a similar nature,
24 in addition to the notice, the physician or health care provider shall furnish a written
25 treatment plan if the course of treatment will require more frequent outpatient visits
26 than the standard treatment frequency for the nature and degree of the injury and the
27 type of treatments. The treatment plan shall be furnished to the employee and the
28 employer within 14 days after treatment begins. The treatment plan must include
29 objectives, modalities, frequency of treatments, and reasons for the frequency of
30 treatments. If the treatment plan is not furnished as required under this subsection,
31 neither the employer nor the employee may be required to pay for treatments that

1 exceed the frequency standard. The board shall adopt regulations establishing
 2 standards for frequency of treatment. Notwithstanding (a) of this section, a claim
 3 for palliative care or treatment provided after the employee's conditions
 4 medically stable is not valid and enforceable against the employer unless the
 5 employee's attending physician certifies that the palliative care or treatment is
 6 required to enable the employee to continue in the employee's employment at the
 7 time of treatment or to enable the employee to continue to participate in an
 8 agreed upon or approved reemployment plan. Palliative care or treatment is also
 9 subject to the requirements of this subsection if the palliative care or treatment
 10 involves continuing and multiple treatments of a similar nature. Limitations
 11 described in this subsection do not apply if the physician certifies that the
 12 treatment is needed to treat chronic debilitating pain.

13 * Sec. 24. AS 23.30.095(j) is amended to read:

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

19 * Sec. 25. AS 23.30.095 is amended by adding new subsections to read:

20 (n) A generic drug product must be used when dispensing a drug product to an
 21 employee under this chapter unless the attending physician provides justification in
 22 writing explaining the medical necessity for the name-brand drug product. The
 23 department, by regulation, shall establish a preferred drug list and a procedure for
 24 establishing medical necessity to depart from the list and to use a name-brand drug
 25 product. In this subsection, "generic drug product" has the meaning given the term
 26 "equivalent drug product" in AS 08.80.480.

27 (o) For purposes of this chapter, the medical treatment or service that the
 28 nature of the injury or the process of recovery requires under (a) of this section means
 29 treatment or service that is within the recommended guidelines set out in the American
 30 College of Occupational and Environmental Medicine's Occupational Medicine
 31 Practice Guidelines in effect at the time the treatment or service is provided. The

1 American College of Occupational and Environmental Medicine's Occupational
 2 Medicine Practice Guidelines shall be presumed correct on the issue of the nature,
 3 extent, and scope of medical treatment or services. For an injury not covered by the
 4 American College of Occupational and Environmental Medicine's Occupational
 5 Medicine Practice Guidelines, the treatment or service shall be in accordance with
 6 standards based on other scientific, evidence-based medical treatment guidelines
 7 generally recognized by the national medical community and adopted by the board by
 8 regulation, and those standards shall also be presumed correct on the issue of the
 9 nature, extent, and scope of medical treatment or services. Treatment may not be
 10 denied based on American College of Occupational and Environmental Medicine's
 11 Occupational Medicine Practice Guidelines if the treatment for the injury is not
 12 specifically addressed by the American College of Occupational and Environmental
 13 Medicine's Occupational Medicine Practice Guidelines.

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

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

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

21 * **Sec. 26.** AS 23.30 is amended by adding a new section to article 2 to read:

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

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

26 (1) the usual, customary, and reasonable fees for the treatment or
 27 service in the community in which it is rendered, not to exceed the fees in the fee
 28 schedule specified by the board in its published bulletin in effect on December 15,
 29 2003; or

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

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

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

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

13 (3) establishment of a list of preferred physicians does not affect the
14 employer's choice of physician for an employer medical examination under
15 AS 23.30.095.

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

23 (d) An employer shall pay an employee's bills for medical treatment under this
24 chapter, excluding prescription charges or transportation for medical treatment, within
25 30 days after the date that the employer receives the provider's bill or a completed
26 report as required by AS 23.30.095(c), whichever is later.

27 (e) Unless the employer controverts a charge, an employer shall reimburse an
28 employee's prescription charges under this chapter within 30 days after the employer
29 received the health care provider's completed report and an itemization of the
30 prescription charges for the employee. Unless the employer controverts a charge, an
31 employer shall reimburse transportation expenses for medical treatment under this

1 chapter within 30 days after the employer received the health care provider's
 2 completed report and an itemization of the date, destination, and transportation
 3 expenses for each date of travel for medical treatment. If the employer does not plan
 4 to make or does not make payment or reimbursement in full as required by this
 5 subsection, the employer shall notify in writing the employee and the employee's
 6 health care provider that payment will not be timely made and the reason for the
 7 nonpayment. The notification must be provided on or before the date that payment is
 8 due under this subsection or (d) of this section.

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

11 * Sec. 27. AS 23.30.100(b) is amended to read:

12 (b) The notice must be in writing, contain the name and address of the
 13 employee, [AND] a statement of the time, place, nature, and cause of the injury or
 14 death, and authority to release records of medical treatment for the injury or
 15 death, and be signed by the employee or by a person on behalf of the employee, or, in
 16 case of death, by a person claiming to be entitled to compensation for the death or by a
 17 person on behalf of that person.

18 * Sec. 28. AS 23.30.107(b) is amended to read:

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

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

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

30 * Sec. 29. AS 23.30.107 is amended by adding a new subsection to read:

31 (c) The division may not assemble, or provide information respecting,

1 individual records for commercial purposes that are outside the scope of this chapter.

2 * Sec. 30. AS 23.30.122 is repealed and reenacted to read:

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

7 * Sec. 31. AS 23.30.175(b) is amended to read:

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

10 (1) the weekly rate of compensation shall be calculated by multiplying
11 the recipient's weekly compensation rate calculated under AS 23.30.180, 23.30.185,
12 23.30.190, 23.30.200, or 23.30.215 [,] by the ratio of the cost of living of the area in
13 which the recipient resides to the cost of living in this state;

14 (2) the calculation required by (1) of this subsection does not apply if
15 the recipient is absent from the state for medical or rehabilitation services not
16 reasonably available in the state;

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

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

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

27 * Sec. 32. AS 23.30.175(c) is amended to read:

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

1 * Sec. 33. AS 23.30.205(e) is amended to read:

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

6 ~~death.~~
7 ~~deleted language~~

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

Amend #1

8 **Sec. 23.30.224. Coordination of benefits.** (a) Notwithstanding other
9 provisions of this chapter, an employer's liability for payment of weekly compensation
10 under AS 23.30.180 or 23.30.185 to an employee eligible for a disability benefit under
11 AS 14.25.130, AS 39.35.400, or 39.35.410 may not exceed the lesser of

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

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

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

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

24 (2) 105 percent of the average weekly wage calculated under
25 AS 23.30.175(d).

26 (c) Notwithstanding other provisions of this chapter, the liability of an
27 employer for payment of compensation for an injury or illness under AS 23.30.180 or
28 23.30.185 to an employee who is covered by a union or group retirement system to
29 which the employer makes contributions under a collective bargaining agreement or
30 by membership in a welfare or pension plan or trust may not exceed the lesser of

31 (1) the difference between 100 percent of the employee's spendable

1 weekly wage and an amount equal to the disability benefit, disability pension, or
2 medical retirement benefit that the employee is eligible to receive as a result of the
3 injury or illness, as calculated on a weekly basis, under the retirement system or
4 welfare or pension plan or trust; or

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

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

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

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

20 (2) 105 percent of the average weekly wage calculated under
21 AS 23.30.175(d).

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

26 (g) If the employee receives a lump sum distribution of disability benefits,
27 disability pension, or medical retirement benefits, the combined workers'
28 compensation and weekly disability or medical retirement benefit specified in this
29 section shall be calculated by assuming that the employee received weekly disability
30 or medical retirement payments under the applicable plan from the date of eligibility
31 for the disability benefit or medical retirement until the total of the weekly payments

1 equals the amount of the lump sum, exclusive of that portion of the lump sum
 2 specifically set aside under the applicable plan for retraining expenses, medical and
 3 transportation expenses, and attorney fees or other legal costs.

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

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

7 An executive officer elected or appointed and empowered in accordance with the
 8 charter and bylaws of a corporation, other than an official of a municipal corporation
 9 or a charitable, religious, educational, or other nonprofit corporation, is an employee
 10 of the corporation under this chapter. However, an executive officer of a corporation
 11 may waive coverage under this chapter, subject to the approval of the director
 12 [COMMISSIONER OF LABOR AND WORKFORCE DEVELOPMENT],
 13 notwithstanding AS 23.30.245(b). Notwithstanding any other provision of this
 14 chapter, an executive officer of a municipal corporation or of a charitable, religious,
 15 educational, or other nonprofit corporation may be brought within the coverage of its
 16 insurance contract by the corporation by specifically including the officer in the
 17 contract of insurance. The election to bring an executive officer within the coverage
 18 continues in force for the period the contract of insurance is in effect. During that
 19 period, an executive officer brought within the coverage of the insurance contract is an
 20 employee of the corporation under this chapter.

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

22 (b) Except as provided in this subsection, a member of a limited liability
 23 company organized under AS 10.50 is not an employee of the company under this
 24 chapter. Notwithstanding any other provision of this chapter, a limited liability
 25 company may bring a member of the company within the coverage of the company's
 26 insurance contract by specifically including the member in the contract of insurance.
 27 The election to bring the member within the company's coverage continues in force
 28 for the period the contract of insurance is in effect. During that period, a member
 29 brought within the coverage of the insurance contract is an employee of the company
 30 under this chapter.

31 * Sec. 37. AS 23.30 is amended by adding a new section to read:

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

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

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

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

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

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

31 (c) The provisions of (b) of this section do not preclude liability for civil

1 damages as described in (b) of this section if the liability arose as a result of reckless,
2 wilful, or intentional misconduct.

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

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

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

29 (g) If the material that the director seeks to obtain is located outside the state,
30 the material may be made available to the director to examine at the place where the
31 material is located. The director may designate representatives, including officials of

1 the state in which the material is located, to inspect the material on behalf of the
 2 director. The director may respond to a request from an official of another state for
 3 similar material.

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

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

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

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

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

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

18 (A) to refer an employee to a physician or other health care
 19 provider; or

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

23 * Sec. 38. AS 23.30.250(a) is amended to read:

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

1 individual to file a fraudulent compensation claim is civilly liable to a person
 2 adversely affected by the conduct, is guilty of theft by deception as defined in
 3 AS 11.46.180, and may be punished as provided by AS 11.46.120 - 11.46.150.

4 * Sec. 39. AS 23.30.250(b) is repealed and reenacted to read:

5 (b) To the extent allowed by law, in a civil action under (a) of this section, an
 6 award of damages by a court or jury may include compensatory damages, subject to
 7 AS 09.17. Attorney fees may be awarded to a prevailing party as allowed by law.

8 * Sec. 40. AS 23.30.260 is amended by adding a new subsection to read:

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

13 * Sec. 41. AS 23.30.395(17) is amended to read:

14 (17) "injury" means accidental injury or death arising out of and in the
 15 course of employment, and an occupational disease or infection that [WHICH] arises
 16 naturally out of the employment or that [WHICH] naturally or unavoidably results
 17 from an accidental injury; "injury" includes breakage or damage to eyeglasses, hearing
 18 aids, dentures, or any prosthetic devices that [WHICH] function as part of the body
 19 and further includes an injury caused by the wilful act of a third person directed
 20 against an employee because of the employment; "injury" does not include
 21 aggravation, acceleration, or combination with a preexisting condition, unless the
 22 employment is the major contributing cause of the disability or need for medical
 23 treatment, and does not include mental injury caused by mental stress, unless it is
 24 established that (A) the work stress was extraordinary and unusual in comparison to
 25 pressures and tensions experienced by individuals in a comparable work environment,
 26 and (B) the work stress was the predominant cause of the mental injury; the amount of
 27 work stress shall be measured by actual events; a mental injury is not considered to
 28 arise out of and in the course of employment if it results from a disciplinary action,
 29 work evaluation, job transfer, layoff, demotion, termination, or similar action, taken in
 30 good faith by the employer;

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

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

3 (A) a licensed medical doctor;

4 (B) a licensed doctor of osteopathy;

5 (C) a licensed dentist or dental surgeon;

6 (D) a licensed physician assistant acting under supervision of a
7 licensed medical doctor or doctor of osteopathy;

8 (E) a licensed nurse practitioner acting under supervision of a
9 licensed medical doctor or doctor of osteopathy; or

10 (F) a licensed chiropractor;

11 (36) "commissioner" means the commissioner of labor and workforce
12 development;

13 (37) "department" means the Department of Labor and Workforce
14 Development;

15 (38) "director" means the director of the division of workers'
16 compensation in the department;

17 (39) "division" means the division of workers' compensation in the
18 department.

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

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

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

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

24 * Sec. 45. AS 23.30.095(f), 23.30.095(l), and 23.30.095(m) are repealed.

25 * Sec. 46. The uncodified law of the State of Alaska is amended by adding a new section to
26 read:

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

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

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

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

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

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

8 (b) The task force established under (a) of the section shall consist of 11 voting
9 members. One member shall be a state senator appointed by the president of the senate, one
10 member shall be a state representative appointed by the speaker of the house of
11 representatives, and one member shall be a member of the minority in either house jointly
12 selected by the president of the senate and the speaker of the house of representatives. Eight
13 members shall be appointed jointly by the president of the senate and speaker of the house of
14 representatives as follows:

15 (1) a representative of the Alaska State Medical Association;

16 (2) an attorney who represents employees in workers' compensation cases;

17 (3) an attorney who represents employers in workers' compensation cases;

18 (4) a representative of the insurance industry that provides workers'
19 compensation insurance;

20 (5) a representative from organized labor;

21 (6) a person representing employees not represented by organized labor;

22 (7) a person representing small businesses; and

23 (8) a person representing larger businesses.

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

25 (1) may begin work immediately upon the appointment of its full voting
26 membership and shall meet at least three times telephonically or in person;

27 (2) shall hold public hearings and may perform research related to its work;

28 (3) may meet in the interim and vote telephonically;

29 (4) shall report its written findings and give a copy of proposed legislation and
30 other recommendations to the president of the senate and the speaker of the house of
31 representatives before December 1, 2005; and

1 (5) is terminated on February 1, 2006.

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

4 APPLICABILITY. The amendment to AS 23.30.175(b) made by sec. 31 of this Act
5 applies to an injury occurring on or after the effective date of sec. 31 of this Act.

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

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

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

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

20 TRANSITION: REGULATIONS. The Department of Labor and Workforce
21 Development and the director of insurance in the Department of Commerce, Community, and
22 Economic Development may proceed to adopt regulations necessary to implement the
23 respective provisions for which each is responsible under this Act. The regulations take effect
24 under AS 44.62 (Administrative Procedure Act), but not before the effective date of the
25 statutory changes.

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

28 TRANSITION: MEDICAL SERVICES REVIEW COMMITTEE STUDY AND
29 REPORT. The medical services review committee appointed by the commissioner of labor
30 and workforce development under AS 23.30.095(j), as amended by sec. 24 of this Act, shall
31 proceed to study medical and related benefits provided under AS 23.30 to determine the

1 appropriateness, necessity, delivery, and cost of the benefits and shall, before the end of the
2 first week of the First Regular Session of the Twenty-Fifth Alaska State Legislature, provide
3 to the legislature and the commissioner of labor and workforce development a report of the
4 results of the study.

5 * Sec. 51. Section 49 of this Act takes effect immediately under AS 01.10.070(c).

6 * Sec. 52. Sections 1 - 4, 31, and 50 of this Act take effect September 1, 2005.

7 * Sec. 53. Except as provided in secs. 51 and 52 of this Act, this Act takes effect August 1,
8 2005.

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Summary of CSSB 130(JUD) Prepared for Senate Finance Committee

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

Protecting Workers' Benefits and Jobs

- Sec. 21 Empower the Division Director to immediately shut down an employer upon completion of an investigation confirming lack of required insurance. (Pages 13-14)
- Sec. 21 Empower the Board to fine uninsured employers up to \$1,000/day/employee. (Pages 13-14)
- Sec. 22 Establish a Benefits Guaranty Fund to receive fines assessed against uninsured employers. Permit the Fund to use those fines to pay benefits to injured workers whose employers were uninsured and fail to pay. Authorize the Fund to pursue reimbursement from the uninsured employer. (Pages 14-15)
- Sec. 2 Protect benefits payments from an insurer's insolvency by requiring in-state deposits to back the insurer's loss reserves. (Pages 2-3)
- Sec. 3 Release the deposits to the Alaska Insurance Guaranty Association, upon the insurer's insolvency, for payment of benefits to injured workers. (Pages 3-4)
- Sec. 47 Implement a thorough review of the workers' compensation system and potential reforms through appointment of a legislative task force. Require a task force report, including reform recommendations, by December 1, 2005. (Pages 28-30)

1 provides security as required by AS 23.30.075. 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 has failed to insure or provide security as required by AS 23.30.075.
 4 If an employer fails to comply with a stop order issued under this section, the board
 5 shall assess a civil penalty of \$1,000 a [PER] day. The employer may not obtain a
 6 public contract with the state or a political subdivision of the state for three years
 7 following the violation of the stop order.

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

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

24 (f) If an employer fails to insure or provide security as required by
 25 AS 23.30.075, the division may petition the board to assess a civil penalty of up to
 26 \$1,000 for each employee for each day an employee is employed while the employer
 27 failed to insure or provide the security required by AS 23.30.075. The failure of an
 28 employer to file evidence of compliance as required by AS 23.30.085 creates a
 29 rebuttable presumption that the employer failed to insure or provide security as
 30 required by AS 23.30.075.

31 (g) If an employer fails to pay a civil penalty order issued under (d), (e), or (f)

1 of this section within seven days after the date of service of the order upon the
2 employer, the director may declare the employer in default. The director shall file a
3 certified copy of the penalty order and declaration of default with the clerk of the
4 superior court. The court shall, upon the filing of the copy of the order and
5 declaration, enter judgment for the amount declared in default if it is in accordance
6 with law. Anytime after a declaration of default, the attorney general shall, when
7 requested to do so by the director, take appropriate action to ensure collection of the
8 defaulted payment. Review of the judgment may be had as provided under the Alaska
9 Rules of Civil Procedure. Final proceedings to execute the judgment may be had by
10 writ of execution.

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

12 **Sec. 23.30.082. Workers' compensation benefits guaranty fund.** (a) The
13 workers' compensation benefits guaranty fund is established in the general fund to
14 carry out the purposes of this section. The fund is composed of civil penalty payments
15 made by employers under AS 23.30.080, income earned on investment of the money
16 in the fund, money deposited in the fund by the department, and appropriations to the
17 fund. Money appropriated to the fund does not lapse. Amounts in the fund may be
18 appropriated for claims against the fund, for expenses directly related to fund
19 operations and claims, and for legal expenses.

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

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

29 (d) If the fund pays benefits to an employee under this section, the fund shall
30 be subrogated to all of the rights of the employee to the amount paid, and the
31 employee shall assign all right, title, and interest in that portion of the employee's

1 workers' compensation claim and any recovery under AS 23.30.015 to the fund.
2 Money collected by the division on the claim or recovery shall be deposited in the
3 fund.

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

8 (f) The division may contract under AS 36.30 (State Procurement Code) with
9 a person for the person to adjust claims against the fund. The contract may cover one
10 or more claims.

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

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

14 (c) A claim for medical or surgical treatment, or treatment requiring
15 continuing and multiple treatments of a similar nature is not valid and enforceable
16 against the employer unless, within 14 days following treatment, the physician or
17 health care provider giving the treatment or the employee receiving it furnishes to the
18 employer and the board notice of the injury and treatment, preferably on a form
19 prescribed by the board. The board shall, however, excuse the failure to furnish notice
20 within 14 days when it finds it to be in the interest of justice to do so, and it may, upon
21 application by a party in interest, make an award for the reasonable value of the
22 medical or surgical treatment so obtained by the employee. When a claim is made for
23 a course of treatment requiring continuing and multiple treatments of a similar nature,
24 in addition to the notice, the physician or health care provider shall furnish a written
25 treatment plan if the course of treatment will require more frequent outpatient visits
26 than the standard treatment frequency for the nature and degree of the injury and the
27 type of treatments. The treatment plan shall be furnished to the employee and the
28 employer within 14 days after treatment begins. The treatment plan must include
29 objectives, modalities, frequency of treatments, and reasons for the frequency of
30 treatments. If the treatment plan is not furnished as required under this subsection,
31 neither the employer nor the employee may be required to pay for treatments that

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

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

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

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

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

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

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

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

6 (1) \$100,000; or

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

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

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

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

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

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

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

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

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

12 * Sec. 5. AS 23.30 is amended by adding a new section to read:

13 Sec. 23.30.001. Intent of the legislature and construction of chapter. It is
 14 the intent of the legislature that

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

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

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

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

24 * Sec. 6. AS 23.30.005(a) is amended to read:

25 (a) The Alaska Workers' Compensation Board consists of a southern panel of
 26 three members sitting for the first judicial district, a northern panel of three members
 27 sitting for the second and fourth judicial districts, four southcentral panels of three
 28 members each sitting for the third judicial district, and one panel of three members
 29 that may sit in any judicial district. Each panel must include the commissioner of
 30 labor and workforce development or a hearing officer designated to represent [THE
 31 DESIGNATED REPRESENTATIVE OF] the commissioner, a representative of

1 work stress shall be measured by actual events; a mental injury is not considered to
 2 arise out of and in the course of employment if it results from a disciplinary action,
 3 work evaluation, job transfer, layoff, demotion, termination, or similar action, taken in
 4 good faith by the employer;

5 * Sec. 43. AS 23.30.395 is amended by adding new paragraphs to read:

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

8 (A) a licensed medical doctor;

9 (B) a licensed doctor of osteopathy;

10 (C) a licensed dentist or dental surgeon;

11 (D) a licensed physician assistant acting under supervision of a
 12 licensed medical doctor or doctor of osteopathy;

13 (E) a licensed nurse practitioner acting under supervision of a
 14 licensed medical doctor or doctor of osteopathy; or

15 (F) a licensed chiropractor;

16 (36) "commissioner" means the commissioner of labor and workforce
 17 development;

18 (37) "department" means the Department of Labor and Workforce
 19 Development;

20 (38) "director" means the director of the division of workers'
 21 compensation in the department;

22 (39) "division" means the division of workers' compensation in the
 23 department.

24 * Sec. 44. AS 37.05.146(e) is amended by adding a new paragraph to read:

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

26 * Sec. 45. AS 39.25.120(e)(14) is amended to read:

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

29 * Sec. 46. AS 23.30.095(f), 23.30.095(l), and 23.30.095(m) are repealed.

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

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

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

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

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

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

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

13 (b) The task force established under (a) of the section shall consist of 11 voting
 14 members. One member shall be a state senator appointed by the president of the senate, one
 15 member shall be a state representative appointed by the speaker of the house of
 16 representatives, and one member shall be a member of the minority in either house jointly
 17 selected by the president of the senate and the speaker of the house of representatives. Eight
 18 members shall be appointed jointly by the president of the senate and speaker of the house of
 19 representatives as follows:

20 (1) a representative of the Alaska State Medical Association;

21 (2) an attorney who represents employees in workers' compensation cases;

22 (3) an attorney who represents employers in workers' compensation cases;

23 (4) a representative of the insurance industry that provides workers'
 24 compensation insurance;

25 (5) a representative from organized labor;

26 (6) a person representing employees not represented by organized labor;

27 (7) a person representing small businesses; and

28 (8) a person representing larger businesses.

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

30 (1) may begin work immediately upon the appointment of its full voting
 31 membership and shall meet at least three times telephonically or in person;

- 1 (2) shall hold public hearings and may perform research related to its work;
2 (3) may meet in the interim and vote telephonically;
3 (4) shall report its written findings and give a copy of proposed legislation and
4 other recommendations to the president of the senate and the speaker of the house of
5 representatives before December 1, 2005; and
6 (5) is terminated on February 1, 2006.

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

9 APPLICABILITY. The amendment to AS 23.30.175(b), made by sec. 31 of this Act
10 applies to an injury occurring on or after the effective date of sec. 31 of this Act.

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

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

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

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

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

31 * Sec. 51. The uncodified law of the State of Alaska is amended by adding a new section to

1 read:

2 TRANSITION: MEDICAL SERVICES REVIEW COMMITTEE STUDY AND
3 REPORT. The medical services review committee appointed by the commissioner of labor
4 and workforce development under AS 23.30.095(j), as amended by sec. 24 of this Act, shall
5 proceed to study medical and related benefits provided under AS 23.30 to determine the
6 appropriateness, necessity, delivery, and cost of the benefits and shall, before the end of the
7 first week of the First Regular Session of the Twenty-Fifth Alaska State Legislature, provide
8 to the legislature and the commissioner of labor and workforce development a report of the
9 results of the study.

10 * Sec. 52. Section 50 of this Act takes effect immediately under AS 01.10.070(c).

11 * Sec. 53. Sections 1 - 4, 31, and 51 of this Act take effect September 1, 2005.

12 * Sec. 54. Except as provided in secs. 52 and 53 of this Act, this Act takes effect August 1,
13 2005.

Summary of CSSB 130(JUD) Prepared for Senate Finance Committee

Quicker and More Efficient Resolution of Disputed Benefits Claims

- Sec. 41 Legalize private attorneys' receipt of a one-time consultation fee up to \$300 to advise injured workers about benefits matters. (Page 27)
- Sec. 8 Allow the Department of Labor & Workforce Development to contract with non-profit organizations to provide information and legal assistance to injured workers unable to obtain private counsel. (Page 5)
- Sec. 8 Permit Workers' Compensation Board to delegate authority to Workers' Compensation Division Director by regulation. (Page 5)
- Sec. 9 Allow injured workers represented by Alaska-licensed attorneys to settle their claims without review by the Workers' Compensation Board. Focus Board review on settlements of workers who are minors, incompetent, or unrepresented by counsel. (Pages 5-6)
- Sec. 6 Formally require use of hearing officers and Board adoption of conflict of interest regulations. (Pages 4-5)

1 chapter; (2) knowingly assists, abets, solicits, or conspires in making a false or
 2 misleading submission affecting the payment, coverage, or other benefit under this
 3 chapter; (3) knowingly misclassifies employees or engages in deceptive leasing
 4 practices for the purpose of evading full payment of workers' compensation insurance
 5 premiums; or (4) employs or contracts with a person or firm to coerce or encourage an
 6 individual to file a fraudulent compensation claim is civilly liable to a person
 7 adversely affected by the conduct, is guilty of theft by deception as defined in
 8 AS 11.46.180, and may be punished as provided by AS 11.46.120 - 11.46.150.

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

10 (b) To the extent allowed by law, in a civil action under (a) of this section, an
 11 award of damages by a court or jury may include compensatory damages, subject to
 12 AS 09.17. Attorney fees may be awarded to a prevailing party as allowed by law.

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

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

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

19 (17) "injury" means accidental injury or death arising out of and in the
 20 course of employment, and an occupational disease or infection that [WHICH] arises
 21 naturally out of the employment or that [WHICH] naturally or unavoidably results
 22 from an accidental injury; "injury" includes breakage or damage to eyeglasses, hearing
 23 aids, dentures, or any prosthetic devices that [WHICH] function as part of the body
 24 and further includes an injury caused by the wilful act of a third person directed
 25 against an employee because of the employment; "injury" does not include
 26 aggravation, acceleration, or combination with a preexisting condition, unless the
 27 employment is the major contributing cause of the disability or need for medical
 28 treatment, and does not include mental injury caused by mental stress, unless it is
 29 established that (A) the work stress was extraordinary and unusual in comparison to
 30 pressures and tensions experienced by individuals in a comparable work environment,
 31 and (B) the work stress was the predominant cause of the mental injury; the amount of

1 industry, and a representative of labor. The latter two members of each panel shall be
 2 appointed by the governor and are subject to confirmation by a majority of the
 3 members of the legislature in joint session. The board shall by regulation provide
 4 procedures to avoid conflicts and the appearance of impropriety in hearings.

5 * Sec. 7. AS 23.30.005(b) is amended to read:

6 (b) The commissioner shall act as chair [CHAIRMAN] and executive officer
 7 of the board and chair [CHAIRMAN] of each panel. The commissioner may
 8 designate a representative to act for the commissioner as chair and executive
 9 officer of the board. The commissioner may designate hearing officers to serve as
 10 chairs of panels for hearing claims [IF THE COMMISSIONER DESIGNATES A
 11 REPRESENTATIVE TO ACT FOR THE COMMISSIONER, THE
 12 REPRESENTATIVE SHALL SERVE IN THAT CAPACITY ON THE BOARD
 13 AND ON EACH PANEL].

14 * Sec. 8. AS 23.30.005 is amended by adding new subsections to read:

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

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

20 * Sec. 9. AS 23.30.012 is amended to read:

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

1 **(b) If the claimant or beneficiary is not represented by an attorney**
 2 **licensed to practice in this state or the beneficiary is a minor or incompetent, the**
 3 **agreement shall be reviewed by a panel of the board.** If approved by the board, the
 4 agreement is enforceable the same as an order or award of the board and discharges
 5 the liability of the employer for the compensation notwithstanding the provisions of
 6 AS 23.30.130, 23.30.160, and 23.30.245. The agreement shall be approved by the
 7 board only when the terms conform to the provisions of this chapter, and, if it involves
 8 or is likely to involve permanent disability, the board may require an impartial medical
 9 examination and a hearing in order to determine whether or not to approve the
 10 agreement. **A [THE BOARD MAY APPROVE] lump-sum settlement may be**
 11 **approved [SETTLEMENTS]** when it appears to be to the best interest of the
 12 employee or beneficiary or beneficiaries.

13 * Sec. 10. AS 23.30.041(a) is amended to read:

14 (a) The **director** [BOARD] shall select and employ a reemployment benefits
 15 administrator. The **director** [BOARD] may authorize the administrator to select and
 16 employ additional staff. The administrator is in the partially exempt service under
 17 AS 39.25.120.

18 * Sec. 11. AS 23.30.041(b) is amended to read:

19 (b) The administrator shall

- 20 (1) enforce regulations adopted by the board to implement this section;
- 21 (2) recommend regulations for adoption by the board that establish
 22 performance and reporting criteria for rehabilitation specialists;
- 23 (3) enforce the quality and effectiveness of reemployment benefits
 24 provided for under this section;
- 25 (4) review on an annual basis the performance of rehabilitation
 26 specialists to determine continued eligibility for delivery of rehabilitation services;
- 27 (5) submit to the department, on or before May 1 of each year, a report
 28 of reemployment benefits provided under this section for the previous calendar year;
 29 the report must include a general section, sections related to each rehabilitation
 30 specialist employed under this section, and a statistical summary of all rehabilitation
 31 cases, including

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

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

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

12 * **Sec. 5.** AS 23.30 is amended by adding a new section to read:

13 **Sec. 23.30.001. Intent of the legislature and construction of chapter.** It is
 14 the intent of the legislature that

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

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

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

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

24 * **Sec. 6.** AS 23.30.005(a) is amended to read:

25 (a) The Alaska Workers' Compensation Board consists of a southern panel of
 26 three members sitting for the first judicial district, a northern panel of three members
 27 sitting for the second and fourth judicial districts, four southcentral panels of three
 28 members each sitting for the third judicial district, and one panel of three members
 29 that may sit in any judicial district. Each panel must include the commissioner of
 30 labor and workforce development or a hearing officer designated to represent [THE
 31 DESIGNATED REPRESENTATIVE OF] the commissioner, a representative of

1 industry, and a representative of labor. The latter two members of each panel shall be
 2 appointed by the governor and are subject to confirmation by a majority of the
 3 members of the legislature in joint session. The board shall by regulation provide
 4 procedures to avoid conflicts and the appearance of impropriety in hearings.

5 * Sec. 7. AS 23.30.005(b) is amended to read:

6 (b) The commissioner shall act as chair [CHAIRMAN] and executive officer
 7 of the board and chair [CHAIRMAN] of each panel. The commissioner may
 8 designate a representative to act for the commissioner as chair and executive
 9 officer of the board. The commissioner may designate hearing officers to serve as
 10 chairs of panels for hearing claims [IF THE COMMISSIONER DESIGNATES A
 11 REPRESENTATIVE TO ACT FOR THE COMMISSIONER, THE
 12 REPRESENTATIVE SHALL SERVE IN THAT CAPACITY ON THE BOARD
 13 AND ON EACH PANEL].

14 * Sec. 8. AS 23.30.005 is amended by adding new subsections to read:

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

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

20 * Sec. 9. AS 23.30.012 is amended to read:

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

Summary of CSSB 130(JUD) Prepared for Senate Finance Committee

Fair Benefits at Reasonable Employer Cost

- Sec. 31 Cap non-resident compensation rates at those paid to Alaskan residents. (Page 20)
- Sec. 35 Coordinate payments of workers' compensation benefits, and disability benefits under a plan to which an employer also contributed, so combined benefits do not exceed the injured worker's take home pay. (Pages 21-23)
- Sec. 42 Incrementally reduce benefits costs by redefining compensable injuries. Where a work incident aggravates, accelerates, or combines with a preexisting condition, the incident is not a compensable "injury" unless it is "the major contributing cause" of disability or need for medical treatment. (Pages 27-28)
- Sec. 38 Broaden and strengthen anti-fraud provisions enforced by the Board. (Pages 24-26)
- Sec. 39 Improve criminal anti-fraud provisions to facilitate effective prosecution. (Pages 26-27)
- Sec. 40 Authorize the courts to award compensatory damages (but not punitive damages) and attorney's fees for violations of fraud provisions. (Page 27)
- Sec. 37 Confirm that Limited Liability Company members need not have workers' compensation coverage but allow Company to add them to its insurance policy if desired. (Pages 23-24)
- Sec. 27 Speed processing of medical bills by requiring injury report to include release of medical records for treatment of the injury. (Page 19)
- Sec. 28 Maintain confidentiality of worker's medical and rehabilitation records held by Division or Board. (Page 19)
- Sec. 29 Ban the Division from assembling or providing individual records for commercial purposes. (Pages 19-20)

1 individual records for commercial purposes that are outside the scope of this chapter.

2 * **Sec. 30.** AS 23.30.122 is repealed and reenacted to read:

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

7 * **Sec. 31.** AS 23.30.175(b) is amended to read:

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

10 (1) the weekly rate of compensation shall be calculated by multiplying
11 the recipient's weekly compensation rate calculated under AS 23.30.180, 23.30.185,
12 23.30.190, 23.30.200, or 23.30.215 [.] by the ratio of the cost of living of the area in
13 which the recipient resides to the cost of living in this state;

14 (2) the calculation required by (1) of this subsection does not apply if
15 the recipient is absent from the state for medical or rehabilitation services not
16 reasonably available in the state;

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

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

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

27 * **Sec. 32.** AS 23.30.175(c) is amended to read:

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

1 * **Sec. 33.** AS 23.30.205(e) is amended to read:

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

7 * **Sec. 34.** AS 23.30.205 is amended by adding a new subsection to read:

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

12 **Sec. 35.** AS 23.30 is amended by adding a new section to read:

13 **Sec. 23.30.224. Coordination of benefits.** (a) Notwithstanding other
14 provisions of this chapter, an employer's liability for payment of weekly compensation
15 under AS 23.30.180 or 23.30.185 to an employee eligible for a disability benefit under
16 AS 14.25.130, AS 39.35.400, or 39.35.410 may not exceed the lesser of

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

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

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

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

29 (2) 105 percent of the average weekly wage calculated under
30 AS 23.30.175(d).

31 (c) Notwithstanding other provisions of this chapter, the liability of an

1 employer for payment of compensation for an injury or illness under AS 23.30.186 or
 2 23.30.185 to an employee who is covered by a union or group retirement system to
 3 which the employer makes contributions under a collective bargaining agreement or
 4 by membership in a welfare or pension plan or trust may not exceed the lesser of

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

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

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

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

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

25 (2) 105 percent of the average weekly wage calculated under
 26 AS 23.30.175(d).

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

31 (g) If the employee receives a lump sum distribution of disability benefits,

1 disability pension, or medical retirement benefits, the combined workers'
 2 compensation and weekly disability or medical retirement benefit specified in this
 3 section shall be calculated by assuming that the employee received weekly disability
 4 or medical retirement payments under the applicable plan from the date of eligibility
 5 for the disability benefit or medical retirement until the total of the weekly payments
 6 equals the amount of the lump sum, exclusive of that portion of the lump sum
 7 specifically set aside under the applicable plan for retraining expenses, medical and
 8 transportation expenses, and attorney fees or other legal costs.

9 * Sec. 36. AS 23.30.240 is amended to read:

10 Sec. 23.30.240. Officers of corporations, municipal corporations and
 11 nonprofit corporations and members of limited liability companies as employees.
 12 An executive officer elected or appointed and empowered in accordance with the
 13 charter and bylaws of a corporation, other than an official of a municipal corporation
 14 or a charitable, religious, educational, or other nonprofit corporation, is an employee
 15 of the corporation under this chapter. However, an executive officer of a corporation
 16 may waive coverage under this chapter, subject to the approval of the director
 17 [COMMISSIONER OF LABOR AND WORKFORCE DEVELOPMENT],
 18 notwithstanding AS 23.30.245(b). Notwithstanding any other provision of this
 19 chapter, an executive officer of a municipal corporation or of a charitable, religious,
 20 educational, or other nonprofit corporation may be brought within the coverage of its
 21 insurance contract by the corporation by specifically including the officer in the
 22 contract of insurance. The election to bring an executive officer within the coverage
 23 continues in force for the period the contract of insurance is in effect. During that
 24 period, an executive officer brought within the coverage of the insurance contract is an
 25 employee of the corporation under this chapter.

26 * Sec. 37. AS 23.30.240 is amended by adding a new subsection to read:

27 (b) Except as provided in this subsection, a member of a limited liability
 28 company organized under AS 10.50 is not an employee of the company under this
 29 chapter. Notwithstanding any other provision of this chapter, a limited liability
 30 company may bring a member of the company within the coverage of the company's
 31 insurance contract by specifically including the member in the contract of insurance.

1 chapter; (2) knowingly assists, abets, solicits, or conspires in making a false or
 2 misleading submission affecting the payment, coverage, or other benefit under this
 3 chapter; (3) knowingly misclassifies employees or engages in deceptive leasing
 4 practices for the purpose of evading full payment of workers' compensation insurance
 5 premiums; or (4) employs or contracts with a person or firm to coerce or encourage an
 6 individual to file a fraudulent compensation claim is civilly liable to a person
 7 adversely affected by the conduct, is guilty of theft by deception as defined in
 8 AS 11.46.180, and may be punished as provided by AS 11.46.120 - 11.46.150.

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

10 (b) To the extent allowed by law, in a civil action under (a) of this section, an
 11 award of damages by a court or jury may include compensatory damages, subject to
 12 AS 09.17. Attorney fees may be awarded to a prevailing party as allowed by law.

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

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

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

19 (17) "injury" means accidental injury or death arising out of and in the
 20 course of employment, and an occupational disease or infection that [WHICH] arises
 21 naturally out of the employment or that [WHICH] naturally or unavoidably results
 22 from an accidental injury; "injury" includes breakage or damage to eyeglasses, hearing
 23 aids, dentures, or any prosthetic devices that [WHICH] function as part of the body
 24 and further includes an injury caused by the wilful act of a third person directed
 25 against an employee because of the employment; "injury" does not include
 26 aggravation, acceleration, or combination with a preexisting condition, unless the
 27 employment is the major contributing cause of the disability or need for medical
 28 treatment, and does not include mental injury caused by mental stress, unless it is
 29 established that (A) the work stress was extraordinary and unusual in comparison to
 30 pressures and tensions experienced by individuals in a comparable work environment,
 31 and (B) the work stress was the predominant cause of the mental injury; the amount of

1 work stress shall be measured by actual events; a mental injury is not considered to
 2 arise out of and in the course of employment if it results from a disciplinary action,
 3 work evaluation, job transfer, layoff, demotion, termination, or similar action, taken in
 4 good faith by the employer;

5 * Sec. 43. AS 23.30.395 is amended by adding new paragraphs to read:

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

8 (A) a licensed medical doctor;

9 (B) a licensed doctor of osteopathy;

10 (C) a licensed dentist or dental surgeon;

11 (D) a licensed physician assistant acting under supervision of a
 12 licensed medical doctor or doctor of osteopathy;

13 (E) a licensed nurse practitioner acting under supervision of a
 14 licensed medical doctor or doctor of osteopathy; or

15 (F) a licensed chiropractor;

16 (36) "commissioner" means the commissioner of labor and workforce
 17 development;

18 (37) "department" means the Department of Labor and Workforce
 19 Development;

20 (38) "director" means the director of the division of workers'
 21 compensation in the department;

22 (39) "division" means the division of workers' compensation in the
 23 department.

24 * Sec. 44. AS 37.05.146(c) is amended by adding a new paragraph to read:

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

26 * Sec. 45. AS 39.25.120(c)(14) is amended to read:

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

29 * Sec. 46. AS 23.30.095(f), 23.30.095(l), and 23.30.095(m) are repealed.

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

1 The election to bring the member within the company's coverage continues in force
 2 for the period the contract of insurance is in effect. During that period, a member
 3 brought within the coverage of the insurance contract is an employee of the company
 4 under this chapter.

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

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

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

24 (b) Except as provided in (c) of this section, a person is not liable for civil
 25 damages for filing a report concerning a suspected, anticipated, or completed
 26 fraudulent act or a false or misleading statement or representation with, or for
 27 furnishing other information, whether written or oral, concerning a suspected,
 28 anticipated, or completed fraudulent act or false or misleading statements or
 29 representation to

- 30 (1) law enforcement officials or their agents and employees;
 31 (2) the division of workers' compensation, the division of insurance in

1 the Department of Commerce, Community, and Economic Development, or an agency
2 in another state that regulates insurance or workers' compensation:

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

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

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

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

26 (f) The papers, reports, documents, and evidence received under this section or
27 in an investigation arising from information received under this section are not subject
28 to public inspection for so long as the director considers confidentiality to be in the
29 public interest or reasonably necessary to complete an investigation or protect the
30 person investigated from unwarranted injury. Papers, reports, documents, and
31 evidence relative to an investigation under this section are confidential and not subject

1 to subpoena unless, after notice to the director and a hearing, a court determines that
2 the director would not be unduly hindered by public inspection.

3 (g) If the material that the director seeks to obtain is located outside the state,
4 the material may be made available to the director to examine at the place where the
5 material is located. The director may designate representatives, including officials of
6 the state in which the material is located, to inspect the material on behalf of the
7 director. The director may respond to a request from an official of another state for
8 similar material.

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

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

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

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

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

20 (5) except as otherwise authorized under this chapter, to knowingly
21 confer, offer to confer, solicit, agree to accept, or accept property, services, or a
22 benefit

23 (A) to refer an employee to a physician or other health care
24 provider; or

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

28 * Sec. 39. AS 23.30.250(a) is amended to read:

29 (a) A person, including an employee, employer, physician, medical
30 provider, or the representative of a person who (1) knowingly makes a false or
31 misleading statement, representation, or submission related to a benefit under this

1 chapter; (2) knowingly assists, abets, solicits, or conspires in making a false or
 2 misleading submission affecting the payment, coverage, or other benefit under this
 3 chapter; (3) knowingly misclassifies employees or engages in deceptive leasing
 4 practices for the purpose of evading full payment of workers' compensation insurance
 5 premiums; or (4) employs or contracts with a person or firm to coerce or encourage an
 6 individual to file a fraudulent compensation claim is civilly liable to a person
 7 adversely affected by the conduct, is guilty of theft by deception as defined in
 8 AS 11.46.180, and may be punished as provided by AS 11.46.120 - 11.46.150.

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

10 (b) To the extent allowed by law, in a civil action under (a) of this section, an
 11 award of damages by a court or jury may include compensatory damages, subject to
 12 AS 09.17. Attorney fees may be awarded to a prevailing party as allowed by law.

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

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

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

19 (17) "injury" means accidental injury or death arising out of and in the
 20 course of employment, and an occupational disease or infection that [WHICH] arises
 21 naturally out of the employment or that [WHICH] naturally or unavoidably results
 22 from an accidental injury; "injury" includes breakage or damage to eyeglasses, hearing
 23 aids, dentures, or any prosthetic devices that [WHICH] function as part of the body
 24 and further includes an injury caused by the wilful act of a third person directed
 25 against an employee because of the employment; "injury" does not include
 26 aggravation, acceleration, or combination with a preexisting condition, unless the
 27 employment is the major contributing cause of the disability or need for medical
 28 treatment, and does not include mental injury caused by mental stress, unless it is
 29 established that (A) the work stress was extraordinary and unusual in comparison to
 30 pressures and tensions experienced by individuals in a comparable work environment,
 31 and (B) the work stress was the predominant cause of the mental injury; the amount of

1 disability pension, or medical retirement benefits, the combined workers'
2 compensation and weekly disability or medical retirement benefit specified in this
3 section shall be calculated by assuming that the employee received weekly disability
4 or medical retirement payments under the applicable plan from the date of eligibility
5 for the disability benefit or medical retirement until the total of the weekly payments
6 equals the amount of the lump sum, exclusive of that portion of the lump sum
7 specifically set aside under the applicable plan for retraining expenses, medical and
8 transportation expenses, and attorney fees or other legal costs.

9 * Sec. 36. AS 23.30.240 is amended to read:

10 **Sec. 23.30.240. Officers of corporations, municipal corporations and**
11 **nonprofit corporations and members of limited liability companies as employees.**
12 An executive officer elected or appointed and empowered in accordance with the
13 charter and bylaws of a corporation, other than an official of a municipal corporation
14 or a charitable, religious, educational, or other nonprofit corporation, is an employee
15 of the corporation under this chapter. However, an executive officer of a corporation
16 may waive coverage under this chapter, subject to the approval of the director
17 [COMMISSIONER OF LABOR AND WORKFORCE DEVELOPMENT],
18 notwithstanding AS 23.30.245(b). Notwithstanding any other provision of this
19 chapter, an executive officer of a municipal corporation or of a charitable, religious,
20 educational, or other nonprofit corporation may be brought within the coverage of its
21 insurance contract by the corporation by specifically including the officer in the
22 contract of insurance. The election to bring an executive officer within the coverage
23 continues in force for the period the contract of insurance is in effect. During that
24 period, an executive officer brought within the coverage of the insurance contract is an
25 employee of the corporation under this chapter.

26 * Sec. 37. AS 23.30.240 is amended by adding a new subsection to read:

27 (b) Except as provided in this subsection, a member of a limited liability
28 company organized under AS 10.50 is not an employee of the company under this
29 chapter. Notwithstanding any other provision of this chapter, a limited liability
30 company may bring a member of the company within the coverage of the company's
31 insurance contract by specifically including the member in the contract of insurance.

1 The election to bring the member within the company's coverage continues in force
 2 for the period the contract of insurance is in effect. During that period, a member
 3 brought within the coverage of the insurance contract is an employee of the company
 4 under this chapter.

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

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

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

24 (b) Except as provided in (c) of this section, a person is not liable for civil
 25 damages for filing a report concerning a suspected, anticipated, or completed
 26 fraudulent act or a false or misleading statement or representation with, or for
 27 furnishing other information, whether written or oral, concerning a suspected,
 28 anticipated, or completed fraudulent act or false or misleading statements or
 29 representation to

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

31 (2) the division of workers' compensation, the division of insurance in

1 chapter within 30 days after the employer received the health care provider's
 2 completed report and an itemization of the date, destination, and transportation
 3 expenses for each date of travel for medical treatment. If the employer does not plan
 4 to make or does not make payment or reimbursement in full as required by this
 5 subsection, the employer shall notify in writing the employee and the employee's
 6 health care provider that payment will not be timely made and the reason for the
 7 nonpayment. The notification must be provided on or before the date that payment is
 8 due under this subsection or (d) of this section.

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

11 * Sec. 27. AS 23.30.100(b) is amended to read:

12 (b) The notice must be in writing, contain the name and address of the
 13 employee, [AND] a statement of the time, place, nature, and cause of the injury or
 14 death, and authority to release records of medical treatment for the injury or
 15 death, and be signed by the employee or by a person on behalf of the employee, or, in
 16 case of death, by a person claiming to be entitled to compensation for the death or by a
 17 person on behalf of that person.

18 * Sec. 28. AS 23.30.107(b) is amended to read:

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

22 (1) the reemployment benefits administrator, the division, the board,
 23 or the department from releasing medical or rehabilitation records in an employee's
 24 file, without the employee's consent, to a physician providing medical services under
 25 AS 23.30.095(l) or 23.30.110(g), a party to a claim filed by the employee, or a
 26 governmental agency; or

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

30 * Sec. 29. AS 23.30.107 is amended by adding a new subsection to read:

31 (c) The division may not assemble, or provide information respecting,

1 individual records for commercial purposes that are outside the scope of this chapter.

2 * Sec. 30. AS 23.30.122 is repealed and reenacted to read:

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

7 * Sec. 31. AS 23.30.175(b) is amended to read:

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

10 (1) the weekly rate of compensation shall be calculated by multiplying
11 the recipient's weekly compensation rate calculated under AS 23.30.180, 23.30.185,
12 23.30.190, 23.30.200, or 23.30.215 [,] by the ratio of the cost of living of the area in
13 which the recipient resides to the cost of living in this state:

14 (2) the calculation required by (1) of this subsection does not apply if
15 the recipient is absent from the state for medical or rehabilitation services not
16 reasonably available in the state:

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

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

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

27 * Sec. 32. AS 23.30.175(c) is amended to read:

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

Summary of CSSB 130(JUD) Prepared for Senate Finance Committee

Improving Return-to-Work Benefits While Reducing Costs

- Sec. 11 Require improved reporting of reemployment benefits, including plan status and tracking of injured workers' employment status at intervals following retraining plan completion, in order to provide more accurate and detailed information about the functioning and effectiveness of the reemployment benefits system. (Pages 6-7)
- Sec. 12 Reduce delays in determining reemployment benefits eligibility, and resulting costs, by allowing workers and employers to stipulate to eligibility. Further reduce delays by simplifying standards for entitlement to evaluation. (Pages 7-8)
- Sec. 14 Encourage utilization of reemployment benefits, and reduce costs, by requiring worker to either choose to begin the current retraining process within 30 days of eligibility determination or choose to accept new cash job dislocation benefits (\$5,000-13,500) based upon percentage of permanent partial impairment. (Pages 9-10)
- Sec. 16 Changes language to confirm Board practice of awarding benefits under AS 23.30.041(k) during "reemployment process" and to clarify equal treatment of (pre-1988 amendments) "permanent partial disability" and (post-1988 amendments) "permanent partial impairment" benefits. (Page 10-11)
- Sec. 12 Require Reemployment Benefits Administrator in Workers' Compensation Division to increase monitoring of potential conflicts of interest by assigned vocational rehabilitation specialists and reassign cases where conflicts are detected. (Pages 7-8)

1 **(b) If the claimant or beneficiary is not represented by an attorney**
 2 **licensed to practice in this state or the beneficiary is a minor or incompetent, the**
 3 **agreement shall be reviewed by a panel of the board.** If approved by the board, the
 4 agreement is enforceable the same as an order or award of the board and discharges
 5 the liability of the employer for the compensation notwithstanding the provisions of
 6 AS 23.30.130, 23.30.160, and 23.30.245. The agreement shall be approved by the
 7 board only when the terms conform to the provisions of this chapter, and, if it involves
 8 or is likely to involve permanent disability, the board may require an impartial medical
 9 examination and a hearing in order to determine whether or not to approve the
 10 agreement. A [THE BOARD MAY APPROVE] lump-sum **settlement may be**
 11 **approved** [SETTLEMENTS] when it appears to be to the best interest of the
 12 employee or beneficiary or beneficiaries.

13 * Sec. 10. AS 23.30.041(a) is amended to read:

14 (a) The **director** [BOARD] shall select and employ a reemployment benefits
 15 administrator. The **director** [BOARD] may authorize the administrator to select and
 16 employ additional staff. The administrator is in the partially exempt service under
 17 AS 39.25.120.

18 * Sec. 11. AS 23.30.041(b) is amended to read:

19 (b) The administrator shall

- 20 (1) enforce regulations adopted by the board to implement this section;
- 21 (2) recommend regulations for adoption by the board that establish
 22 performance and reporting criteria for rehabilitation specialists;
- 23 (3) enforce the quality and effectiveness of reemployment benefits
 24 provided for under this section;
- 25 (4) review on an annual basis the performance of rehabilitation
 26 specialists to determine continued eligibility for delivery of rehabilitation services;
- 27 (5) submit to the department, on or before May 1 of each year, a report
 28 of reemployment benefits provided under this section for the previous calendar year;
 29 the report must include a general section, sections related to each rehabilitation
 30 specialist employed under this section, and a statistical summary of all rehabilitation
 31 cases, including