

ALASKA LEGISLATURE

HOUSE and SENATE FINANCE COMMITTEE FILES, 2005-2006 3008

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 AS 23.30.041(c) is repealed and reenacted to read: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 (A) the estimated and actual cost of each active rehabilitation  
2 plan;

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29 to return to the employee's employment at the time of injury, the administrator shall  
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 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;

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

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

### Maintaining Medical Benefits While Reducing Costs

- Sec. 26 Reduce health care costs incrementally by resetting the current maximum reimbursement rates for health care services at the maximum level applied to bills for services rendered in 2004. (By using the Alaska Workers' Compensation Board Medical Fee Schedule in effect on December 15, 2003.) (Page 17)
- Sec. 24 Maintain those maximum rates pending a report of an appointed medical review committee's comprehensive examination of the workers' compensation health care delivery system. (Page 16)
- Sec. 51 The committee must report to the Commissioner of Labor & Workforce Development, and the Legislature, no later than the first week of the 25<sup>th</sup> legislative session. (Pages 30-31)
- Sec. 26 Continue to protect workers by providing that they may not be required to pay any fee or charge for health care services provided under the Act. (Page 19)
- Sec. 23 Reduce health care costs incrementally by restricting compensable palliative care to that which an attending physician certifies is required to 1) enable the injured worker to continue time-of-injury employment or 2) participate in an agreed or approved reemployment plan. This limitation does not apply to treatments a physician certifies are needed for chronic, debilitating pain. (Pages 15-16)
- Sec. 25 Seek to promote injured workers' safe and efficient return to health and function by presuming their injuries require the treatments described in the national, peer-reviewed Occupational Medicine Practice Guidelines of the American College of Occupational and Environmental Medicine. Presumption may be rebutted by injured worker's physician's written certification of the treatment at variance with the guidelines and the basis of the physician's conclusion that varying treatment was reasonably required by the nature of the injury or process of recovery. (Page 16-17)
- Sec. 25 Require Board to adopt other guidelines for injuries not covered by the ACOEM Guidelines. Presumption application and means of rebuttal of those standards same as those for ACOEM Guidelines. (Pages 16-17)
- Sec. 25 Take advantage of generic drug cost savings by requiring their use unless a name brand is medically necessary. (Page 16)

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- Sec. 25 Take advantage of potential cost reductions by requiring the Department Of Labor & Workforce Development to adopt a preferred drug list like that developed by the Department of Health & Social Services. (The Department of Labor & Workforce Development must also set procedures for establishing need to depart from list.) (Page 16)
- Sec. 26 Remove roadblocks to potential cost savings by allowing employers to develop preferred provider lists and negotiate fee rates. Workers are not required, and must be informed, that they can choose physicians not on the list. (Pages 17-18)
- Sec. 43 Defines health care providers qualified to be "attending physicians." (Page 28)

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 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 (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.

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 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 enforcea' le  
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  
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 15 review committee, or contract with an existing organization in the state or another  
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 17 appropriateness, necessity, and ce- " medical and related services provided under  
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 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 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 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:

# SENATE COMMITTEE REPORT

DATE: 4/1/05

FURTHER: Finance

DATE TURNED IN TO OFFICE: 4/8/05

Judiciary Committee considered

SENATE BILL NO. 130

## SB 130 WORKERS' COMPENSATION

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

and recommends:

be replaced with \_\_\_\_\_ CS SB 130 ( JUD )

adopt previous \_\_\_\_\_ CS \_\_\_\_\_ ( \_\_\_\_\_ )

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):**

Department	Date	Fiscal	Indet.	Zero	FN#
CEO	4/4			✓	7

**PREVIOUS FISCAL NOTE(S):**

Department	Date	Fiscal	Indet.	Zero	FN#
CRT	4/4			✓	5
LWF	4/4	✓			6

APPROPRIATION - no fiscal note

**SIGNATURES AND RECOMMENDATIONS:**

French  
Gross  
Therriault  
Huggins  
  
Seelins

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

**SENATE COMMITTEE REPORT  
First Committee of Referral**

DATE: 3/3/05

FURTHER: Finance

Date of 5-Day Notice: 3/3/05  
(in accordance with Uniform Rule 23)

DATE TURNED  
IN TO OFFICE: 4/1/05

Labor and Commerce 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 (LEC)
- adopt previous CS (    )
- attached amendment(s)
- adopt Letter of Intent by      Committee
- further referral to      Committee

<b>Senate Bill:</b>	
<input type="checkbox"/>	Same Title
<input checked="" type="checkbox"/>	New Title
<b>House Bill:</b>	
<input type="checkbox"/>	Same Title
<input type="checkbox"/>	Technical Title Change
<input type="checkbox"/>	New Title w/ SCR # <u>    </u>

**NEW FISCAL NOTE(S):** \* FC/FN Rec'd 4/4

Department	Date	Fiscal	Indet.	Zero	FN#
CRT	4/4			✓	5
LWF	4/4	✓			6

**PREVIOUS FISCAL NOTE**

Department	Date	Fiscal	Indet.	Zero	FN#
DCED	2/23/05			✓	2

SIGNATURES AND RECOMMENDATIONS:		Do PASS	Do NOT PASS	No REC	AMEND
Davis	<i>Bettye Davis</i>				X
Ellis	<i>Bob Ellis</i>				X
Seekins	<i>Halpy Seekins</i>			✓	
B. Stevens	<i>B. Stevens</i>	✓			
Bunde	CHAIR: <i>C. Bunde</i>	✓			

8B13C



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STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
JUNEAU

March 3, 2005

The Honorable Ben Stevens  
President of the Senate  
Alaska State Legislature  
State Capitol, Room 111  
Juneau, AK 99801-1182

Dear President Stevens:

Under the authority of article III, section 18, of the Alaska Constitution, I am transmitting a bill related to the workers' compensation system. This bill proposes discrete improvements to the current system. The goal of these changes is to increase the efficiency and flexibility of the current system, and significantly reduce some of its costs, in order to ensure that benefits will continue to be available in substantially the same form they are today without stifling employment opportunities.

The Legislature has consistently striven to have our workers' compensation system quickly and efficiently deliver fair and predictable benefits to injured workers at a reasonable cost to their employers. Despite those efforts, the current system has not kept pace with the pressures caused by a growing, ever-changing workforce and rising medical costs. In response to complaints regarding delays in resolution of claims and the increasing costs of maintaining the current system, the enclosed bill proposes improvements to several areas.

A significant change proposed in this bill is the creation of a workers' compensation appeals commission. Currently, appeals from Alaska Workers' Compensation Board decisions are heard on a rotating basis by individual superior court judges. The bill proposes to have appeals heard by a five-member commission. This commission, like the board itself, would consist of both lay members representing workers and employers as well as a chair with legal training and workers' compensation experience. Appeals would be heard by a panel both knowledgeable in workers' compensation matters and available to produce consistent, legally precedential decisions in an expeditious manner.

COMMITTEE COPY

The Honorable Ben Stevens

March 3, 2005

Page 2

The bill also places increased responsibility for oversight of the system in the hands of the workers' compensation division. The bill would increase the division's ability to investigate fraudulent claims, pursue employers who fail to provide coverage for their employees, and oversee medical costs. Under the current system the division must refer suspected fraudulent claims to other state agencies for investigation. Under this bill, the division would be able to investigate fraudulent claims on its own. The bill would also allow the division to investigate and quickly close down employers who attempt to operate without workers' compensation coverage. The board is then empowered to assess fines for failing to insure and the bill creates a fund to receive those fines and use them to pay benefits to injured workers whose employers failed to insure.

In addition, the bill gives the division additional authority to address medical costs that are now approaching 60 percent of every workers' compensation benefit dollar paid in Alaska. Under this bill, the Commissioner of the Department of Labor and Workforce Development is authorized to empanel a medical services committee. The committee will review the medical benefit delivery system including current charges, as well as the causes for the sharp rise in charges and possible solutions, and make recommendations for appropriate improvements. The committee is charged with reporting its findings and recommendations by March 1, 2007; sufficient time for a thorough study of the costs and appropriateness of the delivery system.

To address the immediate impacts of the recent premium increases and rising direct costs to self-insured businesses, the bill "rolls back" maximum payments to those under the medical fee schedule in effect on December 15, 1999. The bill also authorizes the division to develop a preferred drug list and establishes a statutory preference for generic drugs unless a worker's physician specifies a name brand drug for medical reasons.

The division is assisted in this endeavor by input from employers, insurers, providers, and the use of national, peer-reviewed medical treatment guidelines. Under the current bill, employers, insurers, and providers may agree to charges for services in advance. Workers would be under no obligation to select a physician from this preferred provider list but the rates for these providers' services would be established by contract with the insurer or employer.

The bill also provides the division with guidance in overseeing the efficacy of the medical benefits system. The bill would adopt the American College of Occupational and Environmental Medicine's Occupational Medicine

The Honorable Ben Stevens  
March 3, 2005  
Page 3

Practice Guidelines as a benchmark for medical treatment. The Guidelines provide for quality care while promoting some standardization of medical services. However, if a condition is not addressed by the Guidelines or the worker's physician recommends alternative treatment, the physician has the opportunity to provide medical justification for treatment outside the Guidelines.

In addition, the bill provides workers and employers greater flexibility over certain portions of the worker's claim. Currently, parties may not settle any portion of a worker's claim without board approval. The bill would allow parties represented by legal counsel to more quickly resolve a worker's claim by agreement without board approval, thereby freeing the board to focus on settlements needing more scrutiny such as those involving minors or workers unrepresented by counsel. It would also allow the parties to stipulate to a worker's eligibility for reemployment benefits without the expense and delay of a reemployment eligibility evaluation while also making it easier to exchange unwanted reemployment benefits for a limited cash benefit. This greater flexibility will make the reemployment process more efficient and satisfactory to both parties.

The bill further enhances the efficiency of the current system by expanding workers' access to legal counsel and including a limited release of medical information on the report of injury form. The bill allows the division to contract with non-profit organizations to provide legal services to injured workers unable to obtain private legal counsel. It also provides a limited medical release for medical records of treatment for the reported injury on the initial report of injury form. This second change is aimed at reducing unnecessary delays in payment resulting from a lack of supporting medical documentation for an injured worker's claim.

The bill also reduces insurers' costs by phasing out contributions to the Second Injury Fund. That Fund represents a limited mechanism for reducing impediments to the hire of workers with certain listed physical limitations. That mechanism has become outmoded due to developments in contemporary employment standards including the Americans with Disabilities Act. The Second Injury Fund will not accept new claims and will be phased out as currently accepted claims are paid.

The bill would increase the coordination of benefits between the workers' compensation system and other disability systems. This would minimize the instances where double compensation results in a worker receiving combined disability benefits that exceed their take home pay. Finally, the bill would also

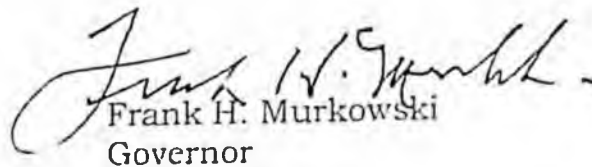
The Honorable Ben Stevens  
March 3, 2005  
Page 4

cap the compensation rates of workers residing outside the State of Alaska to bring them in line with that paid to Alaska resident workers.

This bill represents a major step in bringing the existing system up to date with the current State of Alaska's work force. These changes to specific parts of the existing law are vital to the continuing survival of the workers' compensation system and the availability of a full range of benefits for injured workers in the future.

I urge your prompt and favorable action on this matter.

Sincerely yours,



Frank H. Murkowski  
Governor

Enclosure

**SB**

**131**

SFIN

FILE

# SENATE FINANCE COMMITTEE REPORT

REPORTED OUT

APR 15 2005

SENATE FINANCE  
COMMITTEE

DATE: 4/8/05

FURTHER:

DATE TURNED  
IN TO OFFICE: 4/15/05

Finance Committee considered

SENATE BILL NO. 131

## SB 131 WAGE & HOUR ACT: EXEC/PROF/ADMIN/SALES

"An Act amending the Alaska Wage and Hour Act as it relates to the employment of a person acting in a supervisory capacity; providing definitions for persons employed in administrative, executive, and professional capacities, for persons working in the capacity of an outside salesman, and for persons working in the capacity of a salesman employed on a straight commission basis."

and recommends:

- be replaced with \_\_\_\_\_ CS SB 131 (FINL)
- 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):**

Department	Date	Fiscal	Ind.	Zero	FN#

**PREVIOUS FISCAL NOTE(S):**

Department	Date	Fiscal	Ind.	Zero	FN#
DOL	3/14/05			<input checked="" type="checkbox"/>	1

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	DO PASS	DO NOT PASS	NO REC	AMEND
<i>[Signature]</i>			<input checked="" type="checkbox"/>	
<i>[Signature]</i>	<input checked="" type="checkbox"/>			
<i>[Signature]</i>	<input checked="" type="checkbox"/>			
COCHAIR: <i>[Signature]</i>	<input checked="" type="checkbox"/>			
COCHAIR: <i>[Signature]</i>	<input checked="" type="checkbox"/>			

APR 15 2005

SENATE FINANCE  
COMMITTEE

# FISCAL NOTE

STATE OF ALASKA  
2005 LEGISLATIVE SESSION

Fiscal Note Number 1  
Bill Version: CSSB 131(L&C)  
(S) Publish Date: 4/8/05

Revision Date/Time (Note if correction): \_\_\_\_\_ Department: Labor and Workforce Development  
Title: Wage & Hour Act: Exec/Prof/Admin/Sales RDU: Labor Standards and Safety  
Component: Wage and Hour  
Sponsor: Senate L&C  
Requester: Senate L&C Component Number: 345

**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						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
-----------------------------	--	--	--	--	--	--

<b>CHANGE IN REVENUES ( )</b>						
-------------------------------	--	--	--	--	--	--

**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)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

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

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

There is no anticipated financial impact to the department as a result of this legislation

Prepared by: Grey Mitchell, Director Phone: 465-4855  
 Division: Labor Standards and Safety Date/Time: 3/1/05 8:23 AM  
 Approved by: Greg O'Claray, Commissioner Date: 3/1/2005  
 Agency: Department of Labor and Workforce Development

**ADOPTED**  
SENATE FINANCE  
COMMITTEE  
Amendment Number: #1  
Bill Number: SB 131  
Sponsor: Bunde Date: 4/15/05  
Logged In By: Robin

Senate Amendment

Offered by Senator Bunde  
Amendment to CS for Senate Bill 131(L&C)

24-LS0718/F

1 Page 1, line 7, following "occupations;":

2       Insert "directing retrospective application of the provisions of this Act to work  
3 performed before the effective date of this Act for purposes of claims filed on or after  
4 the effective date of this Act, and disallowing retrospective application for purposes of  
5 claims for that work that are filed before the effective date of this Act;"

6

7 Page 5, following line 30:

8       Insert a new bill section to read:

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

11       APPLICATION AS TO WORK PERFORMED BEFORE THE EFFECTIVE DATE  
12 OF THIS ACT. (a) This Act applies retrospectively to work performed before the effective  
13 date of this Act for purposes of any claim or proceeding based on AS 23.10.050 - 23.10.150  
14 (Alaska Wage and Hour Act) that is filed on or after the effective date of this Act.

15       (b) This Act does not apply to work performed before the effective date of this Act for  
16 purposes of any claim or proceeding based on AS 23.10.050 - 23.10.150 that is filed before  
17 the effective date of this Act."

18

19 Renumber the following bill section accordingly.

SENATE FINANCE COMMITTEE  
4 / 15 / 2005 COMMITTEE ACTION

Bill Number	58131		
Amendment	#1		
Motion	to amend		
<u>Motion by</u>	Wilken		
<u>Objection by</u>	Green		
Removed	✓		
<u>Second Objection by</u>			
<u>Committee Member</u>	Y	<u>Vote</u>	N
Senator Dyson			
Senator Hoffman			
Senator Olson			
Senator Stedman			
Senator Bunde			
Co-Chair Wilken			
Co-Chair Green			
<u>Tally</u>			
Yea			
Nay			
Absent			
<b>MOTION</b>	Passed		

CS FOR SENATE BILL NO. 131(FIN)  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
TWENTY-FOURTH LEGISLATURE - FIRST SESSION

BY THE SENATE FINANCE COMMITTEE

Offered:  
Referred:

Sponsor(s): SENATE LABOR AND COMMERCE COMMITTEE

A BILL  
FOR AN ACT ENTITLED

1 "An Act amending the Alaska Wage and Hour Act as it relates to the employment of a  
2 person acting in a supervisory capacity or in an administrative, executive, or  
3 professional capacity; relating to definitions under the Alaska Wage and Hour Act and  
4 providing definitions for persons employed in administrative, executive, and  
5 professional capacities, for persons working in the capacity of an outside salesman, for  
6 persons working in the capacity of a salesman employed on a straight commission basis,  
7 and for persons that perform computer-related occupations; directing retrospective  
8 application of the provisions of this Act to work performed before the effective date of  
9 this Act for purposes of claims filed on or after the effective date of this Act, and  
10 disallowing retrospective application for purposes of claims for that work that are filed  
11 before the effective date of this Act; and providing for an effective date."

} Amend #

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

1 \* Section 1. AS 23.10.055 is amended to read:

2           **Sec. 23.10.055. Exemptions: compensation of executives, administrators,**  
 3           **and professionals.** The provisions of AS 23.10.050 - 23.10.150 do not apply to

4                   (1) an individual employed in agriculture, which includes farming in  
 5                   all its branches and, among other things, includes the cultivation and tillage of the soil,  
 6                   dairying, the production, cultivation, growing, and harvesting of any agricultural or  
 7                   horticultural commodities, the raising of livestock, bees, fur-bearing animals, or  
 8                   poultry, and any practices, including forestry and lumbering operations, performed by  
 9                   a farmer or on a farm as an incident to or in conjunction with the farming operations,  
 10                   including preparation for market, or delivery to storage or to market or to carriers for  
 11                   transportation to market;

12                   (2) an individual employed in the catching, trapping, cultivating or  
 13                   farming, netting, or taking of any kind of fish, shellfish, or other aquatic forms of  
 14                   animal and vegetable life;

15                   (3) an individual employed in the hand picking of shrimp;

16                   (4) an individual employed in domestic service, including a baby-  
 17                   sitter, in or about a private home;

18                   (5) an individual employed by the United States or by the state or a  
 19                   political subdivision of the state, except as provided in AS 23.10.065(b), including  
 20                   prisoners not on furlough detained or confined in prison facilities;

21                   (6) an individual engaged in the nonprofit activities of a nonprofit  
 22                   religious, charitable, cemetery, or educational organization or other nonprofit  
 23                   organization where the employer-employee relationship does not, in fact, exist, and  
 24                   where services rendered to the organization are on a voluntary basis and are related  
 25                   only to the organization's nonprofit activities; for purposes of this paragraph,  
 26                   "nonprofit activities" means activities for which the nonprofit organization does not  
 27                   incur a liability for unrelated business income tax under 26 U.S.C. 513, as amended;

28                   (7) an employee engaged in the delivery of newspapers to the  
 29                   consumer;

30                   (8) an individual employed solely as a watchman or caretaker of a  
 31                   plant or property that is not in productive use for a period of four months or more;

1 (9) an individual employed

2 (A) in a bona fide executive, administrative, or professional  
3 capacity;

4 (B) [OR] in the capacity of an outside salesman or a salesman  
5 who is employed on a straight commission basis; or

6 (C) as a computer systems analyst, computer programmer,  
7 software engineer, or other similarly skilled worker;

8 (10) an individual employed in the search for placer or hard rock  
9 minerals;

10 (11) an individual under 18 years of age employed on a part-time basis  
11 not more than 30 hours in a week;

12 (12) employment by a nonprofit educational or child care facility to  
13 serve as a parent of children while the children are in residence at the facility if the  
14 employment requires residence at the facility and is compensated on a cash basis  
15 exclusive of room and board at an annual rate of not less than

16 (A) \$10,000 for an unmarried person; or

17 (B) \$15,000 for a married couple;

18 (13) an individual who drives a taxicab, is compensated for taxicab  
19 services exclusively by customers of the service, whose written contractual  
20 arrangements with owners of taxicab vehicles, taxicab permits, or radio dispatch  
21 services are based upon flat contractual rates and not based on a percentage share of  
22 the individual's receipts from customers, and whose written contract with owners of  
23 taxicab vehicles, taxicab permits, or radio dispatch services specifically provides that  
24 the contract places no restrictions on hours worked by the individual or on areas in  
25 which the individual may work except to comply with local ordinances;

26 (14) a person who holds a license under AS 08.54 and who is  
27 employed by a registered guide or master guide licensed under AS 08.54, for the first  
28 60 workdays [WORK DAYS] in which the person is employed by the registered  
29 guide or master guide during a calendar year;

30 (15) an individual engaged in activities for a nonprofit religious,  
31 charitable, civic, cemetery, recreational, or educational organization where the

1 employer-employee relationship does not, in fact, exist, and where services are  
 2 rendered to the organization under a work activity requirement of AS 47.27 (Alaska  
 3 temporary assistance program);

4 (16) an individual who

5 (A) provides emergency medical services only on a voluntary  
 6 basis;

7 (B) serves with a full-time fire department only on a voluntary  
 8 basis; or

9 (C) provides ski patrol services on a voluntary basis; or

10 (17) a student participating in a University of Alaska practicum  
 11 described under AS 14.40.065.

12 \* Sec. 2. AS 23.10.055 is amended by adding new subsections to read:

13 (b) Notwithstanding (c) of this section, an individual employed in a bona fide  
 14 executive, administrative, or professional capacity shall be compensated on a salary or  
 15 fee basis at a rate of not less than two times the state minimum wage for the first 40  
 16 hours of employment each week, exclusive of board or lodging that is furnished by the  
 17 individual's employer.

18 (c) In (a)(9) of this section,

19 (1) "bona fide executive, administrative, or professional capacity" has  
 20 the meaning and shall be interpreted in accordance with 29 U.S.C. 201 - 219 (Fair  
 21 Labor Standards Act of 1938), as amended, or the regulations adopted under those  
 22 sections;

23 (2) "computer systems analyst, computer programmer, software  
 24 engineer, or other similarly skilled worker" has the meaning and shall be interpreted in  
 25 accordance with 29 U.S.C. 201 - 219 (Fair Labor Standards Act of 1938), as amended,  
 26 or the regulations adopted under those sections;

27 (3) "outside salesman" means an employee

28 (A) who is customarily and regularly away from the employer's  
 29 place of business; and

30 (B) whose primary duty is making sales or contracts for sales,  
 31 consignments, or shipment, or obtaining orders for service or for use of

1 facilities for which consideration will be paid by the client or customer;

2 (4) "salesman who is employed on a straight commission basis" means  
3 an employee

4 (A) who is customarily and regularly employed on the business  
5 premises of the employer;

6 (B) who is compensated on a straight commission basis for the  
7 purpose of making sales or contracts for sales, consignments, shipments, or  
8 obtaining orders for services or the use of facilities for which a consideration  
9 will be paid by the client or customer; and

10 (C) whose primary duty is making sales or contracts for sales,  
11 consignments, shipments, or obtaining orders for service or the use of facilities  
12 for which a consideration will be paid by the client or customer.

13 \* Sec. 3. AS 23.10.060(a) is amended to read:

14 (a) An employer who employs employees engaged in commerce or other  
15 business, or in the production of goods or materials in the state, may not employ an  
16 employee for a workweek longer than 40 hours or for more than eight hours a day.  
17 [THIS SECTION DOES NOT APPLY TO THE EMPLOYMENT OF A PERSON  
18 ACTING IN A SUPERVISORY CAPACITY.]

19 \* Sec. 4. AS 23.10.085(b) is amended to read:

20 (b) The regulations may, without limiting the generality of (a) of this section,  
21 define terms used in AS 23.10.050 - 23.10.150, and restrict or prohibit industrial  
22 homework or other acts or practices that the director finds appropriate to carry out the  
23 purpose of AS 23.10.050 - 23.10.150, or to prevent the circumvention or evasion of  
24 AS 23.10.050 - 23.10.150. [IF THE REGULATIONS DEFINING AN INDIVIDUAL  
25 EMPLOYED IN A BONA FIDE EXECUTIVE, ADMINISTRATIVE, OR  
26 PROFESSIONAL CAPACITY FOR PURPOSES OF AS 23.10.055 REQUIRE THAT  
27 THE INDIVIDUAL RECEIVE A MINIMUM SALARY, THE REQUIRED  
28 MINIMUM SALARY MUST BE TWO TIMES THE STATE MINIMUM WAGE  
29 FOR THE FIRST 40 HOURS OF EMPLOYMENT EACH WEEK.]

30 \* Sec. 5. AS 23.10.145 is amended to read:

31 **Sec. 23.10.145. Definitions.** If not defined in this title or in regulations

1 adopted under this title, terms used in AS 23.10.050 - 23.10.150 shall be defined as  
2 they are defined in 29 U.S.C. 201 - 219 ( [THE FEDERAL] Fair Labor Standards Act  
3 of 1938), as amended, or the regulations adopted under those sections [IT].

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

6 APPLICATION AS TO WORK PERFORMED BEFORE THE EFFECTIVE DATE  
7 OF THIS ACT. (a) This Act applies retrospectively to work performed before the effective  
8 date of this Act for purposes of any claim or proceeding based on AS 23.10.050 - 23.10.150  
9 (Alaska Wage and Hour Act) that is filed on or after the effective date of this Act.

10 (b) This Act does not apply to work performed before the effective date of this Act for  
11 purposes of any claim or proceeding based on AS 23.10.050 - 23.10.150 that is filed before  
12 the effective date of this Act.

13 \* Sec. 7. This Act takes effect July 1, 2005.

Amend #1



Alaska State Legislature

Senator Con Bunde  
Senate District P

Vice Chair: Senate Finance Committee  
Chair: Senate Labor & Commerce Committee

**SB 131**  
**SPONSOR STATEMENT**  
**A Senate Labor and Commerce bill**

*"An act amending the Alaska Wage and Hour Act as it relates to the employment of a person acting in a supervisory capacity; providing definitions for persons employed in administrative, executive and professional capacities, for persons working in the capacity of an outside salesman, and for persons working in the capacity of a salesman employed on a straight commission basis."*

Alaska's Wage and Hour Act (AS 23.10.050-23.10.150) establishes the provisions for overtime compensation. AS 23.10.055 sets forth exemptions to the Wage and Hour Act. One of these exemptions is "an individual employed in a bona fide executive, administrative or professional capacity or in the capacity of an outside salesman or a salesman who is employed on a straight commission basis."

As currently defined in our administrative code, the definitions of "executive capacity," "administrative capacity," and "professional capacity" are confusing and difficult to interpret. In order to determine if someone is an executive, administrative or professional employee, you have to use what is known as the "long test." In addition to numerous other factors, the long test includes a calculation of the employee's time spent on "non-exempt work" (i.e. work that is not executive, administrative or professional). If an employee spends more than 20 percent (40 percent in retail or service establishments) of their time on non-exempt work, they become subject to the Wage and Hour Act and can qualify for overtime. The ambiguity within the definitions, including the implementation of the 80/20 test, has led to numerous wage and hour lawsuits, causing great expense to employers and employees.

HB 182 deletes the 80/20 test and sets forth definitions which are much more understandable. The simplicity provided by the new definitions will lead to greater compliance with the statutes. It is in the best interests of both the employer and employee that the statutes are straightforward, practical and easy to follow.

HB 182 also clarifies another area of confusion in the Wage and Hour provisions. Currently, a person acting in a "supervisory capacity" is exempt from payment of overtime, but not exempt from the full Wage and Hour Act. The definition of "supervisory capacity" in the regulations is also ambiguous and difficult to interpret. HB 182 removes this exemption from the statute. There are two reasons for deletion of the provision. The first reason is that due to the uncertainty in interpretation of the definition, the statute is currently unworkable. Secondly, the new definitions of "executive capacity" and "administrative capacity" would subsume a person working in a supervisory capacity. Therefore, there is no need to have a separate provision.

Enacting this bill will eliminate ambiguities, align Alaska more closely with other states and reduce the number of frivolous lawsuits, while protecting workers' rights to receive overtime.

**Sponsor Statement**

## SECTIONAL ANALYSIS FOR CS SB 131(L&C)

*Title: An act amending the Alaska Wage and Hour Act as it relates to the employment of a person acting in a supervisory capacity or in an administrative, executive or professional capacity; relating to definitions under the Alaska Wage and Hour act and providing definitions for persons employed in administrative, executive and professional capacities, for persons working in the capacity of an outside salesman, for persons working in the capacity of a salesman employed on a straight commission basis, and for persons that perform computer-related occupations; and providing for an effective date.*

### CHANGES FROM CS SB 131/G ARE NOTED IN BOLD:

**Section 1:** Adds "computer systems analyst, computer programmer, software engineer or other similarly skilled workers" to the list of exemptions from the Wage & Hour Act.

The previous version had "computer related occupations" within the definition of "professional capacity". We have now broken them out as a separate exemption.

**Section 2:** AS 23.10.055(b)  
Requires individuals employed as executive, administrative and professionals be compensated on a salary of not less than two times the minimum wage for the first 40 hours of employment.

The CS has not changed this provision, but it has been moved within the statutes.

AS 23.10.055(c)(1)

Provides that "bona fide executive, administrative or professional capacity" be defined in accordance with the Fair Labor Standards Act.

The definitions for these terms in the previous version mirrored the federal definitions, but were spelled out within the statute. Because there were questions as to the terms used within the definitions, we have reverted to the federal definitions for the above terms, as provisions have been made for each word used within the federal definitions.

AS 23.10.055(c)(2)

Provides that "computer systems analyst, computer programmer, software engineer or other similarly skilled worker" be defined in accordance with the Fair Labor Standards Act.

This section provides the definition for this exemption found in Section 1 of the bill. Currently, Alaska's regulations defer to the Fair Labor Standards Act when defining computer related occupations. 8 AAC 15.910(a)(11)(iv).

AS 23.10.055(c)(3)

Provides a definition for "outside salesman."

This definition has not changed from the previous version, but it has been moved within the statutes.

AS 23.10.055(c)(4)

Provides a definition for "salesman who is employed on a straight commission basis."

This definition has not changed from the previous version, but it has been moved within the statutes.

**Section 3:** Removes the provision that a person acting in a "supervisory capacity" is exempt from overtime.

This provision has not changed from the previous version, but it has moved to a different section within the bill.

**Section 4:** Deletes the minimum salary requirement when defining these terms in regulation. This salary requirement has been moved to AS 23.10.055(b) (see Section 2).

This provision has not changed from the previous version, but it has moved to a different section within the bill.

**Section 5:** Inserts the United States code reference to the Fair Labor Standards Act of 1938.

This section is new. Where any reference to a federal law is found within our statutes, our drafters would like the correct United States Code references inserted.

**Section 6:** Provides for an effective date of July 1, 2005.

This CS has included an effective date.

CS FOR SENATE BILL NO. 131(L&C)  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
TWENTY-FOURTH LEGISLATURE - FIRST SESSION

BY THE SENATE LABOR AND COMMERCE COMMITTEE

Offered:  
Referred:

Sponsor(s): SENATE LABOR AND COMMERCE COMMITTEE

A BILL  
FOR AN ACT ENTITLED

1 "An Act amending the Alaska Wage and Hour Act as it relates to the employment of a  
2 person acting in a supervisory capacity or in an administrative, executive, or  
3 professional capacity; relating to definitions under the Alaska Wage and Hour Act and  
4 providing definitions for persons employed in administrative, executive, and  
5 professional capacities, for persons working in the capacity of an outside salesman, for  
6 persons working in the capacity of a salesman employed on a straight commission basis,  
7 and for persons that perform computer-related occupations; and providing for an  
8 effective date."

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

10 \* Section 1. AS 23.10.055 is amended to read:

11           Sec. 23.10.055. Exemptions: compensation of executives, administrators,  
12           and professionals. The provisions of AS 23.10.050 - 23.10.150 do not apply to

13           (1) an individual employed in agriculture, which includes farming in

1 all its branches and, among other things, includes the cultivation and tillage of the soil,  
 2 dairying, the production, cultivation, growing, and harvesting of any agricultural or  
 3 horticultural commodities, the raising of livestock, bees, fur-bearing animals, or  
 4 poultry, and any practices, including forestry and lumbering operations, performed by  
 5 a farmer or on a farm as an incident to or in conjunction with the farming operations,  
 6 including preparation for market, or delivery to storage or to market or to carriers for  
 7 transportation to market;

8 (2) an individual employed in the catching, trapping, cultivating or  
 9 farming, netting, or taking of any kind of fish, shellfish, or other aquatic forms of  
 10 animal and vegetable life;

11 (3) an individual employed in the hand picking of shrimp;

12 (4) an individual employed in domestic service, including a baby-  
 13 sitter, in or about a private home;

14 (5) an individual employed by the United States or by the state or a  
 15 political subdivision of the state, except as provided in AS 23.10.065(b), including  
 16 prisoners not on furlough detained or confined in prison facilities;

17 (6) an individual engaged in the nonprofit activities of a nonprofit  
 18 religious, charitable, cemetery, or educational organization or other nonprofit  
 19 organization where the employer-employee relationship does not, in fact, exist, and  
 20 where services rendered to the organization are on a voluntary basis and are related  
 21 only to the organization's nonprofit activities; for purposes of this paragraph,  
 22 "nonprofit activities" means activities for which the nonprofit organization does not  
 23 incur a liability for unrelated business income tax under 26 U.S.C. 513, as amended;

24 (7) an employee engaged in the delivery of newspapers to the  
 25 consumer;

26 (8) an individual employed solely as a watchman or caretaker of a  
 27 plant or property that is not in productive use for a period of four months or more;

28 (9) an individual employed

29 (A) in a bona fide executive, administrative, or professional  
 30 capacity;

31 (B) [OR] in the capacity of an outside salesman or a salesman

1 who is employed on a straight commission basis; or

2 (C) as a computer systems analyst, computer programmer,  
 3 software engineer, or other similarly skilled worker;

4 (10) an individual employed in the search for placer or hard rock  
 5 minerals;

6 (11) an individual under 18 years of age employed on a part-time basis  
 7 not more than 30 hours in a week;

8 (12) employment by a nonprofit educational or child care facility to  
 9 serve as a parent of children while the children are in residence at the facility if the  
 10 employment requires residence at the facility and is compensated on a cash basis  
 11 exclusive of room and board at an annual rate of not less than

12 (A) \$10,000 for an unmarried person; or

13 (B) \$15,000 for a married couple;

14 (13) an individual who drives a taxicab, is compensated for taxicab  
 15 services exclusively by customers of the service, whose written contractual  
 16 arrangements with owners of taxicab vehicles, taxicab permits, or radio dispatch  
 17 services are based upon flat contractual rates and not based on a percentage share of  
 18 the individual's receipts from customers, and whose written contract with owners of  
 19 taxicab vehicles, taxicab permits, or radio dispatch services specifically provides that  
 20 the contract places no restrictions on hours worked by the individual or on areas in  
 21 which the individual may work except to comply with local ordinances;

22 (14) a person who holds a license under AS 08.54 and who is  
 23 employed by a registered guide or master guide licensed under AS 08.54, for the first  
 24 60 workdays [WORK DAYS] in which the person is employed by the registered  
 25 guide or master guide during a calendar year;

26 (15) an individual engaged in activities for a nonprofit religious,  
 27 charitable, civic, cemetery, recreational, or educational organization where the  
 28 employer-employee relationship does not, in fact, exist, and where services are  
 29 rendered to the organization under a work activity requirement of AS 47.27 (Alaska  
 30 temporary assistance program);

31 (16) an individual who

1 (A) provides emergency medical services only on a voluntary  
2 basis;

3 (B) serves with a full-time fire department only on a voluntary  
4 basis; or

5 (C) provides ski patrol services on a voluntary basis; or

6 (17) a student participating in a University of Alaska practicum  
7 described under AS 14.40.065.

8 \* Sec. 2. AS 23.10.055 is amended by adding new subsections to read:

9 (b) Notwithstanding (c) of this section, an individual employed in a bona fide  
10 executive, administrative, or professional capacity shall be compensated on a salary or  
11 fee basis at a rate of not less than two times the state minimum wage for the first 40  
12 hours of employment each week, exclusive of board or lodging that is furnished by the  
13 individual's employer.

14 (c) In (a)(9) of this section,

15 (1) "bona fide executive, administrative, or professional capacity" has  
16 the meaning and shall be interpreted in accordance with 29 U.S.C. 201 - 219 (Fair  
17 Labor Standards Act of 1938), as amended, or the regulations adopted under those  
18 sections;

19 (2) "computer systems analyst, computer programmer, software  
20 engineer, or other similarly skilled worker" has the meaning and shall be interpreted in  
21 accordance with 29 U.S.C. 201 - 219 (Fair Labor Standards Act of 1938), as amended,  
22 or the regulations adopted under those sections;

23 (3) "outside salesman" means an employee

24 (A) who is customarily and regularly away from the employer's  
25 place of business; and

26 (B) whose primary duty is making sales or contracts for sales,  
27 consignments, or shipment, or obtaining orders for service or for use of  
28 facilities for which consideration will be paid by the client or customer;

29 (4) "salesman who is employed on a straight commission basis" means  
30 an employee

31 (A) who is customarily and regularly employed on the business

1 premises of the employer;

2 (B) who is compensated on a straight commission basis for the  
3 purpose of making sales or contracts for sales, consignments, shipments, or  
4 obtaining orders for services or the use of facilities for which a consideration  
5 will be paid by the client or customer; and

6 (C) whose primary duty is making sales or contracts for sales,  
7 consignments, shipments, or obtaining orders for service or the use of facilities  
8 for which a consideration will be paid by the client or customer.

9 \* Sec. 3. AS 23.10.060(a) is amended to read:

10 (a) An employer who employs employees engaged in commerce or other  
11 business, or in the production of goods or materials in the state, may not employ an  
12 employee for a workweek longer than 40 hours or for more than eight hours a day.  
13 [THIS SECTION DOES NOT APPLY TO THE EMPLOYMENT OF A PERSON  
14 ACTING IN A SUPERVISORY CAPACITY.]

15 \* Sec. 4. AS 23.10.085(b) is amended to read:

16 (b) The regulations may, without limiting the generality of (a) of this section,  
17 define terms used in AS 23.10.050 - 23.10.150, and restrict or prohibit industrial  
18 homework or other acts or practices that the director finds appropriate to carry out the  
19 purpose of AS 23.10.050 - 23.10.150, or to prevent the circumvention or evasion of  
20 AS 23.10.050 - 23.10.150. [IF THE REGULATIONS DEFINING AN INDIVIDUAL  
21 EMPLOYED IN A BONA FIDE EXECUTIVE, ADMINISTRATIVE, OR  
22 PROFESSIONAL CAPACITY FOR PURPOSES OF AS 23.10.055 REQUIRE THAT  
23 THE INDIVIDUAL RECEIVE A MINIMUM SALARY, THE REQUIRED  
24 MINIMUM SALARY MUST BE TWO TIMES THE STATE MINIMUM WAGE  
25 FOR THE FIRST 40 HOURS OF EMPLOYMENT EACH WEEK.]

26 \* Sec. 5. AS 23.10.145 is amended to read:

27 **Sec. 23.10.145. Definitions.** If not defined in this title or in regulations  
28 adopted under this title, terms used in AS 23.10.050 - 23.10.150 shall be defined as  
29 they are defined in 29 U.S.C. 201 - 219 ([THE FEDERAL] Fair Labor Standards Act  
30 of 1938), as amended, or the regulations adopted under those sections [IT].

31 \* Sec. 6. This Act takes effect July 1, 2005.



Alaska State Legislature

Senator Con Bunde  
Senate District P

Vice Chair, Senate Finance Committee  
Chair, Senate Labor & Commerce Committee

## SECTIONAL ANALYSIS CS for SB 131 ( )

*Title: An act amending the Alaska Wage and Hour Act as it relates to the employment of a person acting in a supervisory capacity; providing definitions for persons employed in administrative, executive and professional capacities, for persons working in the capacity of an outside salesman, and for persons working in the capacity of a salesman employed on a straight commission basis.*

**Section 1:** Removes the provision that a person acting in a "supervisory capacity" is exempt from overtime. This sentence is being deleted, as "supervisors" will now be covered by the definitions found in Section 3 of the bill.

No changes in CS.

**Section 2:** Deletes the minimum salary requirement when defining these terms in regulation, as these terms will now be defined in statute (see Section 3).

No changes in CS.

**Section 3:** Defines "individual employed in an administrative capacity," "individual employed in an executive capacity," "individual employed in a professional capacity," "outside salesman," and "salesman employed on a straight commission basis."

### Changes made by CS:

Page 3, Lines 17-22: Adds teachers and computer related occupations to definition of "professional capacity." These occupations are included in the current definitions and were inadvertently left out.

Page 3, Lines 26-28: Inserted the term "primary duty"

Page 3, Lines 29-30: Replaced "a person" with "an employee"

Page 3, Line 31: Inserted "customarily"

Page 4, Lines 6-7: Inserted a primary duties test.

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CS FOR SENATE BILL NO. 131(L&C)  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
TWENTY-FOURTH LEGISLATURE - FIRST SESSION

BY THE SENATE LABOR AND COMMERCE COMMITTEE

Offered:  
Referred:

Sponsor(s): SENATE LABOR AND COMMERCE COMMITTEE

A BILL  
FOR AN ACT ENTITLED

1 "An Act amending the Alaska Wage and Hour Act as it relates to the employment of a  
2 person acting in a supervisory capacity; providing definitions for persons employed in  
3 administrative, executive, and professional capacities, for persons working in the  
4 capacity of an outside salesman, and for persons working in the capacity of a salesman  
5 employed on a straight commission basis."

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

7 \* Section 1. AS 23.10.060(a) is amended to read:

8 (a) An employer who employs employees engaged in commerce or other  
9 business, or in the production of goods or materials in the state, may not employ an  
10 employee for a workweek longer than 40 hours or for more than eight hours a day.  
11 [THIS SECTION DOES NOT APPLY TO THE EMPLOYMENT OF A PERSON  
12 ACTING IN A SUPERVISORY CAPACITY.]

13 \* Sec. 2. AS 23.10.085(b) is amended to read:

1 (b) The regulations may, without limiting the generality of (a) of this section,  
2 define terms used in AS 23.10.050 - 23.10.150, and restrict or prohibit industrial  
3 homework or other acts or practices that the director finds appropriate to carry out the  
4 purpose of AS 23.10.050 - 23.10.150, or to prevent the circumvention or evasion of  
5 AS 23.10.050 - 23.10.150. [IF THE REGULATIONS DEFINING AN INDIVIDUAL  
6 EMPLOYED IN A BONA FIDE EXECUTIVE, ADMINISTRATIVE, OR  
7 PROFESSIONAL CAPACITY FOR PURPOSES OF AS 23.10.055 REQUIRE THAT  
8 THE INDIVIDUAL RECEIVE A MINIMUM SALARY, THE REQUIRED  
9 MINIMUM SALARY MUST BE TWO TIMES THE STATE MINIMUM WAGE  
10 FOR THE FIRST 40 HOURS OF EMPLOYMENT EACH WEEK.]

11 \* Sec. 3. AS 23.10.145 is amended by adding a new subsection to read:

12 (b) In AS 23.10.050 - 23.10.150,

13 (1) "individual employed in an administrative capacity" means an  
14 employee

15 (A) who is compensated on a salary or fee basis at a rate of not  
16 less than two times the state minimum wage for the first 40 hours of  
17 employment each week, exclusive of board, lodging, or other facilities;

18 (B) whose primary duty is the performance of office or  
19 nonmanual work directly related to the management or general business  
20 operations of the employer or the employer's customers; and

21 (C) whose primary duty includes the exercise of discretion and  
22 independent judgment with respect to matters of significance;

23 (2) "individual employed in an executive capacity" means an employee

24 (A) who is compensated on a salary or fee basis at a rate of not  
25 less than two times the state minimum wage for the first 40 hours of  
26 employment each week, exclusive of board, lodging, or other facilities;

27 (B) whose primary duty is management of the enterprise in  
28 which the employee is employed or of a customarily recognized department or  
29 subdivision of the enterprise;

30 (C) who customarily and regularly directs the work of two or  
31 more other employees; and

1 (D) who has the authority to hire or fire other employees or  
2 whose suggestions and recommendations as to the hiring, firing, advancement,  
3 promotion, or any other change of status of other employees are given  
4 particular weight;

5 (3) "individual employed in a professional capacity" means an  
6 employee

7 (A) who is compensated on a salary or fee basis at a rate of not  
8 less than two times the state minimum wage for the first 40 hours of  
9 employment each week, exclusive of board, lodging, or other facilities;

10 (B) whose primary duty is to

11 (i) perform work requiring knowledge of an advanced  
12 type in a field of science or learning customarily acquired by a  
13 prolonged course of specialized intellectual instruction;

14 (ii) perform work requiring invention, imagination,  
15 originality, or talent in a recognized field of artistic or creative  
16 endeavor;

17 (iii) teach, tutor, instruct, or lecture in the activity of  
18 imparting knowledge as a teacher certified or recognized as such in a  
19 school or other educational establishment or institution; or

20 (iv) perform computer related occupations that are  
21 exempted from the Fair Labor Standards Act under 29 C.F.R. Part  
22 541.400;

23 (4) "outside salesman" means an employee

24 (A) who is customarily and regularly away from the employer's  
25 place of business; and

26 (B) whose primary duty is making sales or contracts for sales,  
27 consignments, or shipment, or obtaining orders for service or for use of  
28 the services for which consideration will be paid by the client or customer;

29 (5) "salesman employed on a straight commission basis" means an  
30 employee

31 (A) who is customarily and regularly employed on the business

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premises of the employer;

(B) who is compensated on a straight commission basis for the purpose of making sales or contracts for sales, consignments, shipments, or obtaining orders for services or the use of facilities for which a consideration will be paid by the client or customer; and

(C) whose primary duty is making sales or contracts for sales, consignments, shipments, or obtaining orders for service or the use of facilities for which a consideration will be paid by the client or customer.

# STATE OF ALASKA

Department Of Labor and Workforce Development

FRANK H. MURKOWSKI, GOVERNOR

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

## OFFICE OF THE COMMISSIONER

April 14, 2005

The Honorable Norman Rokeberg  
Alaska State Legislature  
Capitol Building, Room 214  
Juneau, Alaska 99801

Dear Representative Rokeberg:

*I AM PLEASED TO INFORM YOU . . . . .*

The Alaska Department of Labor and Workforce Development is in support of CSHB 182(FIN).

This bill will help to streamline the cumbersome process of determining whether an employee is exempt from Alaska's overtime pay requirements, while minimizing the potential for employee abuse by expanding the minimum salary provision. The minimum annual salary of \$29,744 will help to ensure that line workers are not artificially categorized in overtime exempt positions. I applaud your efforts to carefully balance industry needs for clearer overtime pay guidelines with the needs of Alaska's workforce.

We do not expect the proposed changes to have a significant impact on the department's operations. Less than five percent of wage claims filed with the department in FY 2004 involved issues associated with the overtime pay exemptions affected by this proposed legislation. Although the changes may initially produce more questions, the new standards are expected to be easier to explain.

If you need any additional assistance with this bill, please let me know.

Sincerely,

  
Greg O'Claray  
Commissioner

cc: Grey Mitchell, Director LS&S

BILL BACKUP

Senate Bill: SB 131

Short Title: Wage & Hour Act: Exec/Prof/Admin/Sales

Sponsor: Senate Labor and Commerce Committee

Current Version: SB 131

Contact: Jane Alberts, 465-4843

#### Summary:

- Would clarify the definitions of "executive capacity", "administrative capacity" and "professional capacity" as defined in Administrative Code when determining overtime wages under the Wage and Hour Act
- Eliminates the "long test" also known as the "80/20" test and inserts more understandable definitions
- More clearly defines "exempt" and "non-exempt" work when determining payment of overtime
- Eliminates the definition and provision for "supervisory capacity" as this definition is assumed through the other definitions of "professional" and "executive" capacities

#### Benefits:

- Straightforward language brings clarity to employers and employees
- Will lead to great compliance with the Wage and Hour Act
- Reduce lawsuits emerging from ambiguity of the statute

#### Background

- Alaska law has historically exempted individuals employed in a "bona fide executive, administrative or professional" capacity. AS 23.10.055.
- The Alaska Administrative Code regulations, which defined these terms, were enacted in 1978.
- The definitions, when written, were similar to the federal exemptions in the Fair Labor Standards Act (FLSA).

## Current Definitions vs. New Definitions

Employees exempt from Wage and Hour Act	Current Definition	Senate Bill 131
Administrative	<ul style="list-style-type: none"> <li>• Primary duties are management, supervising</li> <li>• Uses discretion and independent judgment</li> <li>• Performs work under only general supervision</li> <li>• Regularly and directly assists a proprietor or an exempt executive employee of the employer</li> <li>• Performs work along specialized or technical lines requiring special training</li> <li>• Salary at least 2.0 times minimum wage in first forty hours a week</li> <li>• 80/20 rule</li> </ul>	<ul style="list-style-type: none"> <li>• Primary duty is performance of office or nonmanual work directly related to management or general business operations</li> <li>• Uses discretion and independent judgment</li> <li>• Salary is at least 2.0 times the minimum wage in first forty hours a week</li> </ul>
Executive	<ul style="list-style-type: none"> <li>• Primary duty is management of the business</li> <li>• Directs two or more employees</li> <li>• May hire and fire</li> <li>• Customarily and regularly exercises discretionary authority</li> <li>• Salary at least 2.0 times the minimum wage in first forty hours a week</li> <li>• 80/20 rule</li> </ul>	<ul style="list-style-type: none"> <li>• Primary duty is management of the business</li> <li>• Directs two or more employees</li> <li>• May hire and fire</li> <li>• Salary at least 2.0 times the minimum wage in first forty hours a week</li> </ul>
Professional	<ul style="list-style-type: none"> <li>• Primary duty requires an advanced degree</li> <li>• Or, is creative in nature, teacher or computer-related</li> <li>• Uses discretion and independent judgment</li> <li>• Work is predominately intellectual and varied in character</li> <li>• Salary at least 2.0 times the minimum wage in first forty hours a week</li> </ul>	<ul style="list-style-type: none"> <li>• Primary duty requires knowledge from prolonged course of specialized intellectual instruction</li> <li>• Or invention, imagination, originality or talent in artistic or creative endeavor</li> <li>• Salary at least 2.0 times the minimum wage in first forty hours a week</li> </ul>

# State by State Overtime Comparison

Completed Spring, 2004

By: John M. Sedor

## Single Definitional Standard – 32 Jurisdictions

(These jurisdictions either do not have applicable wage/hour regulations or directly reference the overtime exemption definitions found in the Fair Labor Standards Act to define their own exemption from overtime requirements. In these jurisdictions, employers will only need to comply with one definitional standard – the federal standard – regarding overtime exemption issues.)

Alabama	Arizona	Delaware	District of Columbia
Florida	Georgia	Idaho	Indiana
Iowa	Kansas	Louisiana	Maine
Massachusetts	Michigan	Mississippi	Missouri
Nebraska	Nevada	New Hampshire	New Mexico
New York	North Carolina	Ohio	Oklahoma
South Carolina	South Dakota	Tennessee	Texas
Utah	Vermont	Virginia	Wyoming

## “Old” Short Test – 8 Jurisdictions

(The “old” short test is similar to the new federal regulations with regard to the “time performing exempt functions” factor)

Connecticut	Illinois	Kentucky	Maryland
Montana	North Dakota <sup>1</sup>	Rhode Island <sup>1</sup>	West Virginia

<sup>1</sup> Definitional language contains minor variations from old federal test.

## Unique Standards – 4 Jurisdictions

(Four states have a unique standard for determining overtime exemption definitions)

California	Colorado	Hawaii	Oregon	
------------	----------	--------	--------	--

## “Old” Long Test – 7 Jurisdictions

Alaska	Arkansas	Minnesota	New Jersey	Pennsylvania
Washington	Wisconsin <sup>2</sup>			

<sup>2</sup> Definitional language contains minor variations from old federal test

## EMPLOYERS BEWARE:

### NEW WAGE AND HOUR REQUIREMENTS MAY SIGNIFICANTLY IMPACT ALASKA EMPLOYERS



Article by Bill Evans, partner,  
Dorsey and Whitney LLP,  
vice-chair, Anchorage Chamber  
of Commerce

Both the federal and state wage and hour laws recently underwent significant revisions. It is very important

that Alaska employers understand these new requirements and ensure that their exempt employees are still in compliance with the new regulations and statutes. Even inadvertent departure from the new requirements can result in substantial liability.

**Major Federal Revisions.** On April 23, 2004, the United States Department of Labor published its long-anticipated revisions concerning the so-called white-collar exemptions (i.e., executive, administrative, professional, computer professional and outside salesperson). A key change to the federal system is that all employees who now earn less than \$455 per week—or \$23,660 per year—must receive overtime. Previously, employees had to earn only \$155 per week in order to qualify as exempt. The U.S. government estimates that more than 1.3 million workers nationwide will benefit from this mandated salary increase. A much fewer number of employees, estimated to be approximately 107,000 nationwide, may lose their current entitlement to overtime due to other changes.

By wholly eliminating the antiquated "long test" for determining exemptions, the Department of Labor did away with the last vestiges of the beleaguered 80/20 requirement that mandated that exempt employees could spend no more than 20 percent of their time engaged in nonexempt duties. The difficulty in objectively documenting compliance with this requirement made it a particularly vexing issue for many employers.

The Department of Labor also significantly revised the test used for determining whether an employee qualifies for an exemption based on his or her job duties. For example, administrative employees, who have always been required to exercise discretion and independent judgment in performing their duties, must now exercise such discretion and independent judgment with respect to "matters of significance." See 29 C.F.R. § 541.200.

Another notable change involves the definition of an "executive" employee. In addition to managing a

department or customarily recognized subdivision of the employer and regularly directing the work of at least two other employees, the new definition of an "executive" employee requires:

"The employee must have authority to hire or fire other employees or his/her suggestions and recommendations as to the hiring, firing, advancement, promotion or any other change of status of other employees are given particular weight."

#### 29 C.F.R. § 541.100.

**Alaska Fails to Adopt Similar Changes.** Choosing not to follow the lead of the federal government, the Alaska Legislature maintained its historic definitions for the white-collar exemptions. Accordingly, Alaska employers now must ensure that their exemptions comply with two significantly different systems. For instance, the problematic 80/20 requirement is still very much alive under Alaska law. It is, therefore, increasingly possible that many employees may be exempt under one system but not under the other.

**Alaska Establishes Minimum Salary for Exempt Employees.** Although the Alaska Legislature did not adopt any changes to the existing definitions for exempt employees, it did substantially increase the minimum salary that an exempt employee must earn. Moreover, it tied this minimum salary to the state's minimum wage, thereby guaranteeing that future increases in the minimum wage will also increase the minimum salary for exempt employees.

House Bill 255, which was submitted for Gov. Murkowski's signature on June 10, 2004, requires that any employee falling under the "administrative," "executive" or "professional" exemptions must earn a minimum salary of at least two times the state minimum wage for the first 40 hours of employment each week.

The current Alaska minimum wage is \$7.25 per hour. Accordingly, this new law will require that any exempt employee be paid a salary of \$580 per week—or \$30,160 per year. There is no evidence of any study being conducted to determine how many employees or employers in Alaska this new requirement will affect. This law will automatically go into effect 90 days after it is signed by the governor.

Support



ALASKA

## National Federation of Independent Business

### Statement of Support for SB 131

March 14, 2005

Employers in Alaska must follow both the Federal Fair Labor Standards Act (FLSA) and the State Wage and Hour Act in setting employee wages. Federal and State law exempts executive, administrative and professional employees from overtime requirements of the wage and hour act. To determine if an employee is exempt, Alaska is one of a few states that continue to apply the "long test" which includes a calculation of the employee's time spent on non-exempt work. (The 80/20 test)\*

Most states use the overtime exemption definitions found in the Fair Labor Standards Act relieving businesses of the burden of applying two systems. Senate Bill 131 removes the 80/20 test for salaried employees and implements a definition of duties test similar to the FLSA regulations.

Keeping track of a salaried employee's hourly activities is a cumbersome if not impossible task. SB 131 is an important bill for small business and large business alike. NFIB/Alaska strongly supports this simplification of the law.

\* The 80/20 test requires an employer to keep track of how much time a salaried worker spends on non-exempt work. If the employee spends more than 20 percent (40 percent in retail or service businesses) of their time on non-exempt work, they are subject to the Wage and Hour Act and can qualify for overtime.

## Please Support SB 131

Submitted by Thyes Shaub on behalf of NFIB/Alaska.



**COASTAL HELICOPTERS, INC.**

LOCATED ON THE JUNEAU AIRPORT  
8995 YANDUKIN DRIVE JUNEAU AK 99801  
(907) 789-5600 FAX (907) 789-7076

e-mail: [coastal@gci.net](mailto:coastal@gci.net)  
March 16, 2005

Senator Con Bunde, Chair  
Senate Labor & Commerce Committee  
Fax: 465-3871

Dear Senator Bunde:

SB 131

Thank you for sponsoring this important legislation. This is a request for your committee to approve SB131. This bill recognizes the cumbersome, if not impossible, task of tracking a professional employee's time hour by hour. As you know, the Federal FSLA has relieved employers of that burden and most states have done so also.

It is unrealistic to require additional paperwork hour by hour for tracking professional or supervisory employees. As I am sure you are aware, a supervisor or professional may start a task but demands of the job may require a change in task before completion. To have an employee at that level be required to write down each task beginning to end to see if it meets the "80/20" rule would create an additional burden on jobs that are often by their nature "burdensome."

The reason for the higher compensation for employees at the professional, administrative or supervisory level is the understanding that they have a job that needs to be accomplished and have the ability to decide the means for accomplishing that job.

Please approve this important legislation.

*Thanks*

Sincerely,  
COASTAL HELICOPTERS, INC.

Dorothy S. Wilson, Vice President



March 16, 2005

Senator Con Bunde  
State Capital Building  
Juneau, AK 99801  
Sent via fax: (907) 465-3871

Dear Senator Bunde,

On behalf of the Alaska Hotel & Lodging Association and the Alaska Restaurant & Beverage Association I convey full support of SB 131. This is an important bill for our industry and for every employee of exempt workers because it provides for exempt status language that employers are easily able to understand and comply with. Currently, exempt status language requires that employers track and log how exempt workers spend their time by the hour to ensure appropriate compliance with the 80/20 or 60/40 provisions.

The definition of exempt status eligibility being based on primary job duty rather than the amount of time a worker spends on exempt vs. non exempt work mirrors the real life work roles of executive and professional salaried workers. The Federal definition of exempt worker was recently changed for the very same reason; it is burdensome to comply with and makes employers vulnerable to costly lawsuits.

A focus on primary job duties provides a clear definition of who is eligible to be exempt and who is not. Without this clear definition, many employers chose to make all employees hourly wage earners, denying the executive and professional management staff access to benefits that could otherwise be offered to them.

The provisions of SB 131 benefit both the employer and the employee. Thank you for your sponsorship of this bill.

My best regards,

A handwritten signature in cursive script that reads "Karen R. Rogina".

Karen R. Rogina  
President & CEO

# LEGAL SERVICES

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

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

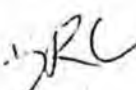
State Capitol  
Juneau, Alaska 99801-1102  
Deliveries to: 129 6th St., Rm. 329

## MEMORANDUM

March 15, 2005

**SUBJECT:** Sectional Summary of SB 131 (Work Order No. 24-LS0718\A)

**TO:** Senator Con Bunde  
Attn: Jane Alberts

**FROM:** Barbara R. Craver   
Legislative Counsel

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

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

Section 1. Deletes the exemption for supervisory work from AS 23.10.060(a).

Section 2. AS 23.10.085(b) is amended because the definitions for individuals working in an executive, administrative or professional capacity are placed in statutes rather than regulations by sec. 3 of this bill.

Section 3. A new subsection is added to AS 23.10.145 to provide definitions for:

- individual employed in an administrative capacity;
- individual employed in an executive capacity;
- individual employed in a professional capacity;
- outside salesman; and
- salesman employed on a straight commission basis.

If I may be of further assistance, please advise.

BRC:med  
05-183.med

Sectional Analysis

**SENATE COMMITTEE REPORT  
First Committee of Referral**

DATE: 3/4/05

FURTHER: Finance

Date of 5-Day Notice: 3/10/05  
(in accordance with Uniform Rule 23)

DATE TURNED  
IN TO OFFICE: 4/8/05

Labor and Commerce Committee considered SENATE BILL NO. 131

**SB 131 WAGE & HOUR ACT: EXEC/PROF/ADMIN/SALES**

"An Act amending the Alaska Wage and Hour Act as it relates to the employment of a person acting in a supervisory capacity; providing definitions for persons employed in administrative, executive, and professional capacities, for persons working in the capacity of an outside salesman, and for persons working in the capacity of a salesman employed on a straight commission basis."

and recommends:

- be replaced with \_\_\_\_\_ CS SB 131 (L & C)
- adopt previous \_\_\_\_\_ CS \_\_\_\_\_ (\_\_\_\_\_)
- attached amendment(s)
- adopt Letter of Intent by \_\_\_\_\_ Committee
- further referral to \_\_\_\_\_ Committee

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

**NEW FISCAL NOTE(S):**

Department	Date	Fiscal	Indet.	Zero	FN#
DOL	3/14/05			✓	1

**PREVIOUS FISCAL NOTE(S):**

Department	Date	Fiscal	Indet.	Zero	FN#

APPROPRIATION - no fiscal note

**SIGNATURES AND RECOMMENDATIONS:**

	DO PASS	DO NOT PASS	NO REC	AMEND
Davis <i>Benny Davis</i>			X	
Ellis <i>Ellis</i>	X			
Seekins <i>Ralph Seekins</i>	✓			
B. Steens <i>B. Steens</i>	✓			
Bunde <b>CHAIR:</b> <i>O Bunde</i>	✓			

**SB**

**132**

**HFIN**

**FILE**



THE  
FOLLOWING  
DOCUMENT(S)  
ARE  
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ORIGINAL  
COPIES

REPORTED OUT OF

# FISCAL NOTE

STATE OF ALASKA 4/20/06  
2006 LEGISLATIVE SESSION

Fiscal Note Number: 4  
Bill Version: HCS SB 132(JUD)  
(H) Publish Date: 3/3/06

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: LAW  
Title: "An Act relating to complaints filed with, RDU: CIVIL  
investigations...The State Commission for Human Rights..." Component: Labor & State Affairs  
Sponsor: \_\_\_\_\_  
Requester: Governor Component No: \_\_\_\_\_

## Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

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

CHANGE IN REVENUES ( )						
------------------------	--	--	--	--	--	--

## FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1007 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

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 amends AS 18.80.112 to provide the staff of the Human Rights Commission with greater authority to evaluate complaints of discrimination and to choose the complaints that it pursues to hearing before the commission. The bill also sets out the appropriate remedy for employment discrimination but preserves the commission's discretion to award "any appropriate relief" if it needs to innovate in order to remedy an unusual case of discrimination. The Department of Law does not anticipate a fiscal impact from passage of this legislation.

Prepared by: Kathryn Daughhitee, Director Phone: 465-3873  
Division: Administrative Services Division Date/Time: 3/10/06 9:22 AM  
Approved by: Kathryn Daughhitee for David Marquez, Attorney General Date: 3/10/06  
Agency: Department of Law

REPORTED OUT OF  
HFC 4/20/06 FISCAL NOTE

STATE OF ALASKA  
2006 LEGISLATIVE SESSION

Fiscal Note Number: 3  
Bill Version: HCS SB 132(IUD)  
(H) Publish Date: 3/3/06

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: OOG  
Title "An Act relating to complaints filed RDU Commissions/Special Offices  
with investigations...of the State Human Rights Comm..." Component Human Rights Commission  
Sponsor Rules Committee  
Requester Governor Component No. \_\_\_\_\_

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

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

OPERATING EXPENDITURES	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Personal Services						
Travel						
Contractual	0.0	0.0	0.0	0.0	0.0	0.0
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
-----------------------------	--	--	--	--	--	--

<b>CHANGE IN REVENUES ( )</b>						
-------------------------------	--	--	--	--	--	--

**FUND SOURCE** (Thousands of Dollars)

FUND SOURCE	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
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)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2006) cost: 0.0  
Mark this box (X) if funding for this bill is included in the Governor's FY 2007 budget proposal:

**POSITIONS**

Full-time	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Part-time						
Temporary						

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

Prepared by: Kevin Jardell, Legislative Director Phone 465-4021  
Division: Governor's Legislative Office Date/Time 1/12/06 12:00 AM  
Approved by: Kevin Jardell, Legislative Director Date 1/12/2006  
Agency: Governor's Legislative Office

*Fail*

*(Offered)*

24-GS1110Y.1  
Kane  
4/19/06

AMENDMENT 2

*Kerthula*

OFFERED IN THE HOUSE

TO: HCS SB 132( ), Draft Version "Y"

1 Page 1, line 2:

2 Delete "and"

3 Insert "providing for attorney fees and costs in cases involving human rights  
4 violations;"

6 Page 1, line 3, following "amendments":

7 Insert "; and amending Rule 82, Alaska Rules of Civil Procedure"

9 Page 6, following line 12:

10 Insert a new bill section to read:

11 **"\* Sec. 11. AS 18.80 is amended by adding a new section to article 2 to read:**

12 **Sec. 18.80.147. Attorney fees and costs.** (a) In an action brought by a person  
13 under AS 22.10.020(i), a prevailing plaintiff shall be awarded costs as provided by  
14 court rule and full reasonable attorney fees at the prevailing reasonable rate.

15 (b) Unless the action is found to be frivolous, in an action brought by a person  
16 under AS 22.10.020(i), a prevailing defendant shall be awarded attorney fees and costs  
17 as provided by court rule. If the action is found to be frivolous, the attorney fees to be  
18 awarded to the defendant shall be full reasonable attorney fees at the prevailing  
19 reasonable rate

20 (c) In this section, "frivolous" means

21 (1) not reasonably based on evidence or on existing law or a  
22 reasonable extension, modification, or reversal of existing law; or

23 (2) brought to harass the defendant or to cause unnecessary delay or

1           needless expense."

2

3    Renumber the following bill sections accordingly.

4

5    Page 6, following line 31:

6           Insert a new bill section to read:

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

9           INDIRECT COURT RULE AMENDMENT. The provisions of sec. 11 of this Act  
10   have the effect of changing Rule 82, Alaska Rules of Civil Procedure, by requiring the award  
11   of full reasonable attorney fees in certain cases."

12

13   Renumber the following bill sections accordingly.

14

15   Page 7, line 4:

16           Delete "secs. 1 - 13"

17           Insert "secs. 1 - 14"

HOUSE FINANCE  
COMMITTEE  
ROLL CALL

DATE: 4/20

Amendment: #1 Kerttula.

SB 132

MEMBER

Favor

Oppose

KELLY		
KERTTULA		
MOSES		
STOLTZE		
WEYHRAUCH —		
FOSTER		
HAWKER —		
HOLM		
JOULE		
MEYER —		
CHENAULT		

Withdraw

~~(folded)~~

24-GS1110Y.2  
Kane  
4/19/06

AMENDMENT |

Kenttula

OFFERED IN THE HOUSE

TO: HCS SB 132( ), Draft Version "Y"

1 Page 2, line 3:

2 Delete "a new subsection"

3 Insert "new subsections"

4

5 Page 2, following line 6:

6 Insert a new subsection to read:

7 "(c) A complaint may be filed not later than one year after the alleged  
8 discriminatory practice occurred or, for a continuing discriminatory practice, not later  
9 than one year after the alleged discriminatory practice stopped."

# FISCAL NOTE

STATE OF ALASKA  
2006 LEGISLATIVE SESSION

Fiscal Note Number: \_\_\_\_\_  
Bill Version: HCS SB 132(JUD)  
( ) Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: OOG  
Title "An Act relating to complaints filed ...with the RDU Commissions/Special Offices  
State Commission for Human Rights..." Component Human Rights Commission  
Sponsor Rules  
Requester House Judiciary Committee Component No. 1

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

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

OPERATING EXPENDITURES	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Personal Services	236.1					
Travel	5.0					
Contractual	14.0					
Supplies	1.3					
Equipment	15.0					
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>271.4</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

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

1002 Federal Receipts						
1003 GF Match						
1004 GF	271.4					
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type - Do not abbreviate)						
<b>TOTAL</b>	<b>271.4</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2006) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2007 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

This fiscal note reflects the need for one Human Rights Field Representative IV and two Human Rights Field Representative IIIs. The FY07 operating budget request for the Human Rights Commission includes an increment of 179.2 for two additional positions and related costs. Should the Human Rights Commission receive their budget increment, this fiscal note will be reduced to 92.2.

Prepared by: Gail Fenwick, Asst. Admin. Director LP Phone: 465-3885  
Division: Office of the Governor, Administrative Services Date/Time: 2/8/06, 3:05pm  
Approved by: Paula Haley, Executive Director Date: 2/8/2006  
Agency: Alaska Human Rights Commission

*adopted 4/20*

24-GS1110V  
Kane  
4/17/06

HOUSE CS FOR SENATE BILL NO. 132( )  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
TWENTY-FOURTH LEGISLATURE - SECOND SESSION

BY

Offered:  
Referred:

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

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to complaints filed with, investigations, hearings, and orders of, and  
2 the interest rate on awards of the State Commission for Human Rights; and making  
3 conforming amendments."

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

5 \* Section 1. AS 18.80.100 is amended to read:

6       Sec. 18.80.100. Complaint; time limitations. A person who is aggrieved by  
7       a [ANY] discriminatory practice [CONDUCT] prohibited by this chapter may sign  
8       and file with the commission a written, verified complaint stating the name and  
9       address of the person alleged to have engaged in the discriminatory practice  
10       [CONDUCT], and the particulars of the discrimination. A complainant may  
11       withdraw the complaint at any time before the service of an accusation under  
12       AS 18.80.120. A withdrawal must be signed by the complainant and be in  
13       writing. A withdrawal does not limit the discretion of the executive director  
14       provided in (b) of this section [THE EXECUTIVE DIRECTOR MAY FILE A

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COMPLAINT IN LIKE MANNER WHEN AN ALLEGED DISCRIMINATION COMES TO THE ATTENTION OF THE DIRECTOR].

\* Sec. 2. AS 18.80.10J is amended by adding a new subsection to read:

(b) The executive director may file a complaint in the manner provided in (a) of this section when a discriminatory practice comes to the attention of the executive director.

\* Sec. 3. AS 18.80.110 is amended to read:

**Sec. 18.80.110. Investigation and conciliation.** The executive director or a member of the commission's staff designated by the executive director shall informally investigate the matters set out in a filed complaint, promptly and impartially. If the investigator determines that there is [THE ALLEGATIONS ARE SUPPORTED BY] substantial evidence of an unlawful discriminatory practice under this chapter, the investigator shall immediately try to eliminate or remedy the discriminatory practice through an agreement reached [DISCRIMINATION COMPLAINED OF,] by conference, conciliation, and persuasion. If an agreement is reached, it must be reduced to writing and signed by the complainant, executive director, and respondent. The agreement is binding and enforceable under this chapter as an order of the commission. An agreement reached under this section may include the compromise of damages authorized under this chapter.

\* Sec. 4. AS 18.80 is amended by adding a new section to read:

**Sec. 18.80.112. Dismissal of complaint without prejudice.** (a) If an investigation of a complaint under AS 18.80.110 fails to discover substantial evidence of an unlawful discriminatory practice under this chapter, the executive director shall issue an order dismissing the complaint without prejudice.

(b) At any time before the issuance of an accusation under AS 18.80.120, the executive director may dismiss without prejudice a complaint if the executive director determines that

(1) the complainant's objection to a proposed agreement under AS 18.80.110 is unreasonable;

(2) the complainant is unavailable or unwilling to participate in a hearing;

1 (3) relief is precluded by the absence of the person alleged to have  
2 engaged in the discriminatory practice;

3 (4) the person aggrieved by the discriminatory practice has initiated or  
4 wants to initiate an action or proceeding in another forum based on the same facts:

5 (5) a hearing will not represent the best use of commission resources;

6 (6) a hearing will not advance the purposes stated in AS 18.80.200; or

7 (7) the probability of success of the complaint on the merits is low.

8 (c) The commission, in its discretion, may, but is not required to, review the  
9 executive director's order of dismissal under (a) or (b) of this section and may affirm  
10 the order, remand the complaint for further investigation, or, if the commission  
11 concludes that substantial evidence supports the complaint of an unlawful  
12 discriminatory practice, refer the complaint for conference, conciliation, and  
13 persuasion as provided in AS 18.80.110, or for hearing.

14 (d) Dismissal under this section does not prevent a complainant from

15 (1) initiating an action or proceeding in another forum; or

16 (2) filing a new complaint under AS 18.80.100 that resolves the  
17 grounds for the dismissal under this section.

18 \* **Sec. 5.** AS 18.80.120 is repealed and reenacted to read:

19 **Sec. 18.80.120. Hearing.** (a) If no agreement is reached under AS 18.80.110  
20 and the executive director determines to refer the complaint for hearing, the executive  
21 director shall issue an accusation based on the investigator's determination of  
22 substantial evidence and serve the person charged in the accusation and the  
23 complainant with notice of the referral and a copy of the accusation. The executive  
24 director's decision to refer the complaint to hearing is not reviewable by the  
25 commission under this chapter. The location of the hearing is the commission office  
26 unless the commission designates another location. The executive director, or the  
27 executive director's designee, shall present the case in support of the accusation before  
28 the commission. The person charged in the accusation may file a written answer and  
29 may appear at the hearing, with or without counsel, and submit evidence.

30 (b) The commission shall request the chief administrative law judge to  
31 appoint, under AS 44.64.020, an administrative law judge employed or retained by the

1 office of administrative hearings to preside over a hearing conducted under this  
2 section. AS 44.64.040 - 44.64.055, 44.64.070 - 44.64.200, and the procedures in  
3 AS 44.62.330 - 44.62.630 (Administrative Procedure Act) apply to the hearing except  
4 as otherwise provided in this chapter.

5 (c) An accusation may be reasonably and fairly amended by the commission.  
6 An amendment to name a different discriminatory practice must be supported by  
7 substantial evidence, and the discriminatory practice must be referred for conference,  
8 conciliation, and persuasion as provided in AS 18.80.110, before a hearing may  
9 proceed.

10 (d) In a hearing on an accusation, each element of an accusation or defense  
11 must be proven by a preponderance of the evidence.

12 (e) At any time after the issuance of an accusation, the executive director or  
13 the person charged in the accusation may petition for a summary decision on the  
14 accusation. The commission shall grant a petition if, after a reasonable opportunity for  
15 discovery, the record shows that there is no genuine issue of material fact and the  
16 petitioner is entitled to an order under AS 18.80.130 as a matter of law.

17 \* Sec. 6. AS 18.80.130(a) is amended to read:

18 (a) At the completion of the hearing or after consideration of a petition for  
19 summary decision under AS 18.80.120(e), if the commission finds that a person  
20 charged in an accusation [AGAINST WHOM A COMPLAINT WAS FILED] has  
21 engaged in the discriminatory practice [CONDUCT] alleged in the accusation  
22 [COMPLAINT], it shall order the person to refrain from engaging in the  
23 discriminatory practice [CONDUCT]. The order must include findings of fact [,] and  
24 may order the person to take affirmative action to correct the discriminatory  
25 practice. The commission may not order an award of noneconomic or punitive  
26 damages in a case [PRESCRIBE CONDITIONS ON THE ACCUSED'S FUTURE  
27 CONDUCT RELEVANT TO THE TYPE OF DISCRIMINATION]. In a case  
28 involving a discriminatory practice [DISCRIMINATION] in

29 (1) employment, the commission may order any appropriate relief,  
30 including one or more of the following: training of an employer, labor  
31 organization, or employment agency, and its employees concerning

1 discriminatory practices; an accommodation for a person with a disability;  
2 removal of or changes to a personnel record; posting of signs; back pay; [BUT  
3 NOT LIMITED TO,] the hiring, reinstatement, or upgrading of an employee with or  
4 without back pay; the payment of front pay for a period of not more than one year  
5 if hiring, reinstatement, or upgrading of an employee is inappropriate because a  
6 vacancy does not exist, the employer's discriminatory practice rendered the  
7 employee incapable of returning to work, or the relationship between the  
8 employer and employee has so deteriorated as to make working conditions  
9 intolerable; [,] restoration to membership in a labor organization; [, OR] admission  
10 to or participation in an apprenticeship training program, on-the-job training program,  
11 or other retraining program; or restoration of seniority; however, an order for back  
12 pay or front pay must be reduced by the amount the employee could have earned  
13 or could earn by making reasonably diligent efforts to obtain similar  
14 employment;

15 (2) housing, the commission may order the sale, lease, or rental of the  
16 housing accommodation to the aggrieved person if it is still available, or the sale,  
17 lease, or rental of a like accommodation owned by the person charged in the  
18 accusation [AGAINST WHOM THE COMPLAINT WAS FILED] if one is still  
19 available, or the sale, lease, or rental of the next vacancy in a like accommodation,  
20 owned by the person charged in the accusation [AGAINST WHOM THE  
21 COMPLAINT WAS FILED]; the commission may award actual damages, which shall  
22 include [, BUT NOT BE LIMITED TO,] the expenses incurred by the complainant for  
23 obtaining alternative housing or space; for storage of goods and effects; and for  
24 moving and [FOR] other costs actually incurred as a result of the unlawful practice or  
25 violation.

26 \* Sec. 7. AS 18.80.130(c) is amended to read:

27 (c) If the commission finds that a person charged in an accusation  
28 [AGAINST WHOM A COMPLAINT WAS FILED] has not engaged in the  
29 discriminatory practice [CONDUCT] alleged in the accusation [COMPLAINT], it  
30 shall issue and cause to be served on the complainant an order dismissing the  
31 complaint.

1 \* **Sec. 8.** AS 18.80.130 is amended by adding a new subsection to read:

2 (f) The interest rate for an award under this section is determined in the  
3 manner provided in AS 09.30.070.

4 \* **Sec. 9.** AS 18.80.135(b) is amended to read:

5 (b) The commission may obtain a court order for the enforcement of any of its  
6 orders by filing a complaint with the superior court in the judicial district in which the  
7 unlawful practice [CONDUCT] is alleged to have occurred.

8 \* **Sec. 10.** AS 18.80.140 is amended to read:

9 **Sec. 18.80.140. Effect of compliance with order.** Immediate and continuing  
10 compliance with all the terms of a commission order is a bar to criminal prosecution  
11 for the particular instances of discriminatory practice [CONDUCT] described in the  
12 accusation issued under AS 18.80.120 [FILED BEFORE THE COMMISSION].

13 \* **Sec. 11.** AS 18.80.270 is amended to read:

14 **Sec. 18.80.270. Penalty.** A person, employer, labor organization, or  
15 employment agency, who or that wilfully engages in an unlawful discriminatory  
16 practice [CONDUCT] prohibited by this chapter, or wilfully resists, prevents,  
17 impedes, or interferes with the commission or any of its authorized representatives in  
18 the performance of duty under this chapter, or who or that wilfully violates an order of  
19 the commission, is guilty of a misdemeanor and, upon conviction by a court of  
20 competent jurisdiction, is punishable by a fine of not more than \$500, or by  
21 imprisonment in a jail for not more than 30 days, or by both.

22 \* **Sec. 12.** AS 18.80.300 is amended by adding new paragraphs to read:

23 (17) "complainant" means a person who is aggrieved by a  
24 discriminatory practice prohibited by this chapter and who has filed a complaint as  
25 provided in AS 18.80.100;

26 (18) "pay" means wages; salaries; commissions; amounts an employer  
27 contributes to retirement, health, or other fringe benefit plans; and other forms of  
28 remuneration paid to an employee for personal services.

29 \* **Sec. 13.** AS 44.62.330(a) is amended by adding a new paragraph to read:

30 (46) State Commission for Human Rights, where procedures are not  
31 otherwise expressly provided in AS 18.80.