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# STATE OF ALASKA

## DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

JAY S. HAMMOND, GOVERNOR

POUCH K-STATE CAPITOL  
JUNEAU, ALASKA 99811

February 15, 1980

Hon. Vernon L. Hurlbert  
Chairman  
House Labor & Management Committee  
Pouch V  
Juneau, Alaska 99811

Re: HB 705 (Workmen's Compensation)  
Our File No: J-77-004-80

Dear Mr. Hurlbert:

We have found a technical error in H.B. No. 705, "An Act relating to Workmen's Compensation; and providing for an effective date" introduced February 11, 1980 by the Rules Committee at the request of the governor and referred to your committee.

On page 1, line 20, the words "an amount equal to" should be inserted after the word "fund" so that line 20 would read: "...employer or insurance carrier shall pay to the fund an amount equal to eight percent of ...."

Thank you for your assistance in this matter.

Very truly yours,

AVRUM M. GROSS  
ATTORNEY GENERAL

By: *Kathryn Kolkhorst*  
Kathryn Kolkhorst  
Assistant Attorney General

KK/ab

cc: Edmond Orbeck, Commissioner  
Department of Labor

FOR BK  
→ RAF COMMENTS IN  
LEFT MARGIN

Introduced: 2/11/80  
Referred: Labor & Management

BY THE RULES COMMITTEE BY  
REQUEST OF THE GOVERNOR

1 IN THE HOUSE

2 HOUSE BILL NO. 705

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 ELEVENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to workmen's compensation; and pro-  
7 viding for an effective date."

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

9 \* Section 1. AS 23.30.040 is repealed and re-enacted to read.

10 Sec. 23.30.040. SECOND INJURY FUND. (a) There is created a  
11 second injury fund, administered by the commissioner of labor in  
12 accordance with the orders and awards of the board. The sums required  
13 to be paid into the fund must be paid for the sole benefit of those  
14 entitled to participate in it under the provisions of this chapter.  
15 Disbursements must be made by the commissioner of labor in accordance  
16 with the orders and awards of the board.

17 (b) Each employer or insurance carrier shall make payments to  
18 the fund in the following circumstances:

19 (1) if an employee suffers a compensable injury, each  
20 employer or insurance carrier shall pay to the fund <sup>AN AMOUNT EQUAL TO</sup> eight percent of  
21 the total compensation to which an employee is entitled for permanent  
22 partial, permanent total, temporary partial, and temporary total  
23 disability; ~~now~~

24 (2) if an employee suffers a compensable injury which  
25 results in death and the employee is not survived by a widow, widower,  
26 child, or dependant relative eligible to receive death benefits under  
27 AS 23.30.215.

28 (c) The board is authorized to refund a payment made into the  
29 fund if the employer or insurance carrier can show that it made the

SHOULD BE DELAYED EFF. DATE

1 payment by mistake or inadvertence, or that there existed at the time  
2 of the payment a beneficiary entitled to benefits under AS 23.30.215.

3 (d) The percentage of compensation to be paid into the fund by  
4 each employer or insurance carrier under (b) of this section must be  
5 redetermined annually by the commissioner.

6 (1) The percentage must be set at a rate reasonably calcu-  
7 lated to maintain the fund at 175 percent of disbursements from the  
8 fund for the most recent fiscal year.

9 (2) The fund's balance at the end of each fiscal year must  
10 be subtracted from the disbursements total in making the calculations  
11 in this section.

12 (3) From the effective date of this Act through December 31,  
13 1980, the percentage rate is eight percent.

14 (4) The commissioner of labor shall redetermine, calculate,  
15 and publish the rate on November 1, 1980, and on each succeeding  
16 November 1.

17 (5) The rate published November 1, 1980 is the effective  
18 rate for January 1, 1981 -- December 31, 1981. The rate published  
19 each succeeding November 1 is effective each succeeding January 1 --  
20 December 31.

21 (6) The board may adopt regulations necessary to implement  
22 this section.

23 (e) The board may direct and provide the vocational retraining  
24 and rehabilitation of a permanently disabled person whose condition is  
25 a result of an injury compensable under this chapter by making coopera-  
26 tive arrangements with insurance carriers, private organizations and  
27 institutions, or state or federal agencies. The person being retrained  
28 or rehabilitated is entitled to receive compensation from the second  
29 injury fund for maintenance, in the sum which the board considers

1 necessary, during the period of retraining and rehabilitation, not  
2 exceeding \$200 a month. The total expenditures for maintenance,  
3 training, rehabilitation, and necessary transportation may not exceed  
4 \$10,000 for one person.

5 (f) All amounts collected as civil penalties under this chapter  
6 must be paid into the second injury fund.

7 (g) The attorney general may investigate claims and hire wit-  
8 nesses necessary to a proper defense of the money in the fund and,  
9 subject to appropriation made by law, may be reimbursed from the fund  
10 for the expenses of that defense.

11 (h) Subject to appropriation made by law, all administration  
12 expenses of the state under this section and AS 23.30.205 must be paid  
13 from the fund.

14 \* Sec. 2. AS 23.30.045(c) is amended to read:

OK 15 (c) For a person eligible for vocational rehabilitation service  
16 under AS 23.15.080 and who is placed with an employer for service  
17 [WITHOUT WAGES] at the request of the office of vocational rehabilita-  
18 tion to give him on the job training, work readiness or work therapy  
19 experience, or work sampling, the liability set out in (a) of this  
20 section applies to the state rather than to the employer.

21 \* Sec. 3. AS 23.30.095(a) is amended to read:

22 (a) The employer shall furnish medical, surgical, and other  
23 attendance or treatment, nurse and hospital service, medicine, crutches,  
24 and apparatus for the period which the nature of the injury or the  
25 process of recovery requires. [, NOT EXCEEDING TWO YEARS FROM AND  
26 AFTER THE DATE OF INJURY TO THE EMPLOYEE. HOWEVER, IF THE CONDITION  
27 REQUIRING THE TREATMENT, APPARATUS, OR MEDICINE IS A LATENT ONE, THE  
28 TWO-YEAR PERIOD RUNS FROM THE TIME THE EMPLOYEE HAS KNOWLEDGE OF THE  
29 NATURE OF HIS DISABILITY AND ITS RELATIONSHIP TO HIS EMPLOYMENT AND

1 AFTER-DISABLEMENT. IT SHALL BE ADDITIONALLY PROVIDED THAT, IF CON-  
2 TINUED TREATMENT OR CARE OR BOTH BEYOND THE TWO-YEAR PERIOD IS INDI-  
3 CATED, THE INJURED EMPLOYEE HAS THE RIGHT OF REVIEW BY THE BOARD. THE  
4 BOARD MAY AUTHORIZE CONTINUED TREATMENT OR CARE OR BOTH AS THE PROCESS  
5 OF RECOVERY MAY REQUIRE.] When medical care is required, the injured  
6 employee may designate a licensed physician inside the state to  
7 render the care except in cases where, in the judgment of the board,  
8 care or treatment or both can best be administered by the selection of  
9 another licensed physician. Upon procuring the services of a physician,  
10 the injured employee shall give proper notification of his selection  
11 to the employer within a reasonable time after first being treated.

12 [IF FOR ANY REASON DURING THE PERIOD WHEN MEDICAL CARE IS REQUIRED THE  
13 EMPLOYEE WISHES TO CHANGE TO ANOTHER PHYSICIAN, HE MAY DO SO IN  
14 ACCORDANCE WITH RULES PRESCRIBED BY THE BOARD.] *none prescribed*

15 \* Sec. 4. AS 23.30.095(c) is amended to read:

16 (c) No claim for medical or surgical treatment is valid and  
17 enforceable as against the employer unless, within 20 [TWENTY] days  
18 following each visit for [THE FIRST] treatment, the physician giving  
19 the treatment or the employee receiving it furnishes to the employer  
20 and the board notice of the injury and treatment, preferably on a form  
21 prescribed by the board. The board may, however, excuse the failure  
22 to furnish notice within 20 days when it finds it to be in the interest  
23 of justice to do so, and it may, upon application by a party in inter-  
24 est, make an award for the reasonable value of the medical or surgical  
25 treatment so obtained by the employee.

26 \* Sec. 5. AS 23.30.095(e) is amended to read:

27 (e) The employee shall, after an injury, at reasonable times  
28 during the continuance of his disability if requested by his employer  
29 or, when ordered by the board, submit himself to an examination by a

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1 physician or surgeon authorized to practice medicine under the laws of  
2 the state in which the employee may be found, furnished and paid for  
3 by the employer. [THE EMPLOYEE HAS THE RIGHT TO HAVE A PHYSICIAN,  
4 PAID FOR BY THE EMPLOYER, PRESENT AT THE EXAMINATION OR EXAMINATIONS.]

5 No fact relative to the injury or claim communicated to or otherwise  
6 learned by a physician or surgeon who may have attended or examined  
7 the employee, or who may have been present at an examination is privi-  
8 leged, either in the hearings provided for in this chapter or an  
9 action to recover damages against an employer who is subject to the  
10 compensation provisions of this chapter. If an employee refuses to  
11 submit himself to any examination provided for herein, his rights to  
12 compensation shall be suspended until the obstruction or refusal  
13 ceases, and his compensation during the period of suspension may, in  
14 the discretion of the board or the court determining an action brought  
15 for the recovery of damages hereunder, be forfeited. The board in any  
16 case of death may require an autopsy at the expense of the party  
17 requesting the autopsy. No autopsy may be held without notice first  
18 being given to the widow or widower or next of kin if they reside in  
19 the state or their whereabouts can be reasonably ascertained, of the  
20 time and place of the autopsy and reasonable time and opportunity  
21 given the widow or widower or next of kin to have a representative  
22 present to witness the autopsy. If no adequate notice is given, the  
23 findings from the autopsy may be suppressed on motion made to the  
24 board or to the superior court, as the case may be.

25 \* Sec. 6. AS 23.30.110(c) is amended to read:

26 (c) The board shall make the investigation which it considers  
27 necessary in respect of the claim, and upon application of an inter-  
28 ested party shall order a hearing on it. If a hearing on a claim is  
29 ordered the board shall give the claimant and other interested parties

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Chiropractor

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1 at least 20 [10] days' notice of the hearing, served personally upon  
2 the claimant and other interested parties or sent by registered mail,  
3 and shall, within ~~20~~ 20 days after the hearing is **HELD** had by order,  
4 reject the claim or make an award in respect to it. [IF NO HEARING IS  
5 ORDERED WITHIN 20 DAYS AFTER NOTICE IS GIVEN AS PROVIDED IN (b) OF  
6 THIS SECTION, THE BOARD SHALL BY ORDER REJECT THE CLAIM OR MAKE AN  
7 AWARD IN RESPECT TO IT.]

"Patently  
uncontested"

\* Sec. 7. AS 23.30.145(a) is amended to read:

(a) Fees for legal services rendered in respect to a claim are not valid unless approved by the board. [, AND THE FEES MAY NOT BE LESS THAN 25 PER CENT ON THE FIRST \$1,000 OF COMPENSATION OR PART OF THE FIRST \$1,000 OF COMPENSATION, AND 10 PER CENT OF ALL SUMS IN EXCESS OF \$1,000 OF COMPENSATION. WHEN THE BOARD ADVISES THAT A CLAIM HAS BEEN CONTROVERTED, IN WHOLE OR IN PART, THE BOARD MAY DIRECT THAT THE FEES FOR LEGAL SERVICES BE PAID BY THE EMPLOYER OR CARRIER IN ADDITION TO COMPENSATION AWARDED; THE FEES MAY BE ALLOWED ONLY ON THE AMOUNT OF COMPENSATION CONTROVERTED AND AWARDED. WHEN THE BOARD ADVISES THAT A CLAIM HAS NOT BEEN CONTROVERTED, BUT FURTHER ADVISES THAT BONA FIDE LEGAL SERVICES HAVE BEEN RENDERED IN RESPECT TO THE CLAIM, THEN THE BOARD SHALL DIRECT THE PAYMENT OF THE FEES OUT OF THE COMPENSATION AWARDED. IN DETERMINING THE AMOUNT OF FEES THE BOARD SHALL TAKE INTO CONSIDERATION THE NATURE, LENGTH AND COMPLEXITY OF THE SERVICES PERFORMED, TRANSPORTATION CHARGES, AND THE BENEFITS RESULTING FROM THE SERVICES TO THE COMPENSATION BENEFICIARIES.]

\* Sec. 8. AS 23.30.145(b) is amended to read:

(b) If an employer fails to [FILE TIMELY NOTICE OF CONTROVERSY OR FAILS TO] pay compensation or medical and related benefits within 15 days after it becomes due or otherwise resists the payment of compensation or medical and related benefits and if the claimant has

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1 employed an attorney in the successful prosecution of his claim, the  
2 board shall make an award to reimburse the claimant for his costs in  
3 the proceedings, including a reasonable attorney fee. The award is in  
4 addition to the compensation or medical and related benefits ordered  
5 and must be paid by the employer or carrier. In determining the  
6 amount of fees the board shall take into consideration the nature,  
7 length, and complexity of the services performed, transportation  
8 charges, and the benefits resulting from the services to the compensa-  
9 tion beneficiaries.

10 \* Sec. 9. AS 23.30.155(c) is amended to read:

11 (c) Upon making the first payment, and upon suspension of payment  
12 for any cause, the employer or carrier shall [IMMEDIATELY] notify the  
13 board within 10 days, in accordance with a form prescribed by the  
14 board, that payment of compensation has begun or has been suspended,  
15 as the case may be. If the employer or carrier fails to so notify the  
16 board within 10 days, the board shall assess against the employer or  
17 carrier a civil penalty in the amount of \$100 plus \$25 for each day  
18 in excess of the 10 days that the employer or carrier fails to give  
19 the notice. [Total penalties under this section may not exceed \$2,500.]

20 \* Sec. 10. AS 23.30.155(h) is amended to read:

21 (h) The board may upon its own initiative at any time in a case  
22 in which payments are being made without an award, and shall in a case  
23 where right to compensation is controverted, or where payments of  
24 compensation have been reduced, stopped or suspended, upon receipt of  
25 notice from a person entitled to compensation, or from the employer,  
26 that the right to compensation is controverted, or that payments of  
27 compensation have been reduced, stopped or suspended, make the investi-  
28 gations, cause the medical examinations to be made, or hold the hear-  
29 ings, and take the further action which it considers will properly

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1 protect the rights of all parties.

2 \* Sec. 11. AS 23.30.175(b) is repealed and re-enacted to read:

3 (b) After June 30 and before December 1 of each year, the  
4 commissioner shall adopt and publish the average weekly wage, as  
5 computed by the United States Secretary of Labor for the purposes of  
6 unemployment insurance, for the preceding calendar year for all juris-  
7 dictions, including Alaska. These figures are the applicable average  
8 weekly wages for the following calendar year. The average weekly wage  
9 is the amount determined by dividing (1) the total wages paid by all  
10 employers covered for the purpose of computing unemployment insurance  
11 by (2) the average monthly employment reported by those employers for  
12 the same period and dividing the result by 52.

13 \* Sec. 12. AS 23.30.175(c) is repealed and re-enacted to read:

14 (c) The following rules apply to out-of-state recipients:

15 (1) For a recipient who resides in a jurisdiction other  
16 than Alaska, the weekly rate of compensation must be calculated using  
17 the recipient's average weekly wage times the ratio of the average  
18 weekly wage of the jurisdiction in which the recipient resides to the  
19 average weekly wage of Alaska.

20 (2) For the purposes of this chapter, absence from Alaska  
21 for a continuous period of more than 90 days creates a rebuttable  
22 presumption of non-residential status; however, this presumption does  
23 not arise if the absence from Alaska is for medical or rehabilitation  
24 services that are not reasonably available in Alaska.

25 (3) The calculation and reduction required by this subsection  
26 does not apply when the recipient's average weekly wage and resulting  
27 compensation rate have been determined under the provisions of AS  
28 23.30.220 by use of wages earned wholly in employment in jurisdictions  
29 other than Alaska.

1 (4) Application of this subsection may not result in reduc-  
2 tion of the weekly compensation rate to less than the minimum weekly  
3 grant of the workmen's compensation system of the jurisdiction in which  
4 the recipient is residing, or in any event to less than \$65 per week.

5 (5) Application of this subsection from the effective date  
6 of this Act to January 1, 1981 may not result in a weekly rate of  
7 compensation which is greater than 166.6 percent of the average  
8 weekly wage of the jurisdiction in which the recipient is residing.  
9 After January 1, 1981, application of this subsection may not result  
10 in a weekly rate of compensation which is greater than 200 percent of  
11 the average weekly wage of the jurisdiction in which the recipient is  
12 residing.

13 \* Sec. 13. AS 23.30.191 is amended to read:

14 Sec. 23.30.191. EXPENSES FOR REHABILITATING INJURED EMPLOYEES.  
15 An employee, who, as a result of injury, is or may be expected to be  
16 totally or partially incapacitated for his normal occupation and who,  
17 under the direction of the Department of Labor, is being rehabilitated  
18 to engage in a remunerative occupation and who is not entitled to  
19 further temporary total disability or temporary partial disability  
20 compensation, in addition to the amount allowed under AS 23.30.040 for  
21 maintenance, may receive additional compensation necessary for his  
22 rehabilitation, not more than one-half of the compensation allowed  
23 under AS 23.30.185. The resulting reduction to one-half of the  
24 compensation may not reduce the weekly grant to a sum less than \$65.

25 \* Sec. 14. AS 23.30.215(h) is amended to read:

26 (h) In the event a deceased worker is survived by a child or  
27 children of a former marriage not living with the surviving widow or  
28 widower, then the child or [THOSE] children shall receive the amount  
29 being paid under a decree of child support but in no event may the

1 child or children be entitled to receive benefits in excess of benefits  
2 to which the child or children would have been entitled had there not  
3 been a decree of child support, unless there are no other beneficiaries  
4 or beneficiary entitled to benefits; the difference between the amount  
5 payable under a decree of child support [THIS AMOUNT] and the maximum  
6 benefit payable under this section shall be distributed pro rata to  
the remainder of those entitled.

7  
8 \* Sec. 15. <sup>old - same as previous</sup> AS 23.30.095(g), <sup>Appeals</sup> 23.30.125(b), <sup>export benefits HI</sup> 23.30.175(d), (e), and (f)  
9 are repealed. No: way 3 OK

10 \* Sec. 16. This Act takes effect immediately in accordance with AS 01.-  
11 10.070(c).  
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