

SCOMM

33:9

August 13, 1980

COMMENTARY
ON A DRAFT OF A
WORKERS' COMPENSATION OPEN RATING
MODIFIED FILE AND USE BILL

The objective of this proposed legislation is to promote competitive workers' compensation insurance by effecting the following changes in ORS Chapter 737, the Insurance Rating Law:

1. The current workers' compensation rating organization would be limited to supplying ratemaking recommendations on losses only. Each insurer would add its own allowances for expenses, taxes, profits and contingencies;
2. Insurers would be allowed to "file and use" rates not less than the claim cost provisions recommended by the rating organization without prior approval of the commissioner;
3. All other components of an insurer's rating plans and systems - such as premium discounts, retrospective rating and experience rating - would require companies to develop their own rating plans and systems and submit for commissioner's approval. All recommendations of the rating organization would need prior approval;
4. The Classification and Rating Committee of the National Council on Compensation Insurance and all the quasi-regulatory

functions of the Northwest Compensation Rating Bureau would be preserved.

Section 1 of the proposed bill amends ORS 737.205 to require workers' compensation carriers to file their own rates and rating systems. The filing requirement may currently be met by authorizing the Commissioner to accept filings of a rating organization.

Rating organizations would be limited (by Section 4) to recommending only rating plans and rate provisions related to claim payment or expected incurred losses. Each insurer must at least add its own provisions for expenses, taxes, profit and contingencies, but may other wise request approval from the Commissioner to adopt recommendations of a rating organization.

The current experience rating plan is considered by many to be an essential part of the rating system. Since this plan involves only a comparison of actual and expected losses, the proposed bill would allow the rating organization to continue recommending the current plan. Any insurer could request approval of the plan for its use. Insurers would be allowed to develop their own experience rating plans, but would not be required to do so.

Section 2 of the proposed bill amends the statistical record keeping requirements of ORS 737.265 to mandate workers' compensation insurers to report their statistics to a rating organization

according to a statistical plan prescribed by the Commissioner. The intent is to preserve the uniform data base so all insurers may have access to the largest possible body of Oregon data for their ratemaking effort.

Full information is necessary for free competition. This section would not only assure that each insurer could utilize the entire Oregon data for its ratemaking, but that it could also obtain the experience of each employer through the rating organization for its ratemaking, but that it could also obtain the experience of each employer through the rating organization for rating purposes. This availability of employer experience has been an important factor in the experience rating process and would be preserved.

Section 3 of the proposed bill would promote open competition for workers' compensation rating by abolishing the mandatory adherence requirement for rates. ORS 737.265(2) is the statute which currently requires all insurers to adhere to the rates, rating plans and systems, and policy forms of the rating organization with some deviation of classification premium rates permitted. Section 3 of the proposed bill leaves only mandatory adherence to policy forms of the rating organization.

Section 4 of the proposed bill would amend ORS 737.320 to waive the prior approval requirement for premium rates filed by an insurer subject to a simple test: they must not be less than provisions for claim payment recommended by a rating organization.

If an insurer rate schedule satisfies the test, then the insurer may "file and use" them without waiting for approval from the Commissioner. ORS 737.205(1) applies in that case. Any rate schedule that did not satisfy the test for each classification of employers would remain subject to the approval process of ORS 737.320(2).

The intent is to allow insurers to adopt claim cost recommendations from a rating organization, add their own provisions for taxes and expenses, and file their own rates. Such a process would be free of the regulatory restraint of prior approval. An insurer could even project claim costs lower than the approved recommendations and still not face prior approval if its expense allowances exceed the difference.

The remaining components of workers' compensation rating systems, which modify the rates for each individual employer, are of technically sophisticated design. Since the industry has followed rating organization constructions with little exceptions since workers' compensation laws were enacted early in this century, not many insurers would have the resources necessary to properly design well-balanced rating plans. Hence, it is recommended that the restraint of prior approval be retained for these aspects of rating. With the abolition of mandatory adherence in Section 3 of the bill, responsible insurers would be able to develop innovative rating systems. Alternative ways of classifying employers would also be allowed; however, the test in Section 4

for rates to be not lower than recommended "pure premiums" and statistical reporting requirement of Section 2 both would require an alternative classification scheme to be readily convertible to the system recommended by the rating organization.

Rates, rating plans and rating systems recommended by a rating organization would be restricted to provisions for claim payment or "incurred losses" only. These provisions, often called "pure premiums", could be based on historical claim payments, insurers' estimates of unpaid amounts and unreported claims, historical development patterns, adjustments for prospective benefits and frequencies, and other actuarially sound factors. None of the recommendations, however, would be allowed to contain provisions for loss adjustment or operating expenses, taxes, or profits. All recommendations of a rating organization would remain subject to prior approval by the Commissioner.

The current experience rating plan relies only on employer classifications, payrolls, actual incurred losses, and expected losses. Hence, the proposed bill would not prohibit the continued recommendation of the current plan. Premium discount tables and retrospective rating plans, however, are currently based wholly or in part on expense provisions and could not be recommended. The rating organization could continue to provide its members with loss-related elements of the respective rating system such as excess pure premium ratios ("Table M"), excess loss factors, hazard

groups ("Table H"), and loss development factors but could not provide expense allowances, tax multipliers, or basic premium factors. The rating organization could assist any insurer with preparing rating plans based on the expense provisions selected by the insurer.

Section 5 of the proposed bill would amend ORS 737.560(2) to require the State Accident Insurance Fund Corporation to be a member of a rating organization. The current statute gives SAIF management the option of membership. The intent of the proposed change is to preserve the statewide data base, a major portion of which is statistics from SAIF. All competing insurers, including SAIF, could have access to the same information. The right of membership on any committees affecting Oregon is preserved for SAIF.

Section 6 would appropriate funds for the administration of this new rating law by the Insurance Division in addition to the current levels of expenditure. This amount contemplates addition of one associate actuary with the credential of being either an Associate or a Fellow of the Casualty Actuarial Society. All current and proposed expenditures for administration of the rating law with respect to workers' compensation is reimbursed to the General Fund by the Workers' Compensation Department administrative fund according to ORS 737.320(4).

Section 7 states a proposed effective date of January 1, 1980, allowing time after legislative enactment for insurers to prepare filings and the Insurance Commissioner to acquire staff.

SUMMARY

This proposed bill would promote competition in workers' compensation insurance by repealing the mandatory adherence to rates, rating plans, and rating systems of a rating organization and waiving prior approval requirements for classification premium rates not lower than approved recommended provisions for claim payment.

Workers' compensation insurers, including SAIF Corporation, would be required to be members of and report statistics to a rating organization. Rates, rating plans, and rating systems recommended by the rating organization must have prior approval of the Insurance Commissioner. Ratemaking recommendations, the actual numerical values to be used in rating plans, would be limited to provisions for claim payment only. Insurers would have to add their own rate filings. So long as those rates are not lower than the claim provisions recommended by the advisory organization, insurers may file them with the Insurance Division and begin using them without prior approval.

The statutes which now call upon the National Council as a rating

organization to establish an Oregon Classification and Rating Committee and maintaining the quasi-regulatory functions of the Northwest Compensation Rating Bureau would still apply so far as insurers utilize the recommended rating plans and system and for uniform statistical reporting. By requiring insurers to report loss statistics to a rating organization, the statewide insured-employers data base would be preserved.

Beyond classification premium rates, the remaining components or workers' compensation rating system are of technically sophisticated design. Few insurers are accustomed to properly designing well-balanced rating plans of their own. The restraint of prior approval would be retained for these aspects of rating.

July 25th Before Task Force

THE MAIN OBJECTIVE OF THE W. C. OPEN RATING -- MODIFIED FILE AND USE DRAFT CONCEPT IS TO ELIMINATE THE SUBSIDIZATION OF INEFFICIENT CARRIERS WRITING OREGON COMP. PRESENTLY, THE EXPENSE COMPONENTS OF W. C. RATES ARE TIED TO AVERAGE EXPENSES FOR NATIONAL OPERATIONS. BASED ON THE ESTIMATED PRESENT ANNUAL \$5.2 MILLION SAVINGS TO OREGON EMPLOYERS FROM THE LIMITED 1980^{class} RATE DEVIATIONS, IT IS GUESTIMATED THAT THE MOD. F & U SYSTEM WOULD MORE THAN DOUBLE THIS ANNUAL SAVINGS BY REALIZING THE POTENTIAL OF FULL DEVIATION IN ARRIVING AT THE NET PREMIUM -- THE TRUE CONTRACTUAL COST.

SECONDARY OBJECTIVES ARE:

- (1) DEREGULATION, ALLOWING FREE ENTERPRISE TO BEAR UPON THE OREGON HIGH COST PROBLEM,
- (2) RECOGNIZING THOSE CARRIERS WHO HAVE EXPRESSED A DESIRE TO DEVIATE IN RATINGS PLANS AND SYSTEMS, AND
- (3) STIMULATE THE INNOVATIVE MARKET-PLACE FORCES TO PROVIDE MORE "UP FRONT" -- CONTRACTUAL PRICING PROGRAMS AND LESS "TALL-END" -- OR ~~MORE~~ POSSIBILITIES OF DIVIDEND PRICING PROGRAMS, and

(4) STIMULATE ^{the potential for} more equitable apportionment ^{plans} of the W.C. @ burden among our employees.

NOTING THE ~~THE~~ JULY 10 INQUIRIES AND DISCUSSIONS OF THE DRAFT CONCEPT, I BELIEVE IT WORTHWHILE TO REVIEW THE MECHANICS OF THE "OPEN RATING -- MOD. F & U" SYSTEM BEFORE ADDRESSING YOUR SPECIFIC QUESTIONS.

THE DRAFT CONCEPT MANDATES ^{that} EACH CARRIER MUST RENDER ITS OWN RATE-MAKING FILINGS FOR DETERMINING ITS ULTIMATE PRICE -- THE NET PREMIUM -- BASED UPON ITS OWN EXPENSES. THE CARRIER MAY, HOWEVER, RELY UPON THE AVERAGE OREGON ~~LOSS~~ ^{COST} (P.P.), IF IT CHOOSES. THIS P.P. IS ABOUT 63% OF THE NET PREMIUM -- IT'S THE FOUNDATION FOR PRICING.

REALISTICALLY, BECAUSE OF CREDIBILITY DIFFICULTIES, FEW CARRIERS COULD JUSTIFY THEIR OWN P.P. CLASSIFICATION BASE, AND SINCE THE PEOPLE OF THIS STATE MUST ALWAYS KNOW WHAT THAT BASE IS, THERE MUST BE A MECHANISM PROVIDING THE P.P. BASE. AN INDUSTRY ORGANIZATION ^{would} PROVIDE THIS BY RENDERING "ADVISORY CLAIM PAYMENT (P.P.)" FILINGS WITH THE COMMISSIONER SUBJECT TO HIS PRIOR APPROVAL. SUCH PRIOR APPROVAL IS NECESSARY TO CURB ANY UPWARD "FLO~~at~~" OR CRACKS IN THE P.P. BASE.

BEING REALISTIC, WE WOULD SEE LITTLE, IF ANY, CHANGE
IN THE CURRENT P.P. FILING AND COMMISSIONER REVIEW PROCESSES.
WE WOULD STILL ^{have} BU. FILINGS ON:

1. P.P. BY CLASS (EXH)
2. ~~RECORDS~~ ^{RATINGS:} (A) TABL "M" LOSS RATE PERCENTAGES FOR "INSURANCE CHARGE" TELLING WHAT PERCENT OF TOTAL LOSSES ARE NOT RECOVERABLE.
(B) TABL "H" - "HAZARD GROUPS"
(C) "LOSS DEVELOPMENT" FACTORS
(D) EXP MOD & BASIC RULES (EXH)
3. ANY OTHER LOSS FACTORS FOR ANY RATING PLAN OR SYSTEM, EXCEPT FOR LOSS ADJ. EXPENSE.

THE CARRIER ARMED BY SUCH "ADVISES" WOULD & MUST MAKE
THEIR OWN CLASS RATE, RATING PLAN & SYSTEM FILINGS, WITH ONE
EXCEPTION -- EXPERIENCE RATING. SINCE EXPERIENCE RATING DOES
NOT INVOLVE EXPENSE ELEMENTS, THE BU'S "ADVISORY'S" COULD BE *(not made by us)*
ADOPTED BY THE CARRIERS ~~AS~~ THEIR OWN. REALISTICALLY, THERE'S

ONLY THE REMOTEST POSSIBILITY THAT ANY EXPERIENCE MOD. PLAN OTHER THAN THE "ADVISORY" WOULD CLEAR THE COMMISSIONER'S PRIOR APPROVAL ON RATING PLANS AND SYSTEMS.

WISH TO ILLUSTRATE THE MECHANICS OF THE DRAFT CONCEPT RESPECTS INDIVIDUAL CARRIER FILINGS. BUT FIRST WOULD LIKE TO IDENTIFY THE VARIOUS TYPES OF INNOVATIVE PLANS ANTICIPATED IN THEIR RANKING ORDER OF PROBABLE FILINGS:

1. CLASSIFICATION RATES (EXH)
 2. PREMIUM DISCOUNT (EXH)
- } HERE BY APPLICATION OF THE CONCEPT'S HANDLING OF EXPENSES, ALL CARRIERS WOULD BE DEVIATING FROM THE PRESENT UNIFORM CLASSIFICATION & P.D. RATINGS.
3. BASIC MANUAL RULES, E.G. "SINGLE ENTERPRISE RULE" AND SAIF'S "DAY TO DAY" RULE DEVIATION THEREFROM RESPECTS DIVISION OF PAYROLL. SUCH REFORM HAS GREAT POTENTIAL FOR MORE EQUITABLE APPORTIONMENT OF THE W.C. COST BURDEN AMONG EMPLOYERS.

4. CLASSIFICATIONS - NEW, MERGED, OR DELETED. DEVELOPMENTS IN THIS AREA AGAIN, ANTICIPATED RELIEF FOR EMPLOYERS RESPECTS THE EQUITABLE APPORTIONMENT PROBLEM. SUCH WOULD ALSO HOPEFULLY RELIEVE THE ESCALATING BURDEN ON THE OC&R COMMITTEE AND COMMISSIONER RESPECTS ADMINISTRATIVE LAW CONTESTED CASE HEARINGS.

5. RETROS - COULD BE EXPANDED FROM THE EXISTING 4 FIXED AND ONE RESTRICTED VARIABLE TYPE FOR ACCOMMODATING MORE EMPLOYERS ^{with} ~~ON~~ A TAILORED CONTRACTUAL COST PLUS PRICING CONTRACT.

FOR ILLUSTRATING THE F & U TEST AND ADMINISTRATION OF THE MOD. F & U CONCEPT, I REFER YOU TO THE EXHIBITS BEFORE YOU.

1. CLASS RATES - "PENETRATING FLOOR" OF THE COMMISSIONER'S
(A) GRAPH 1 - NO PENETRATION ADOPTED ADVISORY P.P.
(B) GRAPH 2 - PENETRATION

2. PREMIUM DISCOUNT:
(A) GRAPH 3 - NO PENETRATION: THE NOTION LIES THAT
 COMMISSIONER PREDISPOSED TO APPROVE THE P.D. PLAN.
(B) GRAPH 4 - PENETRATION: GREAT JUSTIFICATION FOR THE
 PLAN TO CLEAR PRIOR APPROVAL.
(C) GRAPH 5 - PLAN IMPOSED UPON A PENETRATING RATE:
 THE GREATEST JUSTIFICATION WARRANT.

THE SAME PENETRATION ISSUE LIES WITH RETRO FILINGS THE
OPERATIVE QUESTION IN ALL THESE SITUATIONS IS (SEE EXHIBIT):

3. ALTERNATIVE CLASS SYSTEM
(SEE EXHIBIT)

4. ALTERNATIVE RATING RULES (SEE EXHIBITS OF GRAPH & BASIC
MANUAL)

AMENDMENTS

SUBSEQUENT TO OUR OWN REVIEW, WE WISH TO OFFER AMENDMENTS TO THE CONCEPTUAL DRAFT, AS FOLLOWS:

1. THE COMMISSIONER PERSONALLY RECOMMENDS THAT SECTION 7 OF THE DRAFT BE AMENDED REQUIRING SAIF TO REPORT ITS STATISTICAL DATA IN THE SAME MANNER AS PRIVATE INSURERS. THIS CAN BE ACCOMPLISHED BY: (SEE DRAFT PAGES 8 & 9, AMENDMENTS)
2. IT IS ALSO RECOMMENDED THAT SECTION 1 BY AMENDED TO ASSURE THAT THERE BE A UNIFORM REPORTING OF STATISTICAL INFORMATION (SEE PAGE 2 (5)). ALTERNATIVES OF PRESCRIBING A SPECIFIC BUREAU OR REPORTING ORGANIZATION RAISE CONSTITUTIONAL ISSUES OF THE FIRST (ASSEMBLY), FIFTH (TAKING), TENTH (FREEDOM OF CONTRACT AND POLICE POWER) AND 14TH AMENDMENTS. SEEMS IMPROPER FOR GOVERNMENT TO CREAT A PRIVATE MONOPOLY. OUR SUGGESTION OF INSTEAD UTILIZING UNIFORM STATISTICAL REPORTING AND PROVIDE SUFFICIENT POWER TO RESTRICT EXPANSION OF BUREAUS -- IT WOULD CHILL ANY APPETITE FOR NUMEROUS RATING BUREAUS.
3. HOUSEKEEPING AND STYLING AMENDMENTS WILL BE FORTHCOMING FROM THE COMMISSIONER, E.G. CORRECTING "WORKMEN" TO "WORKERS" IN THE VARIOUS EXISTING CODE SECTIONS AND

REVERTING BACK TO "RATING ORGANIZATIONS" VEHICLE FOR "ADVISORY" FILINGS WITH APPROPRIATE RESTRICTIONS. THE INTENT WAS ONLY TO RESTRICT THE NATURE OF FILINGS AND NOT THE TYPE OF ORGANIZATION.

RESPONDING TO THE TASK FORCES JULY 10 INQUIRIES -- I BELIEVE THERE WERE ESSENTIALLY TWO.

1. "ADVISORY ORGANIZATION" (PROFFERED AMENDMENT HANDLES -- GIVE 14 YEAR HISTORY OF BUREAU OPERATION IN THIS STATE WITHOUT CHANGE AND THE 5 REASONS FOR RETAINING NCCI.)

2. "PURE PREMIUM" CLARIFICATION (MONTE'S CHARACTERIZATION CORRECT -- PAID LOSSES PLUS RESERVES THEREON).

RESPOND TO ANY FURTHER QUESTIONS.

FILE AND USE TEST
For Class Premium Rates

Premium per
\$100 payroll

8⁰⁰

①
Class rate filed by insurer

INSURER MAY
"FILE AND USE"

6³⁰

Advisory Recommendation ("Pure Premium")

\$PAYROLL

6³⁰

Advisory Recommendation ②

PRIOR APPROVAL
NEEDED

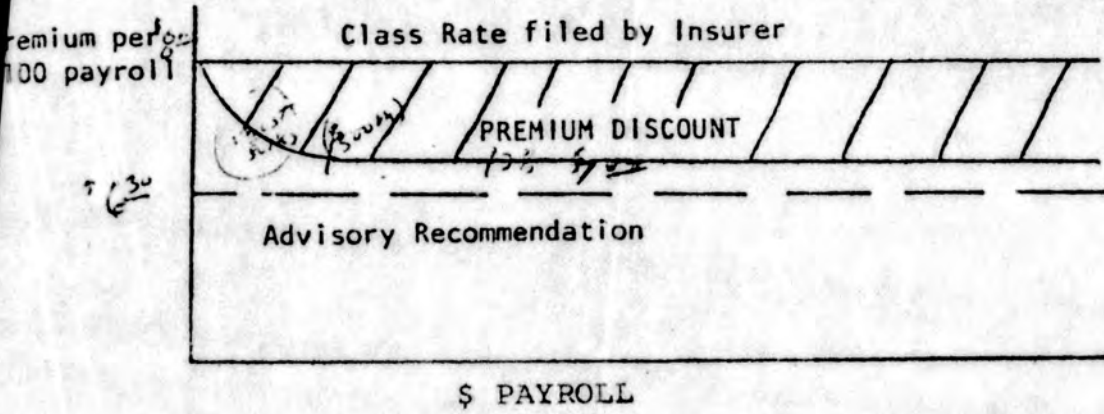
6⁰⁰

Class rate filed by an insurer

NOTE: All other components of an insurer's rating systems and all components of the advisory organization rating system would be subject to prior approval.

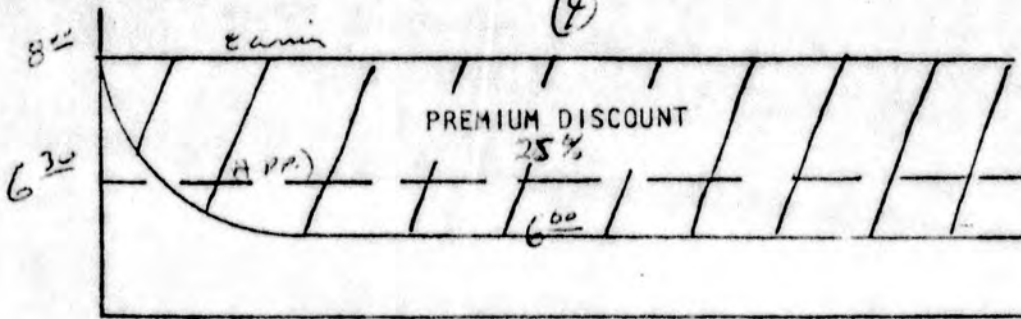
MODIFIED FILE AND USE

(3)



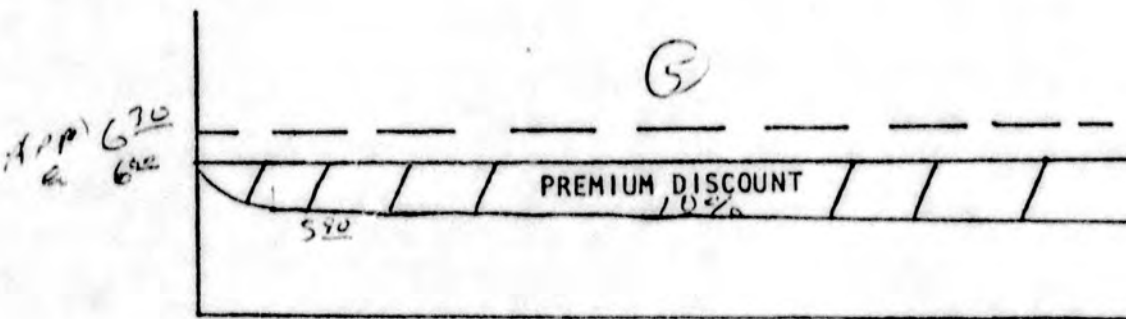
Rate: File & Use
P.D.: Prior Approval
minimum review

(4)



Rate: File & Use
P.D.: Prior Approval
Greater Support
Required

(5)



Rate: Prior Approval
P.D.: Prior Approval
Greatest Support
Required

OPERATIVE QUESTION: Is any class rate, minus the maximum premium discount, less than the advisory "pure premium"?

$$\text{Rate (100\% - maximum Prem Discount \%)} < \text{Advisory "Pure Premium"}$$

ALTERNATIVE CLASSIFICATION SYSTEM
Filed by an Insurer

Since class rates would be subject to the file and use test and since all insurers would have to use a uniform statistical plan for reporting claim experience, classifications must be readily convertible to the advisory classification system.

Adv. Filing

6666	6667
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Directing Co.

<i>Direct Adv. Cl. Assign 66661 Michigan</i>	<i>Co. & Rates 66661</i>	<i>Outgoing 66671</i>	<i>from Re- ins. Adv. Cl. 7/25/57 66672 Michigan</i>
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if no penetration of floor

Advisory "Pure Premiums"

Class 6666: \$10

Class 6667: \$15

Class Rates filed by insurer:

Class 66661: \$12

Class 66662: \$16

Class 66671: \$16

Class 66672: \$18

ALTERNATIVE CLASS SYSTEM: Prior Approval required

CLASS RATES FILED BY INSURER: File and use, since =
\$12 and \$16 are not less than \$10
and \$16 and \$18 are not less than \$15

See of Classification

ALTERNATIVE RATING RULE
Filed by an Insurer

Example: The Day-to-Day Rule

Rating rules, ^(Single Enterprise Rule) currently require all payroll of an employee to be assigned to the highest-rated class describing any of his work during each week. An insurer may wish to allow an employer to assign a different class each day of the week if appropriate payroll records are maintained. *while easy to audit, may be a great inequity.*

Advisory Rule:

Mon.	Tues.	Wed.	Thurs.	Fri.
6667 <i>full week</i>				

Rule Filed by an insurer:

4444	6667	6667	4444	4444
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Statistical Reporting: The insurer would have to report all payroll, premium, and claims for the entire week within the class having the higher advisory pure premium.

Filing Status: Alternative rule would require prior approval.

Open Competition - Modified File & Use

A. Carrier Filings:

1. Carrier may render a File & Use rate $\frac{1}{100}$ rating plan filing, if their manual rates after application of any expense rate plan (eg. maximum P.D.) is at or higher than the pure premium advisory filing of the rating bureau.

2. Carrier shall ~~not~~ submit its rate for rating plan for prior approval if after application of any rating plan (eg. maximum P.D.) its manual rate is lower than the pure premium advisory.

3. Carrier shall submit any rate filing lower than the P.P. advisory for prior approval.

3.A. " " re. New classification (cannot do adherence to the ^{del} APP filing)

4. E.g. (a) Carrier adopts bureau P.P. advisory filing & loads it for "X" expense, ~~that~~. In all situations a "file & use" situation regardless of expense loading for no penetration of P.P. floor. However,

"Penetrates the floor"

(b) Carrier also files its own Premium Discount Plan of a maximum "Z" amount (% of manual premium). The filing will be File & Use submission if - the adopted P.P. advisory plus "X" expense loading minus the "Z" discount produces a rating higher than the advisory P.P. Yet,

(c) if the adopted P.P. advisory plus "X" expense loading minus "Z" discount produces a rating lower than the advisory P.P., then the filing must be Prior Approval.

(d) Same rule for other expense plans

B. Bureau ^{Advisory} Filings - ^{ALLOWED} for member carriers
1. The advisory Base Premium.

File
36 (3)
M.R.

2. Retros:

(a) "Ins Charge" - table "M" loss rate?

(tells what % of total losses are not recoverable)

[Some must be Premium (4/2)]

- (b) "Hazard Groups" - table "H"
- (c) "Other loss" factors (+2.1)
- (d) "Loss Development" factors
- (e) Experience Rating Modifications & same rules for such.
- (f) any other loss factor for any rating plans, except for loss adjustment expense.

Whereas, comm

- ① ^{monitor} ~~Study~~ implementation of pgms by Div WC Div Ins.
- ② ~~Consider~~ ^{Review} benefit structure
- ③ improve rehab svcs to inj. employees.
- ④ minimize cost to employer
- ⑤ improve delivery of svcs + benefits to employers.
- ⑥ Streamline lang in statute
- ⑦ other matters comm deem necessary.

Authorized exec dir

- ① W Comp Study
- ② Problems
- ③ Committee bill
- ④ Unresolved
- ⑤ Urge Action
 - 2nd inj
 - feds

WORKERS' COMPENSATION REFORM

Ever-climbing rates for workers' compensation insurance and employee complaints over insurance company abuses are forcing the legislature to take another look at a complex and volatile issue - how to make the workers' comp system work at a reasonable cost.

Bitter Fights Over Benefits

Though comp rates have risen slowly on the average since statehood, drastic jumps in the mid-1970's and inflationary increases in recent years have hit employers hard. Business and labor groups fought bitterly in 1976 and 1977 over benefit levels for injured workers. Labor won in 1976, but premiums skyrocketed, especially for hazardous industries, with some rates reaching \$70 per \$100 in wages. The issue helped to heat up the '76 election, and in 1977 a coalition of Republicans and bush Democrats set limits on benefits, partially rolling back the increases.

A New Look At The System

Early last year, reports by industry groups and legislative staffers pointed out problems in the system, pointing to the burden on small employers and the difficulties for injured workers to receive quick payments. Former insurance commissioner Block issued a series of recommendations designed to hold costs down, but labor interests kept the bill bottled in committee. The administration, finding the second injury fund near bankruptcy, introduced legislation (HB-705) raising contributions to the fund and making primarily cosmetic changes to the system. The legislature was reluctant to let the issue come to the floor in an election year again, though, and passed the buck to an interim commission (3 labor reps, 3 management reps, 1 insurance man, and co-chaired by Rep. Rogers and Sen. Stimson).

This Year's Proposal

That commission will be introducing legislation next week making several changes in the comp system:

- *moving workers comp insurance to the nation's first 'open rating' system, allowing insurers to compete by allowing prices to float instead of being fixed by industry groups;
- *increasing options available to employers, including self-insurance, group self-insurance, greater use of deductibles and reinsurance, and other plans;
- *bailing out the second injury fund with a 6 per cent surcharge on all medical benefits (in lieu of the current 8 per cent on only certain forms of medical benefits);
- *increasing funeral benefits and penalties for uninsured employers;
- *making dozens of technical amendments designed to make the workers' comp act internally consistent and more understandable; and
- *funding personnel to speed action on claims, state support of the second injury fund.

Still On The Table

With the exception of the open rating amendment, most of the changes are acceptable to all parties. The insurance industry is divided over open rating; large insurers may seek to separate the issue from the rest of the bill. Most of the toughest issues are still on the table. The commission now plans to work on rehabilitation and benefits issues, but no recommendations are expected this session.

Labor unions are looking for expanded coverage of industrial diseases, inclusion of the value of employee benefit packages in computing comp benefits, broadening of benefits to widows and orphans, and consideration of a state insurance fund to alleviate high costs for small employers. On the other side, waiting in the wings are a series of amendments designed to lower benefits for high-income workers, limit permanent partial disability collections, stop 'doctor-shopping' by injured employees, restrict benefits paid to remote-site employees when injured during off-hours, and provide for state support of the entire system.

Key in consideration of the bill this year will be whether anyone tries to 'pile on' the commission's bill; indications are either labor or business groups could kill the bill.

Introduced: 2/13/81
Referred: Labor & Commerce and
Finance

BY THE RULES COMMITTEE BY REQUEST
OF THE LEGISLATIVE COUNCIL (for
the Workers' Compensation Study
Commission)

1 IN THE HOUSE

2 HOUSE BILL NO. 159

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to workers' compensation; and provid-
7 ing for an effective date."

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

9 * Section 1. The purpose of sec. 2 of this Act is to provide both protec-
10 tion for injured employees and flexibility for employers in making the
11 alternative of self-insurance available to those employers required under
12 AS 23.30 to provide workers' compensation insurance coverage for their
13 employees.

14 * Sec. 2. AS 21 is amended by adding a new chapter to read:

15 CHAPTER 62. WORKERS' COMPENSATION SELF-INSURANCE.

16 Sec. 21.62.010. SELF-INSURANCE. An employer or two or more
17 employers having a common management or two or more employers having a
18 common interest may elect to pay directly the compensation required in
19 AS 23.30 after providing satisfactory proof of financial ability to
20 make direct payments and receiving a self-insurance certificate from
21 the director.

22 Sec. 21.62.020. SELF-INSURANCE FUND. (a) A workers' compensa-
23 tion self-insurance group formed by two or more employers having a
24 common interest shall establish and keep a self-insurance fund with a
25 minimum balance to be determined by the director, but not less than
26 \$250,000. The director may adopt regulations to maintain the solvency
27 of the fund.

28 (b) The fund shall be administered by a board of trustees selected
29 by members of the common interest self-insurance group.

1 (c) A majority of the trustees of the fund must be members of the
2 self-insurance group.

3 (d) A trustee of a fund may not be an owner, officer, or employee
4 of the service company used by the common interest self-insurance group
5 which established the fund.

6 (e) The common interest self-insurance group shall adopt bylaws
7 governing the operation of the fund.

8 Sec. 21.62.030. APPLICATION. (a) An employer desiring to become
9 an individual self-insurer or two or more employers having common
10 management desiring to become a group self-insurer shall submit an
11 application to the division on a form prescribed by the director.

12 (b) The trustees of the fund of a common interest group desiring
13 to become a group self-insurer shall submit an application to the divi-
14 sion on a form prescribed by the director.

15 (c) An applicant for self-insurance shall answer all questions on
16 the application. The answers shall be sworn to and notarized. The
17 application shall be submitted at least 90 days before the proposed
18 effective date or renewal date of the self-insurance certificate.

19 Sec. 21.62.040. CONTENTS OF APPLICATION. An applicant for self-
20 insurance shall submit the following with the application for self-
21 insurance:

22 (1) evidence of working capital of an amount which estab-
23 lishes the financial strength and liquidity to pay normal compensation
24 claims promptly;

25 (2) the proposed amount of retention per loss and retention
26 in the aggregate;

27 (3) the proposed program of excess insurance coverage;

28 (4) proof that the applicant has ample facilities and compe-
29 tent personnel to service the self-insurance plan or a copy of a signed

1 service agreement with an approved service company to provide that
2 service;

3 (5) the location in this state where all records of self-
4 insured loss will be maintained;

5 (6) a description of any loss control or safety programs to
6 be used by the applicant;

7 (7) Any further evidence which the director may require to
8 establish the ability of the applicant to meet its obligations under
9 AS 23.30.

10 Sec. 21.62.050. DOCUMENTS REQUIRED OF INDIVIDUAL SELF-INSURER.
11 In addition to the information required under AS 21.62.040, an applica-
12 tion for individual self-insurance shall be accompanied by

13 (1) a financial statement not more than three months old at
14 the time of the application showing a net worth of not less than
15 \$500,000;

16 (2) an agreement to fully discharge by cash payment all
17 amounts required to be paid under AS 23.30.

18 Sec. 21.62.060. DOCUMENTS REQUIRED OF COMMON MANAGEMENT SELF-
19 INSURANCE GROUP. In addition to the information required under AS 21.-
20 62.040, an application for group self-insurance by a common management
21 group shall be accompanied by

22 (1) a financial statement not more than three months old at
23 the time of application for each member of the group showing a combined
24 net worth of all members of the group to be not less than \$500,000;

25 (2) an indemnity agreement jointly and severally binding
26 each member of the common management self-insurance group to fully
27 discharge by cash payment all amounts required to be paid under
28 AS 23.30.

29 Sec. 21.62.070. DOCUMENTS REQUIRED OF COMMON INTEREST SELF-

1 INSURANCE GROUP. In addition to the information required under AS 21.-
2 62.040, an application for group self-insurance by the trustees of the
3 fund of a common interest group shall be accompanied by

4 (1) a financial statement not more than three months old at
5 the time of the application for each member applying for coverage on
6 the inception date of the fund showing a combined net worth of all
7 members of the common interest self-insurance group of not less than
8 \$1,000,000;

9 (2) an indemnity agreement jointly and severally binding the
10 fund and each member of the common interest self-insurance group to
11 fully discharge by cash payment all amounts required to be paid under
12 AS 23.30;

13 (3) An individual application for each member of the common
14 interest self-insurance group applying for coverage under the fund;

15 (4) a set of bylaws or a trust agreement which shall govern
16 the operation of the fund;

17 (5) proof of the existence of the minimum balance in the
18 fund as required under AS 21.62.020(a);

19 (6) an estimate of all administrative expenses of the fund
20 for the period for which the self-insurance certificate is to be issued.

21 Sec. 21.62.080. REVIEW AND DECISION OF DIRECTOR. (a) The direc-
22 tor shall review the contents of an application for self-insurance and
23 determine whether the applicant has the financial ability to meet its
24 obligations under AS 23.30.

25 (b) The director shall determine the amount of excess insurance
26 coverage necessary for the discharge of the obligations of the employer
27 under AS 23.30 and the protection of the applicant.

28 (c) The director may require a surety bond under AS 21.62.100 as
29 a condition to issuance of a self-insurance certificate.

1 (d) The director shall give written notice to the applicant not
2 later than 30 days before the proposed effective date of his approval
3 or denial of an application for self-insurance. If the application is
4 approved, the notice shall list the conditions which must be met before
5 the self-insurance certificate is issued. If the application is denied,
6 the notice shall state the specific reasons for the denial.

7 (e) A decision of the director is subject to the hearing and
8 appeal procedure under AS 21.06.180 - 21.06.230.

9 Sec. 21.62.090. SELF-INSURANCE CERTIFICATE. Upon approval of an
10 application and receipt of proof of any conditions established under
11 AS 21.62.080(d), the director shall issue a self-insurance certificate
12 to the applicant. The self-insurance certificate shall be on a form
13 prescribed by the director and shall be issued for a period of one
14 year.

15 Sec. 21.62.100. BOND. (a) With each application for self-insur-
16 ance or application for renewal of a self-insurance certificate the
17 director may require a corporate surety bond to secure the payment of
18 obligations under AS 23.30 as they are incurred. The bond shall be on
19 a form prescribed by the director and shall be issued by a corporate
20 surety authorized under AS 21.09 to do business in this state. The
21 amount of the bond for each year shall be equal to or greater than the
22 aggregate retention of the self-insurer but not less than \$25,000.

23 (b) A bond secured in compliance with this section may not be
24 cancelled, exchanged, or replaced unless 60 days written notice is
25 given to the director and to the self-insurer.

26 Sec. 21.62.110. EXCESS INSURANCE. (a) The director shall deter-
27 mine the amount and kind of excess insurance required of an applicant
28 for self-insurance based on the financial strength, past history of
29 loss, and degree of hazard in the operations of the applicant and any

1 other factors he considers appropriate.

2 (b) Excess insurance coverage shall be written by a casualty
3 insurer authorized under AS 21.09 to do business in this state, except
4 that the director may approve a policy of excess insurance with coverage
5 starting at \$1,000,000 with an insurer writing insurance in this state
6 under AS 21.33.

7 (c) A policy of excess insurance issued under this chapter may
8 not be cancelled unless the excess insurer gives 60 days written notice
9 by certified mail to the director and to the self-insurer.

10 (d) The policy of excess insurance shall contain a provision that
11 the director may order the payment of obligations due under the terms
12 of the policy to a party other than the employer if necessary to assure
13 the prompt payment of benefits to injured employees.

14 (e) A policy of excess insurance under this chapter shall cover
15 each employer named in the application for self-insurance under AS 21.-
16 62.030 and no other employers.

17 Sec. 21.62.120. SERVICING FOR SELF-INSURERS. (a) It is the sole
18 responsibility of a self-insurer to provide competent persons to service
19 its programs for claims adjusting, underwriting, and loss control.

20 (b) A self-insurer may contract with one or more approved service
21 companies to provide these services on a full-time basis.

22 (c) The department shall adopt regulations for approving service
23 companies under this section.

24 Sec. 21.62.130. RECORDS. (a) A self-insurer or a service company
25 on behalf of a self-insurer shall maintain all claims records at a
26 location in the state.

27 (b) The records of a self-insurer which relate to self-insurance
28 under this chapter are subject to guidelines established by the director
29 concerning their retention and the review of those records by the

1 director.

2 (c) All claims files of a self-insurer are subject to review by
3 the director during normal business hours at a location in the state as
4 stated in the application for self-insurance.

5 Sec. 21.62.140. REPORTS. The director may by regulation require
6 reports concerning payroll, losses, reserves, financial condition, and
7 other matters reasonably related to the ability of a self-insurer to
8 meet its obligations under AS 23.30. Failure to comply with these
9 regulations is cause for revocation of a self-insurance certificate.

10 Sec. 21.62.150. INDEMNITY AGREEMENT. The director may by regula-
11 tion establish the provisions of the indemnity agreement required under
12 AS 21.62.060(2) and 21.62.070(2). An indemnity agreement may contain
13 other provisions that are consistent with the provisions adopted by
14 regulation.

15 Sec. 21.62.160. REVOCATION OF A SELF-INSURANCE CERTIFICATE. (a)
16 Failure to comply with the provisions of this chapter or AS 23.30 is
17 grounds for revocation of a self-insurance certificate.

18 (b) The director shall give a self-insurer 30 days written notice
19 of a proposed revocation of a self-insurance certificate. The notice
20 of proposed revocation shall contain a statement of the reasons for
21 revocation. Revocation is effective 30 days after a self-insurer re-
22 ceives a notice of proposed revocation unless the self-insurer requests
23 a hearing within 15 days after receiving notice of proposed revocation.
24 Revocation shall be stayed until the hearing process is completed.

25 (c) A self-insurer may appeal an order under this section as
26 provided in AS 21.06.230.

27 Sec. 21.62.170. INDEXING. The director may adopt regulations to
28 provide for a revision of the dollar amounts in AS 21.62.020(a), 21.62.-
29 050(1), 21.62.060(1), 21.62.070(1), 21.62.100(a), and 21.62.110(f) to

1 reflect devaluation of those amounts due to inflation.

2 Sec. 21.62.200. DEFINITIONS. In this chapter

3 (1) "common interest self-insurance group" means a group of
4 employers that are in the same or similar type of business and includes
5 unrelated businesses which are owned or controlled by the same person
6 or persons if one of the unrelated businesses is the same or similar
7 type of business as the other businesses in the group;

8 (2) "common management self-insurance group" means a group
9 of employers which have businesses that are owned or controlled by the
10 same persons;

11 (3) "fund" means a self-insurance fund;

12 (4) "trustee" means a person elected by a common interest
13 self-insurance group for a stated term to direct the administration of
14 a fund.

15 * Sec. 3. AS 18.80.220(a)(4) is amended to read:

16 (4) an employer, labor organization or employment agency to
17 discharge, expel or otherwise discriminate against a person because he
18 has

19 (A) opposed any practices forbidden under AS 18.80.-
20 200 - 18.80.280; [OR BECAUSE HE HAS]

21 (B) filed a complaint, testified or assisted in a
22 proceeding under this chapter; or

23 (C) filed a claim for workers' compensation benefits
24 under AS 23.30;

25 * Sec. 4. AS 21.36.190(d) is amended to read:

26 (d) This section does not apply to workers' compensation insur-
27 ance when issued to an association of employers in the same rating
28 classification [FORMED FOR PURPOSES OTHER THAN THE PURCHASE OF INSUR-
29 ANCE] and which as a group

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(1) has a constitution and bylaws;

(2) incorporates a safety program;

[(3) AS A GROUP HAS PREFERRED CHARACTERISTICS OVER SIMILAR RISKS WRITTEN ON AN INDIVIDUAL BASIS;] and

(4) has filed and received approval from the director for the rating program to be applied to the group.

* Sec. 5. AS 21.39.040(d) is amended to read:

(d) Subject to the exceptions [EXCEPTION] specified in (e) of this section and AS 21.39.045, each filing shall be on file for a waiting period of 15 days before it becomes effective, which period may be extended by the director for an additional period not to exceed 15 days if he gives written notice within the waiting period to the insurer or rating organization which made the filing stating that he needs additional time for the consideration of the filing. Upon written application by the insurer or rating organization, the director may authorize a filing which he has reviewed to become effective before the expiration of the waiting period. A filing shall be considered to meet the requirements of this chapter unless disapproved by the director within the waiting period.

* Sec. 6. AS 21.39 is amended by adding a new section to read:

Sec. 21.39.045. WORKERS' COMPENSATION RATE FILINGS. (a) A filing of workers' compensation rates by a rating organization shall be limited to provisions for claim payment and may not include allowances for expenses, taxes, or profit, except as necessary for full rate development for an assigned risk pool under AS 21.39.155.

(b) If each rate in a schedule of workers' compensation rates for a specific classification of risks filed by an insurer is not lower than the rate for each respective classification filed by a rating organization in accordance with (a) of this section and approved by the

1 director, the schedule of rates filed by the insurer is effective
2 immediately and the waiting period in AS 21.39.040(d) is not required.

3 (c) Notwithstanding (b) of this section, the director may require
4 an insurer to comply with the waiting period in AS 21.39.040(d) for a
5 rate filing or part of a rate filing if he determines that the rate
6 filing or part of the rate filing is excessive, inadequate, or unfairly
7 discriminatory.

8 * Sec. 7. AS 21.39.070 is amended by adding new subsections to read:

9 (c) Notwithstanding (a) of this section, a filing by an insurer
10 of an independent deductible or loss reimbursement plan is not consid-
11 ered a deviation under this section.

12 (d) Notwithstanding (a) of this section, a filing of workers'
13 compensation rates under AS 21.39.045(b) is not a deviation under this
14 section.

15 * Sec. 8. AS 23.30.005(a) is amended to read:

16 (a) The Alaska Workers' Compensation Board shall consist of nine
17 [SEVEN] members, including a southern panel of three members sitting
18 for the first judicial district, a northern panel of three members
19 sitting for the second and fourth judicial districts, [AND] a south-
20 central panel of three members sitting for the third judicial district,
21 and one panel of three members which may sit in any judicial district.

22 Each panel shall include the commissioner of labor or his designated
23 representative, a representative of industry and a representative of
24 labor. The latter two members of each panel shall be appointed by the
25 governor. All panel members are subject to confirmation by a majority
26 of the members of the legislature in joint session.

27 * Sec. 9. AS 23.30.010 is amended to read:

28 Sec. 23.30.010. COVERAGE. Benefits are [COMPENSATION IS] payable
29 under this chapter in respect of disability or death of an employee.

1 * Sec. 10. AS 23.30.015 is amended to read:

2 Sec. 23.30.015. BENEFITS [COMPENSATION] WHERE THIRD PERSONS ARE
3 LIABLE. (a) If on account of disability or death for which benefits
4 [COMPENSATION IS] payable under this chapter the person entitled to the
5 benefits [COMPENSATION] believes that a third person other than the
6 employer or a fellow employee is liable for damages, he need not elect
7 whether to receive benefits [COMPENSATION] or to recover damages from
8 the third person.

9 (b) Acceptance of benefits [COMPENSATION] under an award in a
10 compensation order filed by the board operates as an assignment to the
11 employer of all rights of the person entitled to benefits [COMPENSATION]
12 and the personal representative of a deceased employee to recover
13 damages from the third person unless the person or representative
14 entitled to benefits [COMPENSATION] commences an action against the
15 third person within one year after an award.

16 (c) Payment of compensation into the second-injury fund as a
17 result of death operates as an assignment to the employer of all rights
18 of the representative of the deceased to recover damages from the third
19 person.

20 (d) An employer under an assignment may either institute proceed-
21 ings for the recovery of damages or may compromise with a third person,
22 either without or after instituting an action.

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

25 (1) The employer shall retain an amount equal to

26 (A) the expenses incurred by him in respect to the
27 action or compromise, including a reasonable attorney fee deter-
28 mined by the board;

29 (B) the cost of all benefits actually furnished by him

1 under this chapter;

2 (C) all amounts paid as compensation and second-injury
3 fund payments;

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

13 (2) the employer shall pay any excess to the person entitled
14 to benefits [COMPENSATION] or to his representative.

15 (f) Even if an employee, his representative, or his employer
16 brings an action or settles a claim against the third person, the
17 employer shall pay the benefits [AND COMPENSATION] required by this
18 chapter.

19 (g) If the employee or his representative recovers damages from
20 the third person, the employee or representative shall promptly pay to
21 the employer the total amounts paid by the employer under (e)(1)(A),
22 (B), and (C) of this section, insofar as the recovery is sufficient
23 after deducting all litigation costs and expenses. Any excess recovery
24 by the employee or representative shall be credited against any amount
25 payable by the employer thereafter.

26 (h) If compromise with a third person is made by the person
27 entitled to benefits [COMPENSATION] or his representative of an amount
28 less than the benefits [COMPENSATION] to which the person or repre-
29 sentative would be entitled, the employer is liable for benefits

1 [COMPENSATION] stated in (f) of this section only if the compromise is
2 made with his written approval.

3 (i) If the employer is insured and the carrier has assumed the
4 payment of benefits [COMPENSATION] the carrier shall be subrogated to
5 all the rights of the employer.

6 (j) Notice of the commencement of an action against a third party
7 shall be given to the board and to all interested parties within 30
8 days.

9 * Sec. 11. AS 23.30.020 is amended to read:

10 Sec. 23.30.020. CHAPTER PART OF CONTRACT OF HIRE. This chapter
11 constitutes part of every contract of hire, express or implied, and
12 every contract of hire shall be construed as an agreement on the part
13 of the employer to pay and on the part of the employee to accept
14 benefits [COMPENSATION] in the manner provided in this chapter for all
15 personal injuries sustained.

16 * Sec. 12. AS 23.30.025(b) is amended to read:

17 (b) All policies of insurance companies insuring the payment of
18 benefits [COMPENSATION] under this chapter are conclusively presumed to
19 cover all the employees and the entire benefits [COMPENSATION] liability
20 of the insured employer employed at or in connection with the business
21 of the employer carried on, maintained, or operated at the location or
22 locations set out [FORTH] in that [SUCH] policy or agreement. A
23 provision in a policy attempting to limit or modify the liability of
24 the company issuing it is wholly void except as provided in (c) of this
25 section.

26 * Sec. 13. AS 23.30.025 is amended by adding a new subsection to read:

27 (c) An insurer may issue a policy of insurance insuring the
28 payment of benefits under this chapter which provides for a deductible
29 amount to be paid by the employer. A policy with a deductible provision

1 must be approved by the director of insurance and must provide that the
2 deductible amount be paid by the insurer to the employee on behalf of
3 the employer. After payment of the deductible by the insurer, the
4 insurer may recover the deductible amount from the employer. The
5 failure of an employer to reimburse an insurer for the deductible
6 amount does not relieve the insurer from any other obligation it may
7 have under the policy of insurance. An insurer is not required to
8 apply for a deviation under AS 21.39.070 in order to issue a policy
9 under this subsection. This subsection does not apply to a policy of
10 excess insurance purchased by a self-insurer.

11 * Sec. 14. AS 23.30.030 is amended to read:

12 Sec. 23.30.030. REQUIRED POLICY PROVISIONS. A policy of a
13 company insuring the payment of benefits [COMPENSATION] under this
14 chapter is considered to contain the provisions set out in (1) - (7) of
15 this section.

16 (1) The insurer assumes in full all the obligations to pay
17 physician's fees, nurse's charges, hospital services, hospital supplies,
18 medicine, prosthetic devices, transportation charges to the nearest
19 point where adequate medical facilities are available, burial expenses,
20 and compensation or death benefits imposed upon the insured under the
21 provisions of this chapter.

22 (2) The policy is made subject to the provisions of this
23 chapter and its provisions relative to the liability of the insured
24 employer to pay physician's fees, nurse's charges, hospital services,
25 hospital supplies, medicines, prosthetic devices, transportation charges
26 to the nearest point where adequate medical facilities are available,
27 burial expenses, compensation or death benefits to and for [SAID]
28 employees or beneficiaries, the acceptance of the liability by the
29 insured employer, the adjustment, trial and adjudication of claims for

1 the physician's fees, nurse's charges, hospital services, hospital
2 supplies, medicines, prosthetic devices, transportation charges to the
3 nearest point where adequate medical facilities are available, burial
4 expenses, compensation or death benefits and the liability of the
5 insurer to pay the same are considered a part of this policy contract.

6 (3) As between the insurer and the employee or his benefici-
7 aries, notice to or knowledge of the occurrence of the injury on the
8 part of the insured employer is notice or knowledge on the part of the
9 insurer; jurisdiction of the insured employer for the purpose of this
10 chapter is jurisdiction of the insurer; and the insurer, in all things,
11 is bound by and subject to the orders, awards, judgments and decrees
12 made against the insured employer under this chapter.

13 (4) The insurer will promptly pay to the person entitled to
14 them the benefits conferred by this chapter, including physician's
15 fees, nurse's charges, hospital services, hospital supplies, medicines,
16 prosthetic devices, transportation charges to the nearest point where
17 adequate medical facilities are available, burial expenses, and all
18 installments of compensation or death benefits awarded or agreed upon
19 under this chapter. The obligation of the insurer is not affected by a
20 default of the insured employer after the injury, or by default in
21 giving a notice required by this policy. The policy is a direct
22 promise by the insurer to the person entitled to physician's fees,
23 nurse's charges, fees for hospital services, charges for medicines,
24 prosthetic devices, transportation charges to the nearest point where
25 adequate medical facilities are available, and hospital supplies,
26 charges for burial, compensation or death benefits, and is enforceable
27 in the name of that person. The insurer shall provide claims facili-
28 ties through its own staffed adjusting facilities located within the
29 state, or by independent, licensed, resident adjusters with power to

1 effect settlement within the state.

2 (5) A termination of the policy by cancellation is not
3 effective as to the employees of the insured employer covered by it
4 until 20 days after written notice of the termination has been received
5 by the board. If the employer has a contract with the state or a home
6 rule or other political subdivision of the state, and his policy is
7 cancelled due to nonpayment of a premium, the termination of the policy
8 is not effective as to the employees of the insured employer covered by
9 it until 20 days after written notice of the termination has been
10 received by the contracting agency, and the agency has the option of
11 continuing the payments on behalf of the employer in order to keep the
12 policy in force. If, however, the employer has secured insurance with
13 another insurance carrier, cancellation is effective as of the date of
14 the new coverage.

15 (6) All claims for compensation, death benefits, physician's
16 fees, nurse's charges, hospital services, hospital supplies, medicines,
17 prosthetic devices, transportation charges to the nearest point where
18 adequate medical facilities are available, and burial expenses, may be
19 made directly against either the employer or the insurer, or both, and
20 the order or award of the board may be made against either the employer
21 or the insurer or both.

22 (7) If the insurer fails or refuses to pay a final award or
23 judgment (except during the pendency of an appeal) made against it, or
24 its insured, or if it fails or refuses to comply with a provision of
25 this chapter, the director of insurance [COMMISSIONER] shall revoke the
26 approval of the policy form, and may not accept further proofs of
27 insurance from it until it has paid the award or judgment or has
28 complied with the violated provision of this chapter, and has resub-
29 mitted its policy form and received the approval of the form by the

1 insurance commissioner.

2 * Sec. 15. AS 23.30.040 is repealed and reenacted to read:

3 Sec. 23.30.040. SECOND INJURY FUND. (a) There is created a
4 second injury fund, administered by the commissioner of labor. Money
5 in the second injury fund may only be paid for the benefit of those
6 persons entitled to payment of benefits from the second injury fund
7 under this chapter. Payments from the second injury fund must be made
8 by the commissioner of labor in accordance with the orders and awards
9 of the board.

10 (b) If an employee suffers a compensable injury which results in
11 temporary total disability, temporary partial disability, permanent
12 partial disability, or permanent total disability, the employer or
13 insurance carrier shall contribute to the second injury fund. The
14 contribution must be made by one year from the date of the injury or on
15 termination of the employee's claim, whichever is sooner. The amount
16 of the contribution is the product of the compensation to which the
17 employee is entitled for temporary total disability, temporary partial
18 disability, permanent partial disability, permanent total disability,
19 or for rehabilitation under AS 23.30.191 and the applicable contribution
20 rate set out in column A of this subsection. By December 15 of each
21 year the commissioner shall determine and make available to the public
22 the applicable contribution rate for the following calendar year accord-
23 ing to the reserve rate of the second injury fund in Column B of this
24 subsection:

	Column A	Column B	
	Second Injury Fund	Reserve Rate	
	Contribution Rate	At Least	But Less Than
	(Percent)	(Percent)	(Percent)
29	6	0	50

1	5	50	75
2	4	75	100
3	3	100	125
4	2	125	150
5	1	150	175
6	0	175	-

7 (c) If an employee suffers a compensable injury which results in
8 death and the employee is not survived by a widow, widower, child, or
9 dependent relative eligible to receive death benefits under AS 23.-
10 30.215, the employer or insurance carrier shall pay \$10,000 to the
11 second injury fund.

12 (d) The board may refund a payment made into the second injury
13 fund if the employer or insurance carrier shows that it made the pay-
14 ment by mistake or inadvertence, or if it shows there existed at the
15 time of the death of the employee a beneficiary entitled to benefits
16 under AS 23.30.215.

17 (e) The board may direct and provide the vocational retraining
18 and vocational rehabilitation of a permanently disabled person whose
19 condition is a result of an injury compensable under this chapter by
20 making cooperative arrangements with insurance carriers, private organi-
21 zations and institutions, or state or federal agencies. The person
22 being retrained or rehabilitated is entitled to receive additional
23 compensation from the second injury fund for maintenance during the
24 period of retraining and rehabilitation in the sum which the board
25 considers necessary, not to exceed \$200 a month. The total expenditures
26 for maintenance, retraining, rehabilitation, and necessary transporta-
27 tion may not exceed \$10,000 for one person.

28 (f) All amounts collected as civil penalties under AS 23.30.-
29 155(c) shall be paid into the second injury fund.

1 (g) The attorney general may investigate claims and hire expert
2 witnesses necessary to prevent fraudulent or excessive claims for money
3 in the second injury fund.

4 (h) Administration expenses of the state under this section and
5 AS 23.30.205 shall be paid from the general fund.

6 * Sec. 16. AS 23.30.045(a) is amended to read:

7 Sec. 23.30.045. EMPLOYER'S LIABILITY FOR BENEFITS [COMPENSATION].

8 (a) An employer is liable for and shall secure the payment to his
9 employees of the benefits [COMPENSATION] payable under AS 23.30.050,
10 23.30.095, 23.30.145, and 23.30.185 - 23.30.215. If the employer is a
11 subcontractor, the contractor is liable for and shall secure the payment
12 of the benefits [COMPENSATION] to employees of the subcontractor unless
13 the subcontractor secures the payment.

14 * Sec. 17. AS 23.30.045(b) is amended to read:

15 (b) Benefits are [COMPENSATION IS] payable irrespective of fault
16 as a cause for the injury.

17 * Sec. 18. AS 23.30.045(c) is amended to read:

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

25 * Sec. 19. AS 23.30.045(d) is amended to read:

26 (d) No contract may be awarded by the state or a home rule or
27 other political subdivision of the state to an employer unless the
28 employer [PERSON] to whom the contract is to be awarded has submitted
29 to the contracting agency proof, furnished by the insurance carrier, of

1 current coverage by workers' compensation insurance from an insurance
2 company or association authorized to transact the business of workers'
3 compensation insurance in this state or proof, furnished by the
4 director of insurance [BOARD], of a current certificate of self-
5 insurance from the director of insurance [BOARD]. The employer [PERSON]
6 to whom the contract is awarded shall keep his workers' compensation
7 insurance policy in effect during the life of the contract with the
8 state or political subdivision. If the state or the political sub-
9 division of the state fails to obtain proof of coverage or self-
10 insurance or to protect itself under (e) of this section, and an
11 employee of the contractor is injured during the term of the contract,
12 the state or the political subdivision is liable for workers' compensa-
13 tion to the employee if the employee is unable to recover from the
14 employer because of the employer's lack of financial assets. The state
15 or the political subdivision is not liable, however, to the employee
16 for workers' compensation if the employee can recover from the employer
17 under (a) and (b) of this section.

18 * Sec. 20. AS 23.30.045(e) is amended to read:

19 (e) When a contracting agency of the state or a political subdivi-
20 sion receives notice that the workers' compensation insurance policy
21 of an employer to whom the agency has awarded a contract has been
22 cancelled due to nonpayment of a premium, without being replaced by a
23 comparable policy, the agency may either terminate the contract with
24 the employer or continue the premium payments on his behalf in order to
25 keep the policy in force during the life of the agency's contract. If
26 the agency chooses to keep the policy in force, it may deduct its
27 payments from the contract price or bring an action against the employ-
28 er to recover the amount of the payments. When the contracting agency
29 receives notice that the director of insurance [BOARD] has revoked a

1 certificate of self-insurance held by a person to whom a contract has
2 been awarded, the agency may terminate the contract. This subsection
3 does not limit the causes of action or remedies which the state or
4 political subdivision may have against the employer.

5 * Sec. 21. AS 23.30.055 is amended to read:

6 Sec. 23.30.055. EXCLUSIVENESS OF LIABILITY. The liability of an
7 employer prescribed in AS 23.30.045 is exclusive and in place of all
8 other liability of the employer and any fellow employee to the employee,
9 his legal representative, husband or wife, parents, dependents, next of
10 kin, and anyone otherwise entitled to recover damages from the employer
11 or fellow employee at law or in admiralty on account of the injury or
12 death. However, if an employer fails to secure payment of benefits
13 [COMPENSATION] as required by this chapter, an injured employee or his
14 legal representative in case death results from the injury may elect to
15 claim benefits [COMPENSATION] under this chapter, or to maintain an
16 action against the employer at law or in admiralty for damages on
17 account of the injury or death. In that action the defendant may not
18 plead as a defense that the injury was caused by the negligence of a
19 fellow servant, or that the employee assumed the risk of his employ-
20 ment, or that the injury was due to the contributory negligence of the
21 employee.

22 * Sec. 22. AS 23.30.060 is amended to read:

23 Sec. 23.30.060. ELECTION OF DIRECT PAYMENT PRESUMED. (a) An
24 employer is conclusively presumed to have elected to pay benefits
25 [COMPENSATION] directly to employees for injuries sustained arising out
26 of and in the course of the employment according to the provisions of
27 this chapter, until notice in writing of insurance, stating the name
28 and address of the insurance company and the period of insurance, is
29 given to the employee.

1 (b) The notice shall be posted and kept on the premises of the
2 employer or on the premises where the employer's operations are being
3 carried on in three conspicuous places, at the office of the employer,
4 at the mess house or boarding house if there is one, and in some con-
5 spicuous place on the premises or works. The notice shall be sub-
6 stantially in the following form, and the signature shall be witnessed
7 by two witnesses:

8 EMPLOYER'S NOTICE OF INSURANCE

9 To the employees of the undersigned:

10 You and each of you are hereby notified that the undersigned
11 is insured in the.....Insurance Company, whose
12 address is.....and that the period covered
13 by the insurance.....in accordance with the
14 terms, conditions and provisions to pay benefits [COMPENSATION]
15 to employees of the undersigned for injuries received as
16 provided in the Act of the State of Alaska, known as the
17 "Alaska Workers' Compensation Act"

18 Signed.....

19

20 Witness:

21

22 * Sec. 23. AS 23.30.070(e) is amended to read:

23 (e) If the employer or the carrier has been given notice, or the
24 employer (or his agent in charge of the business in the place where the
25 injury occurred) or the carrier has knowledge of an injury or death of
26 an employee and fails, neglects, or refuses to file a report of it as
27 required by the provisions of (a) of this section, the limitations in
28 AS 23.30.105(a) do not begin to run against the claim of the injured
29 employee or his dependents entitled to benefits [COMPENSATION,] or in

1 favor of either the employer or the carrier, until the report has been
2 furnished as required by the provisions of (a) of this section.

3 * Sec. 24. AS 23.30.070(f) is amended to read:

4 (f) An employer who fails or refuses to send a report required of
5 him by this section or who fails or refuses to send the report required
6 by (a) of this section within the time required shall, if so required
7 by the board, pay the employee or his legal representative or other
8 person entitled to benefits [COMPENSATION] by reason of the employee's
9 injury or death an additional award equal to 20 percent of the compen-
10 sation [AMOUNTS] which was [WERE] unpaid when due. The award shall be
11 against either the employer or his insurance carrier, or both.

12 * Sec. 25. AS 23.30.075(a) is amended to read:

13 (a) An employer under this chapter, unless exempted, shall either
14 [,] insure and keep insured for his liability under this chapter in an
15 insurance company or association duly authorized to transact the busi-
16 ness of workers' compensation insurance in this state, or shall furnish
17 the director of insurance [BOARD] satisfactory proof of his financial
18 ability to pay directly the benefits [COMPENSATION] provided for. If
19 an employer elects to pay directly, the director of insurance [BOARD]
20 may, in his [ITS] discretion, require

21 (1) the deposit of an acceptable security, indemnity or bond
22 to secure the payment of benefit [COMPENSATION] liabilities as they are
23 incurred; and

24 (2) proof of excess insurance.

25 * Sec. 26. AS 23.30.075(b) is amended to read:

26 (b) An employer who fails to insure and keep insured employees
27 subject to this chapter or fails to obtain a certificate of self-
28 insurance from the board, upon conviction, is punishable by a fine of
29 not more than \$1,000, or by imprisonment for not more than one year, or

1 by both. If an employer is a corporation, all persons who, at the time
2 of the injury or death, had authority to insure the [SAID] corporation
3 or apply for a certificate of self-insurance, and the person actively
4 in charge of the business of the [SUCH] corporation shall be subject to
5 the penalties prescribed herein and shall be personally, jointly, and
6 severally liable together with the corporation for the payment of all
7 [COMPENSATION OR OTHER] benefits for which the corporation is liable
8 under this chapter if the [SAID] corporation at such time is not
9 insured or qualified as a self-insurer.

10 * Sec. 27. AS 23.30.080 is amended by adding a new subsection to read:

11 (d) If an employer fails to insure or provide security as re-
12 quired by AS 23.30.075, the board may issue a stop order prohibiting
13 the use of employee labor by the employer until the employer insures or
14 provides security as required by AS 23.30.075. If an employer fails to
15 comply with a stop order issued under this section, the board shall
16 assess a civil penalty of at least \$1,000 per day. The employer may
17 not obtain a public contract with the state or any of its political
18 subdivisions for one year following the violation of the stop order.

19 * Sec. 28. AS 23.30.085(a) is amended to read:

20 (a) An employer subject to this chapter, unless exempted, shall
21 initially file evidence of his compliance with the insurance provisions
22 of this chapter with the board, in the form prescribed by it. The
23 employer shall also give evidence of compliance within 10 days after
24 the termination of his insurance by expiration or cancellation. These
25 requirements do not apply to an employer who has certification from the
26 director of insurance [BOARD] of his financial ability to pay benefits
27 [COMPENSATION] directly without insurance.

28 * Sec. 29. AS 23.30.090 is amended to read:

29 Sec. 23.30.090. SELF-INSURANCE CERTIFICATES. If an employer has

1 complied with the provisions of this chapter relating to self-insurance,
2 the director of insurance [BOARD] shall issue him a certificate which
3 shall remain in force for a period fixed by the director of insurance
4 [BOARD]. The director of insurance [BOARD] may, upon at least 10 days'
5 notice and a hearing, revoke a self-insurance certificate upon satis-
6 factory proof that an employer is no longer entitled to it. After
7 revocation the director of insurance [BOARD] may grant a new certifi-
8 cate to an employer, upon his petition and satisfactory proof of his
9 financial ability as provided in this chapter. The director of in-
10 surance shall notify the contracting agency of the state or of a
11 political subdivision of the state when it revokes the self-insurance
12 certificate of an employer holding a contract with the state or a
13 political subdivision of the state. An employer authorized as a self-
14 insurer shall provide claims facilities through its own staffed adjust-
15 ing facilities located within the state, or independent, licensed,
16 resident adjustors with power to effect settlement within the state.

17 * Sec. 30. AS 23.30.092 is amended to read:

18 Sec. 23.30.092. VOLUNTEER AMBULANCE ATTENDANTS, POLICEMEN AND
19 FIREMEN INSURANCE. A political subdivision may elect to provide bene-
20 fits [AND COMPENSATION] to its volunteer ambulance attendants, police-
21 men or firemen by obtaining insurance which would provide its volunteer
22 ambulance attendants, policemen or firemen with benefits [AND COMPENSA-
23 TION] at least equivalent to those conferred upon volunteer ambulance
24 attendants, policemen or firemen by this chapter, and the election
25 shall be considered compliance with the coverage and insurance pro-
26 visions of this chapter. The election shall be made by filing copies
27 of the insurance policy or policies with the commissioner.

28 * Sec. 31. AS 23.30.095(a) is amended to read:

29 (a) The employer shall furnish medical, surgical, and other

1 attendance or treatment, nurse and hospital service, medicine, crutches,
2 and apparatus for the period which the nature of the injury or the
3 process of recovery requires [, NOT EXCEEDING TWO YEARS FROM AND AFTER
4 THE DATE OF INJURY TO THE EMPLOYEE. HOWEVER, IF THE CONDITION REQUIRING
5 THE TREATMENT, APPARATUS, OR MEDICINE IS A LATENT ONE, THE TWO-YEAR
6 PERIOD RUNS FROM THE TIME THE EMPLOYEE HAS KNOWLEDGE OF THE NATURE OF
7 HIS DISABILITY AND ITS RELATIONSHIP TO HIS EMPLOYMENT AND AFTER-
8 DISABLEMENT. IT SHALL BE ADDITIONALLY PROVIDED THAT, IF CONTINUED
9 TREATMENT OR CARE OR BOTH BEYOND THE TWO-YEAR PERIOD IS INDICATED, THE
10 INJURED EMPLOYEE HAS THE RIGHT OF REVIEW BY THE BOARD. THE BOARD MAY
11 AUTHORIZE CONTINUED TREATMENT OR CARE OR BOTH AS THE PROCESS OF RECOVERY
12 MAY REQUIRE]. When medical care is required, the injured employee may
13 designate a licensed physician inside the state to render the care
14 except in cases where, in the judgment of the board, care or treatment
15 or both can best be administered by the selection of another licensed
16 physician. Upon procuring the services of a licensed physician, the
17 injured employee shall give proper notification of his selection to the
18 employer ~~within a reasonable time after~~ first being treated. [IF FOR
19 ANY REASON DURING THE PERIOD WHEN MEDICAL CARE IS REQUIRED THE EMPLOYEE
20 WISHES TO CHANGE TO ANOTHER PHYSICIAN, HE MAY DO SO IN ACCORDANCE WITH
21 RULES PRESCRIBED BY THE BOARD.]

22 * Sec. 32. AS 23.30.095(c) is amended to read:

23 (c) No claim for medical or surgical treatment is valid and
24 enforceable as against the employer unless, within 20 [TWENTY] days
25 following each visit for [THE FIRST] treatment, the physician giving
26 the treatment or the employee receiving it furnishes to the employer
27 and the board notice of the injury and treatment, preferably on a form
28 prescribed by the board. The board shall [MAY], however, excuse the
29 failure to furnish notice within 20 days when it finds it to be in the

1 interest of justice to do so, and it may, upon application by a party
2 in interest, make an award for the reasonable value of the medical or
3 surgical treatment so obtained by the employee.

4 * Sec. 33. AS 23.30.095(e) is amended to read:

5 (e) The employee shall, after an injury, at reasonable times
6 during the continuance of his disability if requested by his employer
7 or, when ordered by the board, submit himself to an examination by a
8 physician or surgeon authorized to practice medicine under the laws of
9 the state in which the employee may be found, furnished and paid for by
10 the employer. [THE EMPLOYEE HAS THE RIGHT TO HAVE A PHYSICIAN, PAID
11 FOR BY THE EMPLOYER, PRESENT AT THE EXAMINATION OR EXAMINATIONS.] No
12 fact relative to the injury or claim communicated to or otherwise
13 learned by a physician or surgeon who may have attended or examined the
14 employee, or who may have been present at an examination is privileged,
15 either in the hearings provided for in this chapter or an action to
16 recover damages against an employer who is subject to the benefits
17 [COMPENSATION] provisions of this chapter. If an employee refuses to
18 submit himself to any examination provided for in this section [HEREIN],
19 his rights to compensation shall be suspended until the obstruction or
20 refusal ceases, and his compensation during the period of suspension
21 may, in the discretion of the board or the court determining an action
22 brought for the recovery of damages under this chapter [HEREUNDER], be
23 forfeited. The board in any case of death may require an autopsy at
24 the expense of the party requesting the autopsy. No autopsy may be
25 held without notice first being given to the widow or widower or next
26 of kin if they reside in the state or their whereabouts can be reason-
27 ably ascertained, of the time and place of the autopsy and reasonable
28 time and opportunity given the widow or widower or next of kin to have
29 a representative present to witness the autopsy. If no adequate notice

1 is given, the findings from the autopsy may be suppressed on motion
2 made to the board or to the superior court, as the case may be.

3 * Sec. 34. AS 23.30.100(a) is amended to read:

4 Sec. 23.30.100. NOTICE OF INJURY OR DEATH. (a) Notice of an
5 injury or death in respect to which benefits are [COMPENSATION IS]
6 payable under this chapter shall be given within 30 days after the date
7 of the [SUCH] injury or death to the board and to the employer.

8 * Sec. 35. AS 23.30.100(b) is amended to read:

9 (b) The notice shall be in writing, contain the name and address
10 of the employee and a statement of the time, place, nature, and cause
11 of the injury or death, and be signed by the employee or by a person on
12 his behalf, or in case of death, by a person claiming to be entitled to
13 benefits [COMPENSATION] for the death or by a person on his behalf.

14 * Sec. 36. AS 23.30.100(d) is amended to read:

15 (d) Failure to give notice does not bar a claim under this
16 chapter

17 (1) if the employer (or his agent in charge of the business
18 in the place where the injury occurred) or the carrier had knowledge of
19 the injury or death and the board determines that the employer or
20 carrier has not been prejudiced by failure to give notice;

21 (2) if the board excuses the failure on the ground that for
22 some satisfactory reason notice could not be given;

23 (3) unless objection to the failure is raised before the
24 board at the first hearing of a claim for benefits [COMPENSATION] in
25 respect to the injury or death.

26 * Sec. 37. AS 23.30.105 is amended to read:

27 Sec. 23.30.105. TIME FOR FILING OF CLAIMS. (a) The right to
28 benefits [COMPENSATION FOR DISABILITY] under this chapter is barred
29 unless a claim for them [IT] is filed within two years after the

1 employee has knowledge of the nature of his disability and its relation
2 to his employment and after disablement. The [HOWEVER, THE MAXIMUM
3 TIME FOR FILING THE CLAIM IN ANY EVENT OTHER THAN ARISING OUT OF AN
4 OCCUPATIONAL DISEASE SHALL BE FOUR YEARS FROM THE DATE OF INJURY, AND
5 THE] right to benefits [COMPENSATION] for death is barred unless a
6 claim for benefits [THEREFORE] is filed within one year after the
7 death. If [, EXCEPT THAT IF] payment of benefits [COMPENSATION] has
8 been made without an award on account of the injury or death, a claim
9 may be filed within two years after the date of the last payment. It
10 is additionally provided that, in the case of a latent injury [DEFECTS
11 PERTINENT TO AND CAUSING COMPENSABLE DISABILITY], the injured employee
12 has full right to claim as shall be determined by the board, time
13 limitations notwithstanding.

14 (b) Failure to file a claim within the period prescribed in (a)
15 of this section is not a bar to benefits [COMPENSATION] unless ob-
16 jection to the failure is made at the first hearing of the claim in
17 which all parties in interest are given reasonable notice and opportu-
18 nity to be heard.

19 (c) If a person who is entitled to benefits [COMPENSATION] under
20 this chapter is mentally incompetent or a minor, the provisions of (a)
21 of this section are not applicable so long as he has no guardian or
22 other authorized representative, but are applicable in the case of a
23 person who is mentally incompetent or a minor from the date of appoint-
24 ment of a guardian or other representative, or in the case of a minor,
25 if no guardian is appointed before he becomes of age, from the date he
26 becomes of age.

27 (d) If recovery is denied to a person, in a suit brought at law
28 or in admiralty to recover damages in respect to injury or death, on
29 the ground that he was an employee and that the defendant is an employer

1 within the meaning of this chapter and that the employer has secured
2 benefits [COMPENSATION] to the employee under this chapter, the limita-
3 tion of time prescribed in (a) of this section begins to run only from
4 the date of termination of the suit.

5 * Sec. 38. AS 23.30.106(b) is amended to read:

6 (b) The payment or award of benefits under the workers' compensa-
7 tion law of another state, territory, province, or foreign nation to an
8 employee or his dependents otherwise entitled on account of the injury
9 or death to the benefits under this chapter is not a bar to a claim for
10 benefits under this chapter; however, a claim under this chapter must
11 be filed within the time limits set out in this chapter. If benefits
12 are [COMPENSATION IS] paid or awarded under this section:

13 (1) the medical and related benefits furnished or paid for
14 by the employer under another workers' compensation law on account of
15 the injury or death shall be credited against the medical and related
16 benefits to which the employee would have been entitled under this
17 chapter had claim been made solely under this chapter;

18 (2) the amount of all income benefits paid or awarded the
19 employee under another workers' compensation law shall be credited
20 against the total amount of income benefits which would have been due
21 the employee under this chapter had claim been made solely under this
22 chapter;

23 (3) the total amount of death benefits paid or awarded under
24 another workers' compensation law shall be credited against the total
25 amount of death benefits due under this chapter.

26 * Sec. 39. AS 23.30.106(c) is amended to read:

27 (c) If an employee is entitled to the benefits of this chapter by
28 reason of an injury sustained in this state in employment by an employer
29 who is domiciled in another state and who has not secured the payment

1 of benefits [COMPENSATION] as required by this chapter, the employer or
2 his carrier may file with the board a certificate, issued by the com-
3 mission or agency of the other state having jurisdiction over workers'
4 compensation claims, certifying that the employer has secured the
5 payment of benefits [COMPENSATION] under the workers' compensation law
6 of the other state and that with respect to that injury the employee is
7 entitled to the benefits provided under that law. In that event

8 (1) the filing of the certificate shall constitute an ap-
9 pointment by the employer or his carrier of the board as his agent for
10 acceptance of the service of process in a proceeding brought by the
11 employee or his dependents to enforce his or their rights under this
12 chapter on account of the injury;

13 (2) the board shall send to the employer or carrier, by
14 registered or certified mail to the address shown on the certificate, a
15 true copy of any notice of claim or other process served on the director
16 by the employee or his dependents in any proceeding brought to enforce
17 his or their rights under this chapter;

18 (3) if the employer is a qualified self-insurer under the
19 workers' compensation law of the other state, the employer, upon sub-
20 mission of evidence satisfactory to the board of his ability to meet
21 his liability to the employee under this chapter, shall be considered
22 to be a qualified self-insurer under this chapter;

23 (4) if the employer's liability under the workers' compensa-
24 tion law of another state is insured, the employer's carrier, as to the
25 employee or his dependents only, shall be considered to be an insurer
26 authorized to write insurance under and be subject to this chapter;
27 however, unless its contract with the employer requires it to pay an
28 amount equivalent to the [COMPENSATION] benefits provided by this
29 chapter, its liability for income benefits or medical and related

1 benefits may not exceed the amounts of the benefits for which the
2 insurer would have been liable under the workers' compensation law of
3 the other state;

4 (5) if the amount for which the employer's insurance is
5 liable under (3) and (4) of this subsection is less than the total [OF
6 THE COMPENSATION] benefits to which the employee is entitled under this
7 chapter, the board may, if it considers it necessary, require the
8 employer to file security satisfactory to the board to secure the
9 payment of benefits due the employee or his dependents under this
10 chapter; and

11 (6) upon compliance with the preceding requirements of (c)
12 of this section, the employer, as to the employee only, shall be
13 considered to have secured the payment of benefits [COMPENSATION] under
14 this chapter.

15 * Sec. 40. AS 23.30.110(a) is amended to read:

16 (a) Subject to the provisions of AS 23.30.105, a claim for
17 benefits [COMPENSATION] may be filed with the board in accordance with
18 its regulations at any time after the first seven days of disability
19 following an injury, or at any time after death, and the board may hear
20 and determine all questions in respect to the claim.

21 * Sec. 41. AS 23.30.110(c) is amended to read:

22 (c) The board shall make the investigation which it considers
23 necessary in respect of the claim, and upon application of an inter-
24 ested party shall order a hearing on it. If a hearing on a claim is
25 ordered, the board shall give the claimant and other interested parties
26 at least 20 [10] days' notice of the hearing, served personally upon
27 the claimant and other interested parties or sent by registered mail,
28 and shall, within 30 [20] days after the hearing is held [HAD], by
29 order, reject the claim or make an award in respect to it. If a hearing

1 is continued by the board, additional notice is not required under this
2 subsection. [IF NO HEARING IS ORDERED WITHIN 20 DAYS AFTER NOTICE
3 IS GIVEN AS PROVIDED IN (b) OF THIS SECTION, THE BOARD SHALL BY ORDER
4 REJECT THE CLAIM OR MAKE AN AWARD IN RESPECT TO IT.]

5 * Sec. 42. AS 23.30.120 is amended to read:

6 Sec. 23.30.120. PRESUMPTIONS. In a proceeding for the enforce-
7 ment of a claim for benefits [COMPENSATION] under this chapter it is
8 presumed, in the absence of substantial evidence to the contrary, that

9 (1) the claim comes within the provisions of this chapter;

10 (2) sufficient notice of the claim has been given;

11 (3) the injury was not occasioned solely by the intoxication
12 of the injured employee;

13 (4) the injury was not occasioned by the wilful intention of
14 the injured employee to injure or kill himself or another.

15 * Sec. 43. AS 23.30.130 is amended to read:

16 Sec. 23.30.130. MODIFICATION OF AWARDS. (a) Upon its own
17 initiative, or upon the application of any party in interest on the
18 ground of a change in conditions, including, for the purposes of
19 AS 23.30.175, a change in residence, or because of a mistake in its
20 determination of a fact, the board may, before one year after the date
21 of the last payment of benefits [COMPENSATION,] whether or not a
22 compensation order has been issued, or before one year after the
23 rejection of a claim, review a compensation case in accordance with the
24 procedure prescribed in respect of claims in AS 23.30.110. In accord-
25 ance with AS 23.30.110 the board may issue a new compensation order
26 which terminates, continues, reinstates, increases, or decreases the
27 compensation, or award benefits [COMPENSATION].

28 (b) A new order does not affect benefits [COMPENSATION] previously
29 paid, except that an award increasing the compensation rate may be made

1 effective from the date of the injury, and if part of the compensation
2 due or to become due is unpaid, an award decreasing the compensation
3 rate may be made effective from the date of the injury, and payment
4 made earlier in excess of the decreased rate shall be deducted from the
5 unpaid compensation, in the manner the board determines.

6 * Sec. 44. AS 23.30.140 is amended to read:

7 Sec. 23.30.140. APPOINTMENT OF GUARDIAN BY COURT. The board may
8 require the appointment of a guardian or other representative by a
9 competent court for any person who is mentally incompetent or a minor
10 to receive benefits [COMPENSATION] payable to the person under this
11 chapter and to exercise the powers granted to or to perform the duties
12 required of the person under this chapter. If the board does not
13 require the appointment of a guardian to receive the compensation of a
14 minor, appointment for this purpose is not necessary.

15 * Sec. 45. AS 23.30.145 is amended to read:

16 Sec. 23.30.145. ATTORNEY FEES. (a) Fees for legal services
17 rendered in respect to a claim are not valid unless approved by the
18 board, and the fees may not be less than 25 percent on the first \$1,000
19 of benefits [COMPENSATION] or part of the first \$1,000 of benefits
20 [COMPENSATION] and 10 percent of all sums in excess of \$1,000 of
21 benefits [COMPENSATION]. When the board advises that a claim has been
22 controverted, in whole or in part, the board may direct that the fees
23 for legal services be paid by the employer or carrier in addition to
24 benefits [COMPENSATION] awarded; the fees may be allowed only on the
25 amount of benefits [COMPENSATION] controverted and awarded. When the
26 board advises that a claim has not been controverted, but further
27 advises that bona fide legal services have been rendered in respect to
28 the claim, then the board shall direct the payment of the fees out of
29 the benefits [COMPENSATION] awarded. In determining the amount of fees

1 the board shall take into consideration the nature, length and complex-
2 ity of the services performed, transportation charges, and the benefits
3 resulting from the services to the compensation beneficiaries.

4 (b) If an employer fails to file timely notice of controversy or
5 fails to pay [COMPENSATION OR MEDICAL AND RELATED] benefits within 15
6 days after it becomes due or otherwise resists the payment of [COMPENSA-
7 TION OR MEDICAL AND RELATED] benefits and if the claimant has employed
8 an attorney in the successful prosecution of his claim, the board shall
9 make an award to reimburse the claimant for his costs in the proceed-
10 ings, including a reasonable attorney fee. The award is in addition to
11 the [COMPENSATION OR MEDICAL AND RELATED] benefits ordered.

12 (c) If proceedings are had for review of an [A COMPENSATION OR
13 MEDICAL AND RELATED BENEFITS] order before a court, the court may allow
14 or increase an attorney's fees. The fees are in addition to [COMPENSA-
15 TION OR MEDICAL AND RELATED] benefits ordered and shall be paid as the
16 court may direct.

17 * Sec. 46. AS 23.30.155 is amended to read:

18 Sec. 23.30.155. PAYMENT OF COMPENSATION. (a) Compensation
19 under this chapter shall be paid periodically, promptly, and directly
20 to the person entitled to it, without an award, except where liability
21 to pay compensation is controverted by the employer. The employer must
22 file a notice, on a form prescribed by the board, stating (1) that the
23 right of the employee to benefits is controverted; (2) the name of the
24 employee; (3) the name of the employer; (4) the date of the alleged
25 injury or death; and (5) the type of benefits and all grounds upon
26 which the right to benefits is controverted. For purposes of deter-
27 mining a penalty under (e) and (f) of this section, an employer con-
28 troverts a claim if the liability to pay benefits is denied or con-
29 tested.

1 (b) The first installment of compensation becomes due on the 14th
2 day after the employer has knowledge of the injury or death. On this
3 date all compensation then due shall be paid. Subsequent compensation
4 shall be paid in installments, every 14 days [SEMIMONTHLY], except
5 where the board determines that payment in installments should be made
6 monthly or at some other period.

7 (c) Upon making the first payment, and upon an increase, reduc-
8 tion, termination, suspension, resumption or a change in rate or type
9 of compensation paid [OF PAYMENT FOR ANY CAUSE], the employer shall
10 [IMMEDIATELY] notify the board within 14 days, on [IN ACCORDANCE WITH]
11 a form prescribed by the board, that payment of compensation has begun
12 or has been increased, reduced, terminated, resumed, changed, or sus-
13 pending, as the case may be. If the employer fails to notify the board
14 within 14 days, the board shall assess against the employer a civil
15 penalty of \$100 plus \$25 for each day in excess of 14 days that the
16 employer fails to give notice. Total penalties under this section may
17 not exceed \$2,500 for each failure to file a required report.

18 (d) If the employer controverts the right to benefits, [COMPEN-
19 SATION] he shall file with the board on or before the 14th day after he
20 has knowledge of the alleged injury or death on or before an install-
21 ment of compensation payable without an award is due, a notice of con-
22 troversion on [, IN ACCORDANCE WITH] a form prescribed by the board
23 [, STATING THAT THE RIGHT TO COMPENSATION IS CONTROVERTED, THE NAME OF
24 THE CLAIMANT, THE NAME OF THE EMPLOYER, THE DATE OF THE ALLEGED INJURY
25 OR DEATH, AND THE GROUNDS UPON WHICH THE RIGHT TO COMPENSATION IS
26 CONTROVERTED].

27 (e) If any installment of compensation payable without an award
28 is not paid within 14 days after it becomes due, as provided in (b) of
29 this section, there shall be added to the unpaid installment an amount

1 equal to 20 percent of it, which shall be paid at the same time as, and
2 in addition to, the installment, unless notice is filed under (d) of
3 this section or unless the nonpayment is excused by the board after a
4 showing by the employer that owing to conditions over which he had no
5 control the installment could not be paid within the period prescribed
6 for the payment.

7 (f) If compensation payable under the terms of an award is not
8 paid within 14 days after it becomes due, there shall be added to that
9 [SUCH] unpaid compensation an amount equal to 20 percent of it, which
10 shall be paid at the same time as, but in addition to, the compen-
11 sation, unless review of the compensation order making the award is had
12 as provided in AS 23.30.125 and an interlocutory injunction staying
13 payments is allowed by the court.

14 [(g) WITHIN 16 DAYS AFTER FINAL PAYMENT OF COMPENSATION HAS BEEN
15 MADE, THE EMPLOYER SHALL SEND TO THE BOARD A NOTICE IN ACCORDANCE WITH
16 A FORM PRESCRIBED BY THE BOARD STATING THE FACT THAT FINAL PAYMENT HAS
17 BEEN MADE, THE TOTAL AMOUNT OF COMPENSATION PAID, THE NAME OF THE
18 EMPLOYEE AND OF ANY OTHER PERSON TO WHOM COMPENSATION HAS BEEN PAID,
19 THE DATE OF THE INJURY OR DEATH, AND THE DATE TO WHICH WHICH COMPENSA-
20 TION HAS BEEN PAID. IF THE EMPLOYER FAILS TO SO NOTIFY THE BOARD WITHIN
21 THIS TIME, THE BOARD SHALL ASSESS AGAINST THE EMPLOYER A CIVIL PENALTY
22 IN THE AMOUNT OF \$100.]

23 (h) The board may upon its own initiative at any time in a case
24 in which payments are being made with or without an award, [AND SHALL
25 IN A CASE] where right to benefits [COMPENSATION] is controverted, or
26 where payments of compensation have been increased, reduced, termin-
27 ated, changed, [STOPPED] or suspended, upon receipt of notice from a
28 person entitled to benefits [COMPENSATION], or from the employer, that
29 the right to benefits [COMPENSATION] is controverted, or that payments

1 of compensation have been increased, reduced, terminated, changed,
2 [STOPPED] or suspended, make the investigations, cause the medical
3 examinations to be made, or hold the hearings, and take the further
4 action which it considers will properly protect the rights of all
5 parties.

6 (i) When the board considers it advisable it may require an
7 employer to make a deposit with the Department of Revenue to secure the
8 prompt and convenient payment of the benefits [COMPENSATION], and pay-
9 ments from the deposit upon an award shall be made upon order of the
10 board.

11 (j) If an employer has made advance payments or overpayments of
12 compensation, he is entitled to be reimbursed, after approval by the
13 board, out of any unpaid installment or installments of compensation
14 due.

15 (k) An injured employee or in case of death his dependents or
16 personal representative, shall give receipts for payment of benefits
17 [COMPENSATION] to the employer paying it and the employer shall produce
18 them for inspection by the board, whenever required.

19 (l) repealed

20 (m) Compensation owed to an injured employee in the state shall
21 be paid by a check or draft which may be cashed on the first banking
22 day after it is received by the employee and on any succeeding banking
23 day.

24 (n) Whenever the board determines that it is in the interest of
25 an injured employee and that a substantial hardship will not be imposed
26 on the employer, the liability of the employer for all or part of
27 compensation payable under AS 23.30.190 may be discharged by the pay-
28 ment of a lump sum.

29 (o) An employer shall file on or before the date one year from

1 the date of injury or upon termination of the claim, whichever is
2 sooner, a report on a form prescribed by the board, showing the total
3 amount of all benefits, legal fees, and penalties paid during the
4 ~~last~~ ^{period} including the name of the claimant, the date of injury, and
5 the claim number.

6 * Sec. 47. AS 23.30.160 is amended to read:

7 Sec. 23.30.160. ASSIGNMENT AND EXEMPTION FROM CLAIMS OF CREDITORS.

8 No assignment, release, or commutation of [COMPENSATION OR] benefits
9 due or payable under this chapter, except as provided by this chapter,
10 is valid, and the [COMPENSATION AND] benefits are exempt from all
11 claims of creditors and from levy, execution, and attachment or other
12 remedy for recovery or collection of a debt. This exemption may not be
13 waived.

14 * Sec. 48. AS 23.30.165 is amended to read:

15 Sec. 23.30.165. LIEN. (a) Each employee and beneficiary entitled
16 to benefits [COMPENSATION] under the provisions of this chapter has a
17 lien for the full amount of his benefits [COMPENSATION], including
18 costs and disbursements of suit and attorney fees allowed, upon all of
19 the property in connection with the construction, preservation, mainte-
20 nance or operation of which the work of the employee was being per-
21 formed at the time of his injury or death. For example: in the case
22 of an employee injured or killed while engaged in mining or in work
23 connected with mining, the lien extends to the entire mine and all
24 property used in connection with it; and in the case of an employee
25 injured or killed while engaged in fishing or in the packing, canning,
26 or salting of fish, or other branch of the fish industry, the lien
27 extends to the entire packing, fishing, salting or canning plant or
28 establishment and all property used in connection with it; and this is
29 the case with other businesses, industries, works, occupations and

1 employments.

2 (b) The lien is prior and paramount to any other lien on the
3 property, except a lien for wages or materials as provided by law, and
4 is of equal rank with a lien for wages or materials.

5 (c) The lien extends to all right, title, interest and claim of
6 the employer in the property affected by the lien.

7 (d) A person claiming a lien under this chapter shall, within one
8 year after the date of the injury from which the claim of benefits
9 [COMPENSATION] arises, file for record in the office of the recorder of
10 the recording district in which the property affected by the lien is
11 located a notice of lien signed and verified by the claimant or someone
12 on his behalf, and stating in substance, the name of the person injured
13 or killed out of which injury or death the claim of benefits [COMPENSA-
14 TION] arises, the name of the employer of the injured or deceased
15 person at the time of the injury or death, a description of the property
16 affected or covered by the lien and the name of the owner or reputed
17 owner of the property.

18 (e) The lien for benefits [COMPENSATION] provided for in this
19 section may be enforced by equitable proceedings as in the enforcement
20 of other liens upon real or personal property, within 10 months after
21 the cause of action arises. Nothing in this section prevents an
22 attachment of property as security for the payment of benefits [COMPEN-
23 SATION].

24 * Sec. 49. AS 23.30.170(a) is amended to read:

25 (a) In case of default by the employer in the payment of benefits
26 [COMPENSATION] due under an award of benefits [COMPENSATION] for a
27 period of 30 days after the benefits are [COMPENSATION IS] due, the
28 person to whom the benefits are [COMPENSATION IS] payable may, within
29 one year after the default, apply to the board making the compensation

1 order for a supplementary order declaring the amount of the default.
2 After investigation, notice, and hearing, as provided in AS 23.30.110,
3 the board shall make a supplementary order declaring the amount of the
4 default. The order shall be filed in the same manner as the compensa-
5 tion order.

6 * Sec. 50. AS 23.30.175(b) is repealed and reenacted to read:

7 (b) After June 30 and before December 1 of each year, the commis-
8 sioner shall adopt and publish the average weekly wage for the preced-
9 ing calendar year as computed by the United States Secretary of Labor
10 for the purposes of unemployment insurance. In determining the rate of
11 compensation the commissioner shall use the average weekly wage figure
12 for each jurisdiction, including Alaska, for which the Secretary of
13 Labor computes an average weekly wage. These figures are the applica-
14 ble average weekly wages for those jurisdictions for the following
15 calendar year. The average weekly wage for Alaska is the amount
16 determined by dividing (1) the total wages paid by all employers
17 covered by the Alaska Employment Security Act by (2) the average
18 monthly employment reported by those employers for the same period and
19 dividing the result by 52.

20 * Sec. 51. AS 23.30.175(c) is repealed and reenacted to read:

21 (c) The following rules apply to recipients who do not reside in
22 Alaska:

23 (1) The weekly rate of compensation shall be calculated
24 using the recipient's average weekly wage times the ratio of the aver-
25 age weekly wage of the jurisdiction in which the recipient resides to
26 the average weekly wage of Alaska. The rate is based on the average
27 weekly wages in effect when the recipient leaves Alaska and shall be
28 adjusted annually upon publication of the average weekly wages for all
29 jurisdictions.

1 (2) The calculation required by this subsection does not
2 apply if

3 (A) the average weekly wage of the recipient and the
4 resulting compensation rate is determined under AS 23.30.220(2) by
5 use of wages earned in jurisdictions other than Alaska; or

6 (B) the absence of the recipient is for medical or
7 rehabilitation services not reasonably available in Alaska.

8 (3) Application of this subsection may not result in a
9 reduction of the weekly compensation rate to less than \$65 a week
10 except as provided in (a) of this section.

11 * Sec. 52. AS 23.30.190(20) is amended to read:

12 (20) in all other cases in this class of disability the
13 compensation is 66-2/3 percent of the difference between his average
14 weekly wages and his wage-earning capacity after the injury in the same
15 employment or otherwise, payable during the continuance of the partial
16 disability, but subject to reconsideration of the degree of the impair-
17 ment by the board on its own motion or upon application of a party in
18 interest; [WHENEVER THE BOARD DETERMINES THAT IT IS IN THE INTEREST OF
19 JUSTICE, THE LIABILITY OF THE EMPLOYER FOR COMPENSATION, OR ANY PART OF
20 IT AS DETERMINED BY THE BOARD, MAY BE DISCHARGED BY THE PAYMENT OF A
21 LUMP SUM;]

22 * Sec. 53. AS 23.30.191 is repealed and reenacted to read:

23 Sec. 23.30.191. EXPENSES FOR REHABILITATING INJURED EMPLOYEES.
24 An employee, who, as a result of injury, is or may be expected to be
25 totally or partially incapacitated for his normal occupation and who,
26 under the direction of the Department of Labor, is being rehabilitated
27 to engage in a remunerative occupation, may receive compensation neces-
28 sary for his rehabilitation of 66-2/3 percent of his average weekly
29 wage subject to the maximum payable under AS 23.30.175.

1 * Sec. 54. AS 23.30.210(b) is amended to read:

2 (b) At any time after death, or after 30 days subsequent to the
3 date of injury, the employer and the employee or the beneficiary or
4 beneficiaries, as the case may be, have the right to reach an agreement
5 in regard to a claim for injury or death under this chapter [HEREUNDER]
6 in accordance with the applicable schedule [HEREOF], but a memorandum
7 of the agreement in a form prescribed by the board shall be filed with
8 the board. Otherwise, the agreement is void for any purpose. If
9 approved by the board, the agreement is enforceable the same as an
10 order or award of the board and discharges the liability of the employer
11 for the benefits [COMPENSATION] notwithstanding the provisions of
12 [AS 23.30.130,] AS 23.30.160 [,] and AS 23.30.245(b) [AS 23.30.245].
13 The agreement shall be approved by the board only when the terms conform
14 to the provisions of this chapter and, if it involves or is likely to
15 involve permanent disability, the board may require an impartial medical
16 examination and a hearing in order to determine whether or not to
17 approve the agreement. The board may approve lump-sum settlements when
18 it appears to be to the best interest of the employee or beneficiary or
19 beneficiaries.

20 * Sec. 55. AS 23.30.215(a)(1) is amended to read:

21 (1) reasonable and necessary funeral expenses not exceeding
22 \$2,500; the commissioner by regulation shall annually adjust this limit
23 to reflect increased expenses resulting from inflation [\$1,000];

24 * Sec. 56. AS 23.30.235 is amended to read:

25 Sec. 23.30.235. CASES IN WHICH NO BENEFITS ARE [COMPENSATION IS]
26 PAYABLE. No benefits [COMPENSATION] may be paid if the injury was
27 occasioned solely by the intoxication of the employee or by the wilful
28 intention of the employee to injure or kill himself or another.

29 * Sec. 57. AS 23.30.245 is amended to read:

1 Sec. 23.30.245. INVALID AGREEMENTS. (a) An agreement by an
2 employee to pay a portion of the premium paid by his employer to a
3 carrier or to contribute to a benefit fund or department maintained by
4 the employer for the purpose of providing benefits [COMPENSATION OR
5 MEDICAL SERVICES AND SUPPLIES] as required by this chapter is not
6 valid. An employer who makes a deduction for this purpose from the pay
7 of an employee entitled to the benefits of this chapter is guilty of a
8 misdemeanor and upon conviction is punishable by a fine of not more
9 than \$1,000.

10 (b) An agreement by an employee to waive his right to benefits
11 [COMPENSATION] under this chapter is not valid.

12 * Sec. 58. AS 23.30.250 is amended to read:

13 Sec. 23.30.250. PENALTY FOR MISREPRESENTATION. A person who wil-
14 fully makes a false or misleading statement or representation for the
15 purpose of obtaining a benefit or payment under this chapter is guilty
16 of theft as defined in AS 11.46.100(3) and is punishable as provided in
17 AS 11.46.120 - 11.46.150 [A MISDEMEANOR, AND UPON CONVICTION IS PUNISH-
18 ABLE BY A FINE OF NOT MORE THAN \$1,000, OR BY IMPRISONMENT FOR NOT MORE
19 THAN ONE YEAR, OR BY BOTH].

20 * Sec. 59. AS 23.30.255 is amended to read:

21 Sec. 23.30.255. PENALTY FOR FAILURE TO PAY BENEFITS [COMPENSA-
22 TION]. (a) An employer required to secure the payment of benefits
23 [COMPENSATION] under this chapter who fails to do so is guilty of a
24 misdemeanor and upon conviction is punishable by a fine of not more
25 than \$1,000, or by imprisonment for not more than one year, or by both.
26 If the employer is a corporation, its president, secretary, and trea-
27 surer are also severally liable to the fine or imprisonment provided in
28 this section for the failure of the corporation to secure the payment
29 of benefits [COMPENSATION]. The president, secretary, and treasurer

1 are severally personally liable, jointly with the corporation, for the
2 benefits [COMPENSATION] or other benefit which accrues under this
3 chapter in respect to an injury which happens to an employee of the
4 corporation while it has failed to secure the payment of benefits
5 [COMPENSATION] as required by AS 23.30.075.

6 (b) An employer who knowingly transfers, sells, encumbers,
7 assigns, or in any manner disposes of, conceals, secretes, or destroys
8 any of his property after one of his employees has been injured within
9 the scope of this chapter, with intent to avoid the payment of benefits
10 [COMPENSATION] under this chapter to the employee or his dependents, is
11 guilty of a misdemeanor, and upon conviction is punishable by a fine of
12 not more than \$1,000, or by imprisonment for not more than one year, or
13 by both. If the employer is a corporation, its president, secretary,
14 and treasurer are also severally liable to the penalty of imprisonment
15 as well as jointly liable with the corporation for the fine.

16 (c) This section does not affect any other liability of the
17 employer under this chapter.

18 * Sec. 60. AS 23.30.260 is amended to read:

19 Sec. 23.30.260. PENALTY FOR RECEIVING UNAPPROVED FEES AND SOLICIT-
20 ING. A person is guilty of a misdemeanor, and upon conviction is
21 punishable for each offense by a fine of not more than \$1,000, or by
22 imprisonment for not more than one year, or by both, if he

23 (1) receives a fee, other consideration, or a gratuity on
24 account of services rendered in respect to a claim, unless the con-
25 sideration or gratuity is approved by the board or the court; or

26 (2) makes it a business to solicit employment for a lawyer
27 or for himself in respect to a claim or award for benefits [COMPENSA-
28 TION].

29 * Sec. 61. AS 23.30 is amended by adding a new section to read:

1 Sec. 23.30.263. UNLAWFUL EMPLOYMENT PRACTICE. It is unlawful for
2 an employer to discharge or otherwise discriminate against an employee
3 because he has filed a claim for workers' compensation benefits under
4 this chapter.

5 * Sec. 62. AS 23.30.265(9) is amended to read:

6 (9) "death" as a basis for a right to benefits [COMPENSATION]
7 means only death resulting from an injury;

8 * Sec. 63. AS 23.30.265(16) is amended to read:

9 (16) "medical and related benefits" includes but is not
10 limited to physicians' fees, nurses' charges, pain clinic services,
11 hospital services, hospital supplies, medicine and prosthetic devices,
12 physical rehabilitation, and treatment for the fitting and training for
13 use of such devices as may reasonably be required which arises out of
14 or is necessitated by an injury, and transportation charges to the
15 nearest point where adequate medical facilities are available;

16 * Sec. 64. AS 23.30.265(19) is amended to read:

17 (19) "self-insurer" means an employer who, instead of insur-
18 ing his liability under this chapter as it provides, elects to pay
19 directly the benefits [COMPENSATION] provided for, and who has furnished
20 to the director of insurance [BOARD] satisfactory proof of his financial
21 ability to make the direct payments and has been issued a self-insur-
22 ance certificate;

23 * Sec. 65. AS 23.30.265(20) is amended to read:

24 (20) "wages" means the money rate at which the service ren-
25 dered is recompensed under the contract of hiring [IN FORCE AT THE TIME
26 OF THE INJURY,] and includes the reasonable value to the employee of
27 board, rent, housing, lodging, or similar advantage received from the
28 employer, and gratuities received in the course of employment from
29 others than the employer;

1 * Sec. 66. AS 23.30.265 is amended by adding new paragraphs to read:

2 (28) "benefits" means compensation and medical and related
3 benefits.

4 (29) "reserve rate" means the unencumbered second injury fund
5 balance on October 31 of each year as a percentage of disbursements
6 from the second injury fund during the 12-month period ending on June 30
7 of the same calendar year.

8 * Sec. 67. AS 23.30.005(k), 23.30.095(g), 23.30.125(b), 23.30.155(g),
9 23.30.175(d), (e), and (f) are repealed.

10 * Sec. 68. The amount of a payment to the second injury fund and the
11 conditions under which a payment is required of an employer or insurance
12 carrier must be in accordance with the version of AS 23.30.040(b) in effect
13 on the date that the injury to the employee occurred.

14 * Sec. 69. Notwithstanding the provisions of AS 23.30.040(b) the con-
15 tribution rate shall be six percent beginning July 1, 1981, through calendar
16 year 1982 ending December 31, 1982.

17 * Sec. 70. This Act takes effect on July 1, 1981.
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STATE OF ALASKA

DEPARTMENT OF LABOR

JAY S. HAMMOND, GOVERNOR

BOX 1149
JUNEAU, ALASKA 99811

Ph: 465-2790

February 23, 1981

The Honorable Brian Rogers
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Representative Rogers:

This letter is to bring to your attention several sections of House Bill No. 159 that require correction or clarification. Those sections are as follows:

- 1) Sec. 15. AS 23.30.040(b), page 17, lines 13-15:

The amended section requires clarification on subsequent contributions to the Fund if the employee's claim exceeds one year from the date of injury. We suggest the bill be revised to read:

The first contribution must be made by one year from the date of the injury or on termination of the employee's claim, whichever is sooner. Subsequent contributions must be made yearly or on termination of the employee's claim, whichever is sooner.

- 2) Sec. 46. AS 23.30.155(d), page 36, lines 18-26:

This amendment was intended to clarify when the employer should file notice of controversion both initially and midstream on an employee's right to benefits. The word OR following the word death was omitted and should be corrected to read:

If the employer controverts the right to benefits, [COMPENSATION] he shall file with the board on or before the 14th day after he has knowledge of the alleged injury or death or on or before an installment of compensation payable without an award is due, a notice of controversion on [, IN ACCORDANCE WITH] a form prescribed by the board [, STATING THAT THE

RIGHT TO COMPENSATION IS CONTROVERTED, THE NAME OF THE CLAIMANT, THE NAME OF THE EMPLOYER, THE DATE OF THE ALLEGED INJURY OR DEATH, AND THE GROUNDS UPON WHICH THE RIGHT TO COMPENSATION IS CONTROVERTED].

- 3) AS 23.30.155(o), page 38, line 29 and page 39, lines 1-5:

The purpose of this amendment was to require the employer to report the total amount of all benefits, legal fees and penalties paid during the year or upon termination of a claim, whichever is sooner. Section requires correction to delete the word quarter and clarification on subsequent reports if the employee's claim exceeds one year from the date of injury. We suggest the bill be revised to read:

An employer shall file on or before the date one year from the date of injury or upon termination of the claim, whichever is sooner, a report on a form prescribed by the board, showing the total amount of all benefits, legal fees, and penalties paid during that period [THE QUARTER] including the name of the claimant, the date of injury, and the claim number. Subsequent reports must be made yearly or upon termination of the claim, whichever is sooner.

- 4) Sec. 61, AS 23.30.263, page 46, lines 1-4:

In the previous draft of this bill, proofed January 29, 1981, Section 1 cross-referenced an amendment to AS 18.80.220(a)(4) to read:

(4) an employer, labor organization or employment agency to discharge, expel or otherwise discriminate against a person because he has

(A) opposed any practices forbidden under AS 18.80.200-18.80.280; [OR BECAUSE HE HAS]

(B) filed a complaint, testified or assisted in a proceeding under this chapter; or

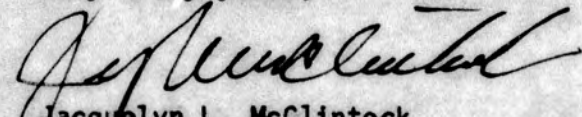
(C) filed a claim for workers' compensation benefits under AS 23.30;

It would appear this amendment was deleted in error from House Bill No. 159 and should be reinstated.

The Honorable Brian Rogers
February 23, 1981
Page 3

If you have any questions regarding these changes, please contact me
at 465-2790.

Very truly yours,



Jacquelyn L. McClintock
Director
Workers' Compensation Division

JLM/kmb

cc: House Labor & Commerce Committee

Tom Sofo
Legislative Affairs

**PLEASE NOTE: THE FOLLOWING PAGES WERE TREATED
AS A UNIT IN THE ORIGINAL DOCUMENT**

BY THE RULES COMMITTEE BY REQUEST
OF THE LEGISLATIVE COUNCIL (for
the Workers' Compensation Study
Commission)

1 IN THE SENATE

2 SENATE BILL NO. 179

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to workers' compensation; and provid-
7 ing for an effective date."

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

9 * Section 1. The purpose of sec. 2 of this Act is to provide both protec-
10 tion for injured employees and flexibility for employers in making the
11 alternative of self-insurance available to those employers required under
12 AS 23.30 to provide workers' compensation insurance coverage for their
13 employees.

14 * Sec. 2. AS 21 is amended by adding a new chapter to read:

15 CHAPTER 62. WORKERS' COMPENSATION SELF-INSURANCE.

16 Sec. 21.62.010. SELF-INSURANCE. An employer or two or more
17 employers having a common management or two or more employers having a
18 common interest may elect to pay directly the compensation required in
19 AS 23.30 after providing satisfactory proof of financial ability to
20 make direct payments and receiving a self-insurance certificate from
21 the director.

22 Sec. 21.62.020. SELF-INSURANCE FUND. (a) A workers' compensa-
23 tion self-insurance group formed by two or more employers having a
24 common interest shall establish and keep a self-insurance fund with a
25 minimum balance to be determined by the director, but not less than
26 \$250,000. The director may adopt regulations to maintain the solvency
27 of the fund.

28 (b) The fund shall be administered by a board of trustees selected
29 by members of the common interest self-insurance group.

Sec. 21.62.020. SELF-INSURANCE FUND. (a) A worker's compensation self-insurance group formed by two or more employers having a common interest shall establish and keep a self-insurance fund with current assets available for the payment of claims equal to one and one-half times the retention per loss for each 500 covered employees.

(b) The fund shall be administered by a board of trustees selected by members of the common interest self-insurance group. When a self-insurance fund is sponsored for a common interest self-insurance group by an existing organization, the board of directors of that organization may serve as the board of trustees for that self-insurance fund.

but not less than \$250,000.

1 (c) A majority of the trustees of the fund must be members of the
2 self-insurance group.

3 (d) A trustee of a fund may not be an owner, officer, or employee
4 of the service company used by the common interest self-insurance group
5 which established the fund.

6 (e) The common interest self-insurance group shall adopt bylaws
7 governing the operation of the fund. ^

8 Sec. 21.62.030. APPLICATION. (a) An employer desiring to become
9 an individual self-insurer or two or more employers having common
10 management desiring to become a group self-insurer shall submit an
11 application to the division on a form prescribed by the director.

12 (b) The trustees of the fund of a common interest group desiring
13 to become a group self-insurer shall submit an application to the divi-
14 sion on a form prescribed by the director.

15 (c) An applicant for self-insurance shall answer all questions on
16 the application. The answers shall be sworn to and notarized. The
17 application shall be submitted at least 90 days before the proposed
18 effective date [or renewal date] of the self-insurance certificate.

19 Sec. 21.62.040. CONTENTS OF APPLICATION. An applicant for self-
20 insurance shall submit the following with the application for self-
21 insurance:

22 (1) evidence of working capital of an amount which estab-
23 lishes the financial strength and liquidity to pay normal compensation
24 claims promptly;

25 (2) the proposed amount of retention per loss and retention
26 in the aggregate;

27 (3) the proposed program of excess insurance coverage;

28 (4) proof that the applicant has ample facilities and compe-
29 tent personnel to service the self-insurance plan or a copy of a signed

(c) A majority of the trustees of the fund must be ^{members of} bonafide representatives of the members of the self-insurance group.

(e) The common interest self-insurance group shall adopt bylaws governing the operation of the fund. When a self-insurance fund is sponsored by an established organization, the bylaws of that organization may be used as the bylaws of the self-insurance fund, provided that operation of the fund is clearly defined by appropriate resolutions.

(c) An applicant for self-insurance shall answer all questions on the application. The answers shall be sworn to and notarized. The application shall be submitted at least 90 days before the proposed effective date of the self-insurance certificate.

1 service agreement with an approved service company to provide that
2 service;

3 (5) the location in this state where all records of self-
4 insured loss will be maintained;

5 (6) a description of any loss control or safety programs to
6 be used by the applicant;

7 *delete* (7) Any further evidence which the director ^{by regulation} may require to
8 establish the ability of the applicant to meet its obligations under
9 AS 23.30.

10 Sec. 21.62.050. DOCUMENTS REQUIRED OF INDIVIDUAL SELF-INSURER.

11 In addition to the information required under AS 21.62.040, an applica-
12 tion for individual self-insurance shall be accompanied by

13 (1) a financial statement not more than three months old at
14 the time of the application showing a net worth of not less than
15 \$500,000;

16 (2) an agreement to fully discharge by cash payment all
17 amounts required to be paid under AS 23.30.

18 Sec. 21.62.060. DOCUMENTS REQUIRED OF COMMON MANAGEMENT SELF-
19 INSURANCE GROUP. In addition to the information required under AS 21.-
20 62.040, an application for group self-insurance by a common management
21 group shall be accompanied by

22 (1) a financial statement not more than three months old at
23 the time of application for each member of the group showing a combined
24 net worth of all members of the group to be not less than \$500,000;

25 (2) an indemnity agreement jointly and severally binding
26 each member of the common management self-insurance group to fully
27 discharge by cash payment all amounts required to be paid under
28 AS 23.30.

29 Sec. 21.62.070. DOCUMENTS REQUIRED OF COMMON INTEREST SELF-

Delete (7)

by regulation

?

(1) a financial statement not more than nine months old at the time of the application showing a net worth of not less than \$500,000;

(1) a financial statement not more than nine months old at the time of application for each member of the group showing a combined net worth of all members of the group to be not less than \$500,000.

1 INSURANCE GROUP. In addition to the information required under AS 21.-
2 62.040, an application for group self-insurance by the trustees of the
3 fund of a common interest group shall be accompanied by

4 (1) a financial statement not more than three months old at
5 the time of the application for each member applying for coverage on
6 the inception date of the fund showing a combined net worth of all
7 members of the common interest self-insurance group of not less than
8 \$1,000,000;

9 (2) an indemnity agreement jointly and severally binding the
10 fund and each member of the common interest self-insurance group to
11 fully discharge by cash payment all amounts required to be paid under
12 AS 23.30;

13 (3) An individual application for each member of the common
14 interest self-insurance group applying for coverage under the fund;

15 (4) a set of bylaws or a trust agreement which shall govern
16 the operation of the fund;

17 (5) proof of the existence of the minimum balance in the
18 fund as required under AS 21.62.020(a);

19 (6) an estimate of all administrative expenses of the fund
20 for the period for which the self-insurance certificate is to be issued.

21 Sec. 21.62.080. REVIEW AND DECISION OF DIRECTOR. (a) The direc-
22 tor shall review the contents of an application for self-insurance and
23 determine whether the applicant has the financial ability to meet its
24 obligations under AS 23.30.

25 (b) The director shall determine the amount of excess insurance
26 coverage necessary for the discharge of the obligations of the employer
27 under AS 23.30 and the protection of the applicant.

28 (c) The director may require a surety bond under AS 21.62.100 as
29 a condition to issuance of a self-insurance certificate. /

(1) a financial statement not more than nine months old at the time of the application for each member applying for coverage on the inception date of the fund showing a combined net worth of all members of the common interest self-insurance group of not less than \$1,000,000;

Delete (3) *purpose?*

(4) a set of bylaws, a trust agreement or bylaws of the sponsoring organization together with the appropriate resolutions which shall govern the operation of the fund;

(5) proof of the existence of the current assets of the fund as required under AS 21.62.020(a).

(6) an estimate of all administrative expenses of the fund for the first year of operation of the self-insurance fund.

(c) The director may require a surety bond under AS 21.62.100 as a condition to issuance of a self-insurance certificate when he ~~demon-~~
finds ~~strates~~ in writing that ~~he has reason to believe~~ that a surety bond is necessary to secure the payment of obligations under AS 23.30 as they are incurred.

1 (d) The director shall give written notice to the applicant not
2 later than 30 days before the proposed effective date of his approval
3 or denial of an application for self-insurance. If the application is
4 approved, the notice shall list the conditions which must be met before
5 the self-insurance certificate is issued. If the application is denied,
6 the notice shall state the specific reasons for the denial.

7 (e) A decision of the director is subject to the hearing and
8 appeal procedure under AS 21.06.180 - 21.06.230.

9 Sec. 21.62.090. SELF-INSURANCE CERTIFICATE. Upon approval of an
10 application and receipt of proof of any conditions established under
11 AS 21.62.080(d), the director shall issue a self-insurance certificate
12 to the applicant. The self-insurance certificate shall be on a form
13 prescribed by the director [and shall be issued for a period of one
14 year].

15 Sec. 21.62.100. BOND. (a) With each application for self-insur-
16 ance or ap, lication for renewal of a self-insurance certificate the
17 director may require a corporate surety bond to secure the payment of
18 obligations under AS 23.30 as they are incurred. The bond shall be on
19 a form prescribed by the director and shall be issued by a corporate
20 surety authorized under AS 21.09 to do business in this state. The
21 amount of the bond for each year shall be equal to or greater than the
22 aggregate retention of the self-insurer but not less than \$25,000.

23 (b) A bond secured in compliance with this section may not be
24 cancelled, exchanged, or replaced unless 60 days written notice is
25 given to the director and to the self-insurer.

26 Sec. 21.62.110. EXCESS INSURANCE. (a) The director shall deter-
27 mine the amount and kind of excess insurance required of an applicant
28 for self-insurance based on the financial strength, past history of
29 loss, and degree of hazard in the operations of the applicant and any

Sec. 21.62.090. SELF-INSURANCE CERTIFICATE. Upon approval of an application and receipt of proof of any conditions established under AS 21.62.080(d), the director shall issue a self-insurance certificate to the applicant. The self-insurance certificate shall be on a form prescribed by the director.

Sec. 21.62.100. BOND. (a) With each application for self-insurance or as a condition for the continuance of a self-insurance certificate, the director may require a corporate surety bond when he ^{is able} ~~demon-~~ ~~strates~~ in writing that ~~he has reason to believe that~~ a surety bond is necessary to secure payment of obligations under AS 23.30 as they are incurred. The bond shall be on a form prescribed by the director and shall be issued by a corporate surety authorized under AS 21.09 to do business in this state. The amount of the bond for each year shall not exceed the aggregate retention of the self-insurer or an amount equal to two times the current assets required in AS 21.62.020, whichever is less.

1 other factors he considers appropriate.

2 (b) Excess insurance coverage shall be written by a casualty
3 insurer authorized under AS 21.09 to do business in this state, except
4 that the director may approve a policy of excess insurance with coverage
5 starting at \$1,000,000 with an insurer writing insurance in this state
6 under AS 21.33.

7 (c) A policy of excess insurance issued under this chapter may
8 not be cancelled unless the excess insurer gives 60 days written notice
9 by certified mail to the director and to the self-insurer.

10 (d) The policy of excess insurance shall contain a provision that
11 the director may order the payment of obligations due under the terms
12 of the policy to a party other than the employer if necessary to assure
13 the prompt payment of benefits to injured employees.

14 (e) A policy of excess insurance under this chapter shall cover
15 each employer named in the application for self-insurance under AS 21.-
16 62.030 and no other employers.

17 Sec. 21.62.120. SERVICING FOR SELF-INSURERS. (a) It is the sole
18 responsibility of a self-insurer to provide competent persons to service
19 its programs for claims adjusting, underwriting, and loss control.

20 (b) A self-insurer may contract with one or more approved service
21 companies to provide these services on a full-time basis.

22 (c) The department shall adopt regulations for approving service
23 companies under this section.

24 Sec. 21.62.130. RECORDS. (a) A self-insurer or a service company
25 on behalf of a self-insurer shall maintain all claims records at a
26 location in the state.

27 (b) The records of a self-insurer which relate to self-insurance
28 under this chapter are subject to guidelines established by the director
29 concerning their retention and the review of those records by the

Delete (b)

2.

1 director.

2 (c) All claims files of a self-insurer are subject to review by
3 the director during normal business hours at a location in the state as
4 stated in the application for self-insurance.

5 Sec. 21.62.140. REPORTS. The director may by regulation require
6 reports concerning payroll, losses, reserves, financial condition, and
7 other matters reasonably related to the ability of a self-insurer to
8 meet its obligations under AS 23.30. Failure to comply with these
9 regulations is cause for revocation of a self-insurance certificate.

10 Sec. 21.62.150. INDEMNITY AGREEMENT. The director may by regula-
11 tion establish the provisions of the indemnity agreement required under
12 AS 21.62.060(2) and 21.62.070(2). An indemnity agreement may contain
13 other provisions that are consistent with the provisions adopted by
14 regulation.

15 Sec. 21.62.160. REVOCATION OF A SELF-INSURANCE CERTIFICATE. (a)
16 Failure to comply with the provisions of this chapter or AS 23.30 is
17 grounds for revocation of a self-insurance certificate.

18 (b) The director shall give a self-insurer 30 days written notice
19 of a proposed revocation of a self-insurance certificate. The notice
20 of proposed revocation shall contain a statement of the reasons for
21 revocation. Revocation is effective 30 days after a self-insurer re-
22 ceives a notice of proposed revocation unless the self-insurer requests
23 a hearing within 15 days after receiving notice of proposed revocation.
24 Revocation shall be stayed until the hearing process is completed.

25 (c) A self-insurer may appeal an order under this section as
26 provided in AS 21.06.230.

140 annual report required working excess admin capital insurance expenses

(New Section)

Sec. 21.62.170. TERM OF CERTIFICATE. (a) A certificate of self-insurance issued pursuant of this chapter or in existence at the time of enactment for this chapter shall continue in effect until it has been

- (1) surrendered by the self-insurer; or
- (2) revoked by the director under AS 21.62.160.

(b) A self-insurer shall notify the director in writing 60 days before any material change is made in the operation of his self-insurance plan. The proposed change shall be deemed approved if it has not been disapproved or modified by the director in writing within 30 days after notice was received.

(c) The director may, on his own initiative, order changes consistent with this chapter in the operation of any self-insurance plan as a condition for the self-insurer to continue to hold his certificate when the director ^{finds} ~~demonstrates~~ in writing that ~~he has reason to believe~~ ~~that~~ the ordered changes are necessary to secure the payment of obligations under AS 23.30. Any such orders issued by the director shall become effective at the first of the next fiscal year for that self-insurance plan beginning not less than 30 days after the issuance of the order.

(d) A self-insurer may appeal an order or decision under this section as provided in AS 21.06.230.

1 **Sec. 21.62.170. INDEXING.** The director may adopt regulations to
2 provide for a revision of the dollar amounts in [AS 21.62.020(a), 21.62.-
3 050(1), 21.62.060(1), 21.62.070(1), 21.62.100(a), and 21.62.110(f)] to
4 reflect devaluation of those amounts due to inflation.

5 **Sec. 21.62.200. DEFINITIONS.** In this chapter

6 (1) "common interest self-insurance group" means a group of
7 employers that are in the same or similar type of business and includes
8 unrelated businesses which are owned or controlled by the same person
9 or persons if one of the unrelated businesses is the same or similar
10 type of business as the other businesses in the group;

11 (2) "common management self-insurance group" means a group
12 of employers which have businesses that are owned or controlled by the
13 same persons;

14 (3) "fund" means a self-insurance fund;

15 (4) "trustee" means a person elected by a common interest
16 self-insurance group for a stated term to direct the administration of
17 a fund.

18 * Sec. 3. AS 18.80.220(a)(4) is amended to read:

19 (4) an employer, labor organization or employment agency to
20 discharge, expel or otherwise discriminate against a person because he
21 has

22 (A) opposed any practices forbidden under AS 18.80.-
23 200 - 18.80.280; [OR BECAUSE HE HAS]

24 (B) filed a complaint, testified or assisted in a
25 proceeding under this chapter; or

26 (C) filed a claim for workers' compensation benefits
under AS 23.30;

* Sec. 4. AS 21.36.190(d) is amended to read:

(d) This section does not apply to workers' compensation in...

Sec. 21.62.180. INDEXING. The director may adopt regulations to provide for a revision of the dollar amounts in AS 21.62.050(1), 21.62.060(1), 21.62.070(1) and 21.62.100(a) to reflect devaluation of those amounts due to inflation.

**PLEASE NOTE: THE PRECEDING PAGES WERE TREATED
AS A UNIT IN THE ORIGINAL DOCUMENT.**

Chapman - Resolution - purpose to future.
\$ more \$ available. Sell legis.

Jointly participate in course - hire
staff etc. If employ/contracts - all
review qualifications + basis

- Actuarial study of comp premiums
Profits, loss ratios
- Rehabilitation - bring up (daho,
Calif people. Union. forcing etc).
Consultants & witnesses to come up.
- Service delivery survey
- Benefit levels → effect on premiums

1/29/81

3000 claims med-only under \$750 IT

Alpaclina 9000 — \$1000 trigger

Individual claim data - over \$1000 only

{ 1) data on each claim.

2) funding 2nd injury. ② 6% suggest report on final

point in closing each yr.

→ 0% as on date of injury

* Recommend: eff ^{on or before} 7/1/81
Admin cost 2nd inj from SF.

Bunkhouse Rule

→ Guarantee fund for self-insurers

\$150K Staggered renewal of existing self-insurers

50 1 group

→ Investigate Uninsured

→ Protect worker if no payments
transition for the 50

① write Self-Ins

② tomorrow - ISS (n)

- Appropriation rec's

- WCCA non-controversial

- other non-c

Self-Ins
holders

③ where from here → Resolution

265 (16)

Exec Director: <u>10 mos.</u>	50.0	
Admin Asst:	30.0	
Clerical:	<u>20.0</u>	100

Actuarial study	50.0	
Rehabilitation	20.0	
Service delivery survey	10.0	
Benefit study/effect on plan	10.0	
Contingency	10.0	100
Office/misc	<u>20.0</u>	

	20
<u>220K</u>	

WORKERS COMPENSATION STUDY COMMISSION

Meeting of April 22, 1981 AGENDA

Wednesday, April 22

1:00 p.m. Senate Finance Committee Room

- -Discussion of commission's proposed legislation (SB-179/HB-159)

5:00 p.m.

-self-insurance provisions

-lump sum payments

-"benefits" vs. "compensation" cleanup language

-same-day bank drafts

-attorney fees

-other provisions

-Public comments on commission legislation

-Discussion of continuation of commission

-Discussion of progress of legislation this year

7:00 p.m. Senate Finance Committee Room

- -Work session

9:00 p.m.

-amendments to HB-159/SB-179

-budget suggestions

-resolution continuing commission

Thursday, April 23

8:00 a.m. (if needed) House Labor & Commerce Committee Room

-Continuation of previous agenda items

1:30 p.m. JOINT MEETING OF HOUSE AND SENATE LABOR AND COMMERCE COMMITTEES

Butrovich Room

12
Safe

1 IN THE HOUSE

BY ROGERS

2 HOUSE CONCURRENT RESOLUTION NO.

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - FIRST SESSION

5 Relating to Workers' Compensation.

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

7 WHEREAS the Eleventh Legislature in enacting Legislative Resolve No. 33
8 established a Workers' Compensation Study Commission; and

9 WHEREAS the Workers' Compensation Study Commission has met to study the
10 provisions of the state workers' compensation law and taken public testimony
11 on that law; and

12 WHEREAS the commission has performed its responsibilities under Legis-
13 lative Resolve No. 33 and is prepared to make certain preliminary findings
14 and recommendations to the legislature to bring the workers' compensation
15 law into harmony with current needs and conditions; and

16 WHEREAS the commission finds that certain areas of the workers compen-
17 sation law require further consideration and study, especially the rehabili-
18 tation of injured employees and the use of incentives to the employer and
19 injured employee to return the injured employee to gainful employment;

20 BE IT RESOLVED by the Alaska State Legislature that the Workers' Com-
21 pensation Study Commission shall retain its present ^{other than members of the} members and continue ^{legis-} _{lature}
22 meeting at least bimonthly for one more year to study the effects of the
23 implementation of new statutes and programs by the division of workers'
24 compensation and to study the rehabilitation of injured workers and incen-
25 tives to those workers and employers to return injured workers to gainful
26 employment; and be it

27 FURTHER RESOLVED that the Workers' Compensation Study Commission shall
28 by the 30th day of the Second Session of the Twelfth Legislature report to
29 the legislature its findings and recommendations concerning changes needed

1 in the workers' compensation law.

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CROFT Taking limit off scheduled injuries.

MAHONEY A lot done in absence. Some things:

2ND injury fund

Some ground for compromise. "Social conscience" overlooks compromise.

Am - lower costs → it can occur. Not all is lost.

→ Must address 2nd injury

YES

4) Rating groups

8) 9-member WC Board

18) DPL

19) Local govt

27) Stop order/uninsureds

155(m) State banks

50 \$51 and Other jurisdictions

55 @ \$2000 funeral

54 ere/benefits CTR Review

~~56 Fraud~~

68/69 2nd injury

MAYBE

Self-Insurance

155(o) DV WC forms

191 benefits

April 22, 1981

Testimony to Workers' Compensation Study Commission
by
Daryl A. Cody
at request of
Alaska Chapter
Associated General Contractors of America, Inc.

INTRODUCTION

My name is Daryl A. Cody and I reside at 16742 - 72nd Avenue West, Edmonds, Washington 98020. I own and operate a general business consulting firm specializing in financial reporting, bonding, insurance and other management matters, offering such services to contractors and the construction industry. My firm holds a general business license issued by the State of Alaska, License Number 098109.

Prior to the establishment of the consulting firm, I was associated with two insurance brokerage firms and two insurance underwriting agencies, all of whom were quite active in the insurance business of Alaska. Through these associations, I have been involved in consulting and the insurance industry of Alaska for the past twenty-six years.

For the past two years, I have served as Co' chairman of the Insurance-Tax-Bonding Committee of the Alaska Chapter, Associated General Contractors of America. At the present time, I am also employed by this association as a consultant in the preparation of a feasibility study of a proposed Group Workers' Compensation Program for the association's members.

GENERAL COMMENTS

In general, the Workers' Compensation Study Commission created by the Second Session of Eleventh Legislature has had a very large and difficult task to accomplish over a very short period of time, with limited facilities and forces with which to accomplish this task.

The Commission has uncovered many of the problems of the existing Statutes. Some of these problems have been overstated and some of the major problems have not received

April 22, 1981

Testimony to Workers' Compensation Study Commission
by Daryl A. Cody

meaningful attention. These are not criticisms of the Commission's efforts or desires, but in my opinion, simply a result of the lack of time and the facilities and forces that have been available to the Commission.

The basic problems of Workers' Compensation in the State of Alaska remain:

- I. The lack of ability of the Workers' Compensation Board to act upon contravened claims in a timely manner,
- II. The ineffective handling of claims by some insurance companies,
- III. The cost of benefits to insurance companies, to employers and eventually to the buying public,
- IV. The ability of some workers to use the Workers' Compensation benefits as a continuous holiday fund or basic support facility between jobs or working seasons.

Perhaps I am trying to over simplify the situation. However, from all of my experiences and from everything I have been able to read about the Commission's activities and the current legislation, these remain the basic problems. Also, these are the same basic problems faced by several other states, some of which have had various good corrective legislative action.

SPECIFIC COMMENTS IN REGARDS TO CURRENT LEGISLATION

The current legislation (HB 159 and SB 179) is an attempt to do some immediate house-keeping work. In studying this Bill and talking with some individuals who have contributed to the Bill, I find at least three separate contributors, namely, the Division of Insurance, the Workers' Compensation Division and the Study Commission. Although I am not totally advised as to the depth of understanding the Study Commission or the Legislative Committee have on the material of the total Bill, I believe there is a good possibility that no one person or group of people really have a grasp on the total proposed legislation and its effects. I will admit that I do not.

April 22, 1981

Testimony to Workers' Compensation Study Commission
by Daryl A. Cody

Again, this is not criticism of the Study Commission nor of the Legislative Committees, but the effect of too little time and not enough facilities or forces to accomplish a true progressive piece of legislation.

In the confines of the material presented in the current Bills, I would suggest the legislature target in on a few key areas, namely:

- I. Increasing the Workers' Compensation Board from seven to nine members.

(It seems that the Board is understaffed and this increase would give the Board the opportunity to handle contraverted claims in a more timely basis.) Bo to be used only in appeals - Use Hearing officers -

- II. Increasing funeral benefits from \$1,000 to \$1,750 or \$1,850. (There is no doubt that the current benefit is too low and some increase is justified.) Will force increase of cost of funerals
- III. Enacting legislation similar to Section 15, Second Injury Fund, as presently object to \$2500⁰⁰ - (in conjunction w/ Soc Security)

presented in HB 159 and SB 179. (There is no doubt that the Second Injury Fund section of the current legislation with one or two minor amendments, should be adopted.)

- IV. Enacting some legislation as requested by the Division of Insurance for regulation of self-insurance. (Some regulation seems necessary, as apparently none or virtually none exists at the moment. The regulations specified in the current legislation seem too burdensome. Few firms or groups within Alaska would be able to conform.)

- V. Provide for a new method of calculating average weekly wage as provided in Sections 50 & 51 of the proposed legislation or as

Again, these are the five areas that I feel should receive legislation during the current session. I identify these areas first of all because of immediate need, and secondly, because they are areas that can easily be separated and dealt with as a single subject.

FURTHER RECOMMENDATIONS

In order for the Commission to carry out its mandate as specified in the originating

- V. (Con't.) otherwise may be agreed.

April 22, 1981

Testimony to Workers' Compensation Study Commission
by Daryl A. Cody

resolution, I recommend that the Study Commission:

- I. Be continued for an additional year,
- II. Be reduced in size from nine members to three or five,
- III. Include the State Commissioners of Labor and of Commerce and Economic Development as Study Commission members,
- IV. Employ professional outside expertise to study the present and future work of the Commission, to review the needs of Alaskan employees and employers and to recommend major revisions to the existing act or a total new Workers' Compensation Act for the State of Alaska,
- V. Be funded in an adequate amount as to be able to appropriately reimburse its members and professional staff for time and expenses.

This is the end of my testimony. Should there be questions, I will attempt to answer them.

Thank you for the opportunity to appear before you.

STATE OF ALASKA

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

OFFICE OF THE COMMISSIONER

From Don Koch 2577
Div Insurance

JAY S. HAMMOND, GOVERNOR

POUCH D

JUNEAU, ALASKA 99811

Phone: 465-2500

February 25, 1981

The Honorable Bob Mulcahy, Chairman
Senate Labor and Commerce Committee
Pouch V
Juneau, Alaska 99811

Dear Senator Mulcahy:

Re: SB 179

Thank you for your request concerning our position on SB 179. It represents the work product of the Workers Compensation Study Commission. The Division of Insurance has been working closely with the Workers Compensation Study Commission on a number of the items covered by this legislation. We are in favor of the bill.

The bill transfers the function of regulating workers compensation self-insurance from the Alaska Workers Compensation Board to the Division of Insurance in this department. We are not overly enthralled with the prospect of acquiring this responsibility, but recognize that it is more akin to our operations than those of the board or the Department of Labor. The bill does provide the necessary tools to properly perform this function and section 2 of the bill is based substantially on work done by the Division of Insurance at the request of the Study Commission.

The bill revises the insurance fictitious group statute to permit workers compensation insurance groups to form with greater ease.

The bill revises the insurance rating law to encourage competitive rating in workers compensation insurance. This is a substantial departure from the current system which tends to fix rates by all insurers at the same level regardless of the individual insurer's experience or expenses. This new approach moves in the direction of a recent model by the National Association of Insurance Commissioners.

The Honorable Bob Mulcahy

-2-

February 25, 1981

We have noted a number of corrections that need to be made. These appear in the enclosed section by section commentary. The commentary is confined to sections 1, 2, 4, 5, 6, 7, 13, 14, 15, 19, 20, 25, 26, 28, 29, 46, 64 and 70.

Very truly yours,

Charles R. Webber
Commissioner

CRW/mh3/15

Enclosure

SB 179
Section by Section Commentary

- Section 1. This section is a purpose section for section 2 of the bill.
- Section 2. This section adds a new chapter to the insurance code dealing with workers compensation self-insurers. It transfers the function from the Workers Compensation Board to the Division of Insurance. It newly provides for self-insurer groups. The chapter outlines requirements intended to aid in determining the ability of the self-insurer to meet its obligations under AS 23.30. These functions are totally new to the Division of Insurance and will require expertise not presently housed there. The functions are more akin to the functions of the Division of Insurance than they are to the Workers Compensation Board functions.
- On page 7, line 24, a stay of revocation provision is included which provides a stay "until the hearing process is completed." This language is ambiguous since no definition provides when the process is completed.
- * Proposed Amendment. On page 7, line 24, remove the phrase "hearing process is completed" and add "the time noted in the order issued by the director following the hearing but not sooner than five days following the order."
- Section 4. This section modifies the fictitious group statute to facilitate the formation of workers compensation safety groups. Groups do not have standing under the rate law to make rate or rating plan filings. Insurance companies have standing. A minor revision will correct the problem.
- * Proposed Amendment. On page 9, line 5, following the word "has" insert the phrase "through an insurer."
- Sections 5-6. These sections modify the Alaska insurance rate law for workers compensation from its present prior approval approach to a file and use approach. Under the present system, a single rating organization files rates for all insurers and the insurers are required to adhere to that schedule of rates. This results in little or no rate competition. This proposal would change the role of the rating organization in a way that would result in a wide selection of insurance rates. Under the proposed change

the rates for each insurer for a particular classification would be different. Insurers would be competing in areas that they do not typically compete in now, including expenses and investment income.

Section 7. This section modifies the deviation section of the insurance rate law to make clear that a rate filing under sections 5 and 6 are not deviations and that a deductible or loss reimbursement plan is not considered a deviation.

Section 13. This section is intended to encourage the use of deductible provisions in a workers compensation insurance policy. It provides that the insurer is liable for the full benefit required under the law but permits recovery by the insurer from the insured employer of the amount they have agreed upon.

Section 14. AS 23.30.030(7) is a required provision in a workers compensation policy. Unfortunately, it is not workable. Form filings are made by a rating organization on behalf of all its member and subscriber companies, so that it is not possible to disapprove the form in the manner outlined. The director of insurance does not presently accept or receive proofs of insurance from any insurer so this language is meaningless. The approach here would penalize all other insured employers of the insurance company and could leave them uninsured. Its akin to killing a gnat with a baseball bat. A better approach would be to allow specific penalty to be determined on the basis of the severity of the specific situation. This could range from a fine to a suspension of authority.

* Proposed Amendment. On page 16, lines 22-29 and page 17, line 1, amend AS 23.30.030(7) to read:

"(7) If the insurer fails or refuses to pay a final award or judgement (except during the pendency of an appeal) made against it, or its insured, or if it fails or refuses to comply with a provision of this chapter, the director of insurance [COMMISSIONER SHALL REVOKE THE APPROVAL OF THE POLICY FORM, AND MAY NOT ACCEPT FURTHER PROOFS OF INSURANCE FROM IT UNTIL IT HAS PAID THE AWARD OR JUDGEMENT OR HAS COMPLIED WITH THE VIOLATED PROVISION OF THIS CHAPTER, AND HAS RESUBMITTED ITS POLICY FORM AND RECEIVED THE APPROVAL OF THE FORM BY THE INSURANCE COMMISSIONER] may suspend or revoke the insurer's Certificate of Authority pursuant to AS 21.09.150 or impose a fine upon the insurer of not less than \$25 and not more than

\$100 for each day the insurer fails or refuses to pay a final award or judgement (excluding the period permitted for appeal) made against it, or its insured, or it fails or refuses to comply with a provision of this chapter."

Section 15. This section is similar in some respects to HB 94. It changes the formula for payments to the second injury fund from 8% on permanent partial disabilities to 6% on permanent total, permanent partial, temporary total, and temporary partial injuries. This formula will improve the cash flow to the second injury fund. The actuaries of the rating organization have estimated the impact on workers compensation insurance rates to be an increase of 1%.

Sections 19, 20, 25, 26, 28, 29, and 64. The changes in these sections relate to the change in section 2 whereby the regulation of self-insurers is transferred from the Workers Compensation Board to the Division of Insurance.

Sections 25, 26 and 64. These sections change "board" to "director of insurance" and also change "compensation" to "benefit." The transfer of the regulation of self-insurance has too quick an effective date to avoid problems. Time is needed to staff, to develop regulations to implement the changes and to work out the bugs. The transfer should be implemented on July 1, 1982. This necessitates a splitting of these sections to reflect that certain changes occur at later dates.

* Proposed Amendment. Split section 25 on page 23, lines 12-24, into 2 sections, 25A and 25B, to read as follows:

Sec. 25A. AS 23.30.075(a) is amended to read:

(a) An employer under this chapter, unless exempted, shall either [,] insure and keep insured for his liability under this chapter in an insurance company or association duly authorized to transact the business of workers compensation insurance in this state, or shall furnish the board satisfactory proof of his financial ability to pay directly the benefits [COMPENSATION] provided for. If an employer elects to pay directly, the board may, in his [ITS] discretion, require



(1) the deposit of an acceptable security, indemnity or bond to secure the payment of benefit [COMPENSATION] liabilities as they are incurred; and

(2) proof of excess insurance.

Sec. 25B. AS 23.30.075(a) is amended to read:

(a) An employer under this chapter, unless exempted, shall either insure and keep insured for his liability under this chapter in an insurance company or association duly authorized to transact the business of workers compensation insurance in this state, or shall furnish the director of insurance [BOARD] satisfactory proof of his financial ability to pay directly the benefits provided for. If an employer elects to pay directly, the director of insurance [BOARD] may in his [ITS] discretion, require

(1) the deposit of an acceptable security, indemnity or bond to secure the payment of benefit liabilities as they are incurred; and

(2) proof of excess insurance.

* Proposed Amendment. Split section 26 on page 23, lines 25-29, and page 24, lines 1-9, into two sections, 26A and 26B to read as follows:

Sec. 26A. AS 23.30.075(b) is amended to read:

(b) An employer who fails to insure and keep insured employees subject to this chapter or fails to obtain a certificate of self-insurance from the board, upon conviction, is punishable by a fine of not more than \$1,000, or by imprisonment for not more than one year, or by both. If an employer is a corporation, all persons who, at the time of the injury or death, had authority to insure the [SAID] corporation or apply for a certificate of self-insurance, and the person actively in charge of the business of the [SUCH] corporation shall be subject to the penalties prescribed herein and shall be personally, jointly and severally liable together with the corporation for the payment of all [COMPENSATION OR OTHER] benefits for which the corporation is liable under this chapter if the [SAID] corporation at such time is not insured or qualified as a self-insurer.

The above section is unchanged from the bill since need for a further change to page 23, line 28, was overlooked. That change is incorporated in section 26B.

Sec. 26B. AS 23.30.075(b) is amended to read:

(b) An employer who fails to insure and keep insured employees subject to the chapter or fails to obtain a certificate of self-insurance from the director of insurance

[BOARD], upon conviction, is punishable by a fine of not more than \$1,000, or by imprisonment for not more than one year, or by both. If an employer is a corporation, all persons who, at the time of the injury or death, had authority to insure the corporation or apply for a certificate of self-insurance, and the person actively in charge of the business of the corporation shall be subject to the penalties prescribed herein and shall be personally, jointly and severally liable together with the corporation for the payment of all benefits for which the corporation is liable under this chapter if the corporation at such time is not insured or qualified as a self-insurer.

* Proposed Amendment. Split section 28 on page 24, lines 19-27 into two sections, 28A and 28B to read as follows:

Sec. 28A. AS 23.30.085(a) is amended to read:

(a) An employer subject to this chapter, unless exempted, shall initially file evidence of his compliance with the insurance provisions of this chapter with the board, in the form prescribed by it. The employer shall also give evidence of compliance within 10 days after the termination of his insurance by expiration or cancellation. These requirements do not apply to an employer who has certification from the board of his financial ability to pay benefits [COMPENSATION] directly without insurance.

Sec. 28B. AS 23.30.085(a) is amended to read:

(a) An employer subject to this chapter, unless exempted, shall initially file evidence of his compliance with the insurance provisions of this chapter with the board, in the form prescribed by it. The employer shall also give evidence of compliance within 10 days after the termination of his insurance by expiration or cancellation. These requirements do not apply to an employer who has certification from the director of insurance [BOARD] of his financial ability to pay benefits directly without insurance.

* Proposed Amendment. Split section 64 on page 46, lines 16-22 into two sections, 64A and 64B to read as follows:

Sec. 64A. AS 23.30.265(19) is amended to read:

(19) "self-insurer" means an employer who, instead of insuring his liability under this chapter as it provides elects to pay directly the benefits [COMPENSATION] provided for, and who has furnished to the board satisfactory proof of his financial ability to make the direct payments and has been issued a self-insurance certificate;

Sec. 64B. AS 23.30.265(19) is amended to read:

(19) "self-insurer" means an employer who, instead of insuring his liability under this chapter as it provides, elects to pay directly the benefits provided for, and who has furnished to the director of insurance [BOARD] satisfactory proof of his financial ability to make the direct payments and has been issued a self-insurance certificate;

Section 29. The language on page 25, lines 4-9, conflicts with sec. 21.62.160 on page 7. It is not needed.

- * Proposed Amendment. On page 25 remove the sentences starting on line 4 and ending on line 9.

The new language on page 25 starting on line 9 and ending on line 13 poses a problem since the director will not necessarily know to whom notices must be sent.

- * Proposed Amendment. On page 25, line 13, following the word "state," add "provided that the contracting agency has obtained proof of self-insurance from the employer designating the contracting agency as a person to receive notice under this section."

Section 46. No comment generally on this section except to say that the use of a draft on page 38, line 21, is in conflict with a barrier to drafts found in AS 21.89.030 adopted in 1968.

- * Proposed Amendment. On page 38, line 21, remove the words "or draft."

Section 70. This is the effective date section calling for an effective date of July 1, 1981. See comments on section 25.

- * Proposed Amendment. This section should be split into two sections, 70A and 70B to read as follows:

Sec. 70A. Sections 3, 4-18, 19A, 21-24, 25A, 26A, 27, 28A, 30-63, 64A and 65-69 of this Act take effect on July 1, 1981.

Sec. 70B. Sections 1, 2, 19B, 20, 25B, 26B, 28B, 29 and 64B of this Act take effect on July 1, 1982.

Introduced: 2/13/81
Referred: Labor & Commerce and
Finance

BY THE RULES COMMITTEE BY REQUEST
OF THE LEGISLATIVE COUNCIL (for
the Workers' Compensation Study
Commission)

1 IN THE HOUSE

2 HOUSE BILL NO. 159

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to workers' compensation; and provid-
7 ing for an effective date."

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

9 * Section 1. The purpose of sec. 2 of this Act is to provide both protec-
10 tion for injured employees and flexibility for employers in making the
11 alternative of self-insurance available to those employers required under
12 AS 23.30 to provide workers' compensation insurance coverage for their
13 employees.

14 * Sec. 2. AS 21 is amended by adding a new chapter to read:

15 CHAPTER 62. WORKERS' COMPENSATION SELF-INSURANCE.

16 Sec. 21.62.010. SELF-INSURANCE. An employer or two or more
17 employers having a common management or two or more employers having a
18 common interest may elect to pay directly the compensation required in
19 AS 23.30 after providing satisfactory proof of financial ability to
20 make direct payments and receiving a self-insurance certificate from
21 the director.

22 Sec. 21.62.020. SELF-INSURANCE FUND. (a) A workers' compensa-
23 tion self-insurance group formed by two or more employers having a
24 common interest shall establish and keep a self-insurance fund with a
25 minimum balance to be determined by the director, but not less than
26 \$250,000. The director may adopt regulations to maintain the solvency
27 of the fund.

28 (b) The fund shall be administered by a board of trustees selected
29 by members of the common interest self-insurance group.

1 (c) A majority of the trustees of the fund must be members of the
2 self-insurance group.

3 (d) A trustee of a fund may not be an owner, officer, or employee
4 of the service company used by the common interest self-insurance group
5 which established the fund.

6 (e) The common interest self-insurance group shall adopt bylaws
7 governing the operation of the fund.

8 Sec. 21.62.030. APPLICATION. (a) An employer desiring to become
9 an individual self-insurer or two or more employers having common
10 management desiring to become a group self-insurer shall submit an
11 application to the division on a form prescribed by the director.

12 (b) The trustees of the fund of a common interest group desiring
13 to become a group self-insurer shall submit an application to the divi-
14 sion on a form prescribed by the director.

15 (c) An applicant for self-insurance shall answer all questions on
16 the application. The answers shall be sworn to and notarized. The
17 application shall be submitted at least 90 days before the proposed
18 effective date or renewal date of the self-insurance certificate.

19 Sec. 21.62.040. CONTENTS OF APPLICATION. An applicant for self-
20 insurance shall submit the following with the application for self-
21 insurance:

22 (1) evidence of working capital of an amount which estab-
23 lishes the financial strength and liquidity to pay normal compensation
24 claims promptly;

25 (2) the proposed amount of retention per loss and retention
26 in the aggregate;

27 (3) the proposed program of excess insurance coverage;

28 (4) proof that the applicant has ample facilities and compe-
29 tent personnel to service the self-insurance plan or a copy of a signed

1 service agreement with an approved service company to provide that
2 service;

3 (5) the location in this state where all records of self-
4 insured loss will be maintained;

5 (6) a description of any loss control or safety programs to
6 be used by the applicant;

7 (7) Any further evidence which the director may require to
8 establish the ability of the applicant to meet its obligations under
9 AS 23.30.

10 Sec. 21.62.050. DOCUMENTS REQUIRED OF INDIVIDUAL SELF-INSURER.
11 In addition to the information required under AS 21.62.040, an applica-
12 tion for individual self-insurance shall be accompanied by

13 (1) a financial statement not more than three months old at
14 the time of the application showing a net worth of not less than
15 \$500,000;

16 (2) an agreement to fully discharge by cash payment all
17 amounts required to be paid under AS 23.30.

18 Sec. 21.62.060. DOCUMENTS REQUIRED OF COMMON MANAGEMENT SELF-
19 INSURANCE GROUP. In addition to the information required under AS 21.-
20 62.040, an application for group self-insurance by a common management
21 group shall be accompanied by

22 (1) a financial statement not more than three months old at
23 the time of application for each member of the group showing a combined
24 net worth of all members of the group to be not less than \$500,000;

25 (2) an indemnity agreement jointly and severally binding
26 each member of the common management self-insurance group to fully
27 discharge by cash payment all amounts required to be paid under
28 AS 23.30.

29 Sec. 21.62.070. DOCUMENTS REQUIRED OF COMMON INTEREST SELF-

1 INSURANCE GROUP. In addition to the information required under AS 21.-
2 62.040, an application for group self-insurance by the trustees of the
3 fund of a common interest group shall be accompanied by

4 (1) a financial statement not more than three months old at
5 the time of the application for each member applying for coverage on
6 the inception date of the fund showing a combined net worth of all
7 members of the common interest self-insurance group of not less than
8 \$1,000,000;

9 (2) an indemnity agreement jointly and severally binding the
10 fund and each member of the common interest self-insurance group to
11 fully discharge by cash payment all amounts required to be paid under
12 AS 23.30;

13 (3) An individual application for each member of the common
14 interest self-insurance group applying for coverage under the fund;

15 (4) a set of bylaws or a trust agreement which shall govern
16 the operation of the fund;

17 (5) proof of the existence of the minimum balance in the
18 fund as required under AS 21.62.020(a);

19 (6) an estimate of all administrative expenses of the fund
20 for the period for which the self-insurance certificate is to be issued.

21 Sec. 21.62.080. REVIEW AND DECISION OF DIRECTOR. (a) The direc-
22 tor shall review the contents of an application for self-insurance and
23 determine whether the applicant has the financial ability to meet its
24 obligations under AS 23.30.

25 (b) The director shall determine the amount of excess insurance
26 coverage necessary for the discharge of the obligations of the employer
27 under AS 23.30 and the protection of the applicant.

28 (c) The director may require a surety bond under AS 21.62.100 as
29 a condition to issuance of a self-insurance certificate.

1 (d) The director shall give written notice to the applicant not
2 later than 30 days before the proposed effective date of his approval
3 or denial of an application for self-insurance. If the application is
4 approved, the notice shall list the conditions which must be met before
5 the self-insurance certificate is issued. If the application is denied,
6 the notice shall state the specific reasons for the denial.

7 (e) A decision of the director is subject to the hearing and
8 appeal procedure under AS 21.06.180 - 21.06.230.

9 Sec. 21.62.090. SELF-INSURANCE CERTIFICATE. Upon approval of an
10 application and receipt of proof of any conditions established under
11 AS 21.62.080(d), the director shall issue a self-insurance certificate
12 to the applicant. The self-insurance certificate shall be on a form
13 prescribed by the director and shall be issued for a period of one
14 year.

15 Sec. 21.62.100. BOND. (a) With each application for self-insur-
16 ance or application for renewal of a self-insurance certificate the
17 director may require a corporate surety bond to secure the payment of
18 obligations under AS 23.30 as they are incurred. The bond shall be on
19 a form prescribed by the director and shall be issued by a corporate
20 surety authorized under AS 21.09 to do business in this state. The
21 amount of the bond for each year shall be equal to or greater than the
22 aggregate retention of the self-insurer but not less than \$25,000.

23 (b) A bond secured in compliance with this section may not be
24 cancelled, exchanged, or replaced unless 60 days written notice is
25 given to the director and to the self-insurer.

26 Sec. 21.62.110. EXCESS INSURANCE. (a) The director shall deter-
27 mine the amount and kind of excess insurance required of an applicant
28 for self-insurance based on the financial strength, past history of
29 loss, and degree of hazard in the operations of the applicant and any

1 other factors he considers appropriate.

2 (b) Excess insurance coverage shall be written by a casualty
3 insurer authorized under AS 21.09 to do business in this state, except
4 that the director may approve a policy of excess insurance with coverage
5 starting at \$1,000,000 with an insurer writing insurance in this state
6 under AS 21.33.

7 (c) A policy of excess insurance issued under this chapter may
8 not be cancelled unless the excess insurer gives 60 days written notice
9 by certified mail to the director and to the self-insurer.

10 (d) The policy of excess insurance shall contain a provision that
11 the director may order the payment of obligations due under the terms
12 of the policy to a party other than the employer if necessary to assure
13 the prompt payment of benefits to injured employees.

14 (e) A policy of excess insurance under this chapter shall cover
15 each employer named in the application for self-insurance under AS 21.-
16 62.030 and no other employers.

17 Sec. 21.62.120. SERVICING FOR SELF-INSURERS. (a) It is the sole
18 responsibility of a self-insurer to provide competent persons to service
19 its programs for claims adjusting, underwriting, and loss control.

20 (b) A self-insurer may contract with one or more approved service
21 companies to provide these services on a full-time basis.

22 (c) The department shall adopt regulations for approving service
23 companies under this section.

24 Sec. 21.62.130. RECORDS. (a) A self-insurer or a service company
25 on behalf of a self-insurer shall maintain all claims records at a
26 location in the state.

27 (b) The records of a self-insurer which relate to self-insurance
28 under this chapter are subject to guidelines established by the director
29 concerning their retention and the review of those records by the

1 director.

2 (c) All claims files of a self-insurer are subject to review by
3 the director during normal business hours at a location in the state as
4 stated in the application for self-insurance.

5 Sec. 21.62.140. REPORTS. The director may by regulation require
6 reports concerning payroll, losses, reserves, financial condition, and
7 other matters reasonably related to the ability of a self-insurer to
8 meet its obligations under AS 23.30. Failure to comply with these
9 regulations is cause for revocation of a self-insurance certificate.

10 Sec. 21.62.150. INDEMNITY AGREEMENT. The director may by regula-
11 tion establish the provisions of the indemnity agreement required under
12 AS 21.62.060(2) and 21.62.070(2). An indemnity agreement may contain
13 other provisions that are consistent with the provisions adopted by
14 regulation.

15 Sec. 21.62.160. REVOCATION OF A SELF-INSURANCE CERTIFICATE. (a)
16 Failure to comply with the provisions of this chapter or AS 23.30 is
17 grounds for revocation of a self-insurance certificate.

18 (b) The director shall give a self-insurer 30 days written notice
19 of a proposed revocation of a self-insurance certificate. The notice
20 of proposed revocation shall contain a statement of the reasons for
21 revocation. Revocation is effective 30 days after a self-insurer re-
22 ceives a notice of proposed revocation unless the self-insurer requests
23 a hearing within 15 days after receiving notice of proposed revocation.
24 Revocation shall be stayed until the hearing process is completed.

25 (c) A self-insurer may appeal an order under this section as
26 provided in AS 21.06.230.

27 Sec. 21.62.170. INDEXING. The director may adopt regulations to
28 provide for a revision of the dollar amounts in AS 21.62.020(a), 21.62.-
29 050(1), 21.62.060(1), 21.62.070(1), 21.62.100(a), and 21.62.110(f) to

1 reflect devaluation of those amounts due to inflation.

2 Sec. 21.62.200. DEFINITIONS. In this chapter

3 (1) "common interest self-insurance group" means a group of
4 employers that are in the same or similar type of business and includes
5 unrelated businesses which are owned or controlled by the same person
6 or persons if one of the unrelated businesses is the same or similar
7 type of business as the other businesses in the group;

8 (2) "common management self-insurance group" means a group
9 of employers which have businesses that are owned or controlled by the
10 same persons;

11 (3) "fund" means a self-insurance fund;

12 (4) "trustee" means a person elected by a common interest
13 self-insurance group for a stated term to direct the administration of
14 a fund.

15 * Sec. 3. AS 18.80.220(a)(4) is amended to read:

16 (4) an employer, labor organization or employment agency to
17 discharge, expel or otherwise discriminate against a person because he
18 has

19 (A) opposed any practices forbidden under AS 18.80.-
20 200 - 18.80.280, [OR BECAUSE HE HAS]

21 (B) filed a complaint, testified or assisted in a
22 proceeding under this chapter; or

23 (C) filed a claim for workers' compensation benefits
24 under AS 23.30;

25 * Sec. 4. AS 21.36.190(d) is amended to read:

26 (d) This section does not apply to workers' compensation insur-
27 ance when issued to an association of employers in the same rating
28 classification [FORMED FOR PURPOSES OTHER THAN THE PURCHASE OF INSUR-
29 ANCE] and which as a group

- 1 (1) has a constitution and bylaws;
2 (2) incorporates a safety program;
3 [(3) AS A GROUP HAS PREFERRED CHARACTERISTICS OVER SIMILAR
4 RISKS WRITTEN ON AN INDIVIDUAL BASIS;] and
5 (4) has filed and received approval from the director for
6 the rating program to be applied to the group.

7 * Sec. 5. AS 21.39.040(d) is amended to read:

8 (d) Subject to the exceptions [EXCEPTION] specified in (e) of
9 this section and AS 21.39.045, each filing shall be on file for a
10 waiting period of 15 days before it becomes effective, which period may
11 be extended by the director for an additional period not to exceed 15
12 days if he gives written notice within the waiting period to the insurer
13 or rating organization which made the filing stating that he needs
14 additional time for the consideration of the filing. Upon written
15 application by the insurer or rating organization, the director may
16 authorize a filing which he has reviewed to become effective before the
17 expiration of the waiting period. A filing shall be considered to meet
18 the requirements of this chapter unless disapproved by the director
19 within the waiting period.

20 * Sec. 6. AS 21.39 is amended by adding a new section to read:

21 Sec. 21.39.045. WORKERS' COMPENSATION RATE FILINGS. (a) A
22 filing of workers' compensation rates by a rating organization shall be
23 limited to provisions for claim payment and may not include allowances
24 for expenses, taxes, or profit, except as necessary for full rate
25 development for an assigned risk pool under AS 21.39.155.

26 (b) If each rate in a schedule of workers' compensation rates for
27 a specific classification of risks filed by an insurer is not lower
28 than the rate for each respective classification filed by a rating
29 organization in accordance with (a) of this section and approved by the

1 director, the schedule of rates filed by the insurer is effective
2 immediately and the waiting period in AS 21.39.040(d) is not required.

3 (c) Notwithstanding (b) of this section, the director may require
4 an insurer to comply with the waiting period in AS 21.39.040(d) for a
5 rate filing or part of a rate filing if he determines that the rate
6 filing or part of the rate filing is excessive, inadequate, or unfairly
7 discriminatory.

8 * Sec. 7. AS 21.39.070 is amended by adding new subsections to read:

9 (c) Notwithstanding (a) of this section, a filing by an insurer
10 of an independent deductible or loss reimbursement plan is not consid-
11 ered a deviation under this section.

12 (d) Notwithstanding (a) of this section, a filing of workers'
13 compensation rates under AS 21.39.045(b) is not a deviation under this
14 section.

15 * Sec. 8. AS 23.30.005(a) is amended to read:

16 (a) The Alaska Workers' Compensation Board shall consist of nine
17 [SEVEN] members, including a southern panel of three members sitting
18 for the first judicial district, a northern panel of three members
19 sitting for the second and fourth judicial districts, [AND] a south-
20 central panel of three members sitting for the third judicial district,
21 and one panel of three members which may sit in any judicial district.

22 Each panel shall include the commissioner of labor or his designated
23 representative, a representative of industry and a representative of
24 labor. The latter two members of each panel shall be appointed by the
25 governor. All panel members are subject to confirmation by a majority
26 of the members of the legislature in joint session.

27 * Sec. 9. AS 23.30.010 is amended to read:

28 Sec. 23.30.010. COVERAGE. Benefits are [COMPENSATION IS] payable
29 under this chapter in respect of disability or death of an employee.

1 * Sec. 10. AS 23.30.015 is amended to read:

2 Sec. 23.30.015. ~~BENEFITS [COMPENSATION] WHERE THIRD PERSONS ARE~~
3 ~~LIABLE.~~ (a) If on account of disability or death for which benefits
4 ~~[COMPENSATION IS]~~ payable under this chapter the person entitled to the
5 benefits ~~[COMPENSATION]~~ believes that a third person other than the
6 employer or a fellow employee is liable for damages, he need not elect
7 whether to receive benefits ~~[COMPENSATION]~~ or to recover damages from
8 the third person.

9 (b) Acceptance of benefits ~~[COMPENSATION]~~ under an award in a
10 compensation order filed by the board operates as an assignment to the
11 employer of all rights of the person entitled to benefits ~~[COMPENSATION]~~
12 and the personal representative of a deceased employee to recover
13 damages from the third person unless the person or representative
14 entitled to benefits ~~[COMPENSATION]~~ commences an action against the
15 third person within one year after an award.

16 (c) Payment of compensation into the second-injury fund as a
17 result of death operates as an assignment to the employer of all rights
18 of the representative of the deceased to recover damages from the third
19 person.

20 (d) An employer under an assignment may either institute proceed-
21 ings for the recovery of damages or may compromise with a third person,
22 either without or after instituting an action.

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

25 (1) The employer shall retain an amount equal to

26 (A) the expenses incurred by him in respect to the
27 action or compromise, including a reasonable attorney fee deter-
28 mined by the board;

29 (B) the cost of all benefits actually furnished by him

1 under this chapter;

2 (C) all amounts paid as compensation and second-injury
3 fund payments;

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

13 (2) the employer shall pay any excess to the person entitled
14 to benefits [COMPENSATION] or to his representative.

15 (f) Even if an employee, his representative, or his employer
16 brings an action or settles a claim against the third person, the
17 employer shall pay the benefits [AND COMPENSATION] required by this
18 chapter.

19 (g) If the employee or his representative recovers damages from
20 the third person, the employee or representative shall promptly pay to
21 the employer the total amounts paid by the employer under (e)(1)(A),
22 (B), and (C) of this section, insofar as the recovery is sufficient
23 after deducting all litigation costs and expenses. Any excess recovery
24 by the employee or representative shall be credited against any amount
25 payable by the employer thereafter.

26 (h) If compromise with a third person is made by the person
27 entitled to benefits [COMPENSATION] or his representative of an amount
28 less than the benefits [COMPENSATION] to which the person or repre-
29 sentative would be entitled, the employer is liable for benefits

1 [COMPENSATION] stated in (E) of this section only if the compromise is
2 made with his written approval.

3 (i) If the employer is insured and the carrier has assumed the
4 payment of benefits [COMPENSATION] the carrier shall be subrogated to
5 all the rights of the employer.

6 (j) Notice of the commencement of an action against a third party
7 shall be given to the board and to all interested parties within 30
8 days.

9 * Sec. 11. AS 23.30.020 is amended to read:

10 Sec. 23.30.020. CHAPTER PART OF CONTRACT OF HIRE. This chapter
11 constitutes part of every contract of hire, express or implied, and
12 every contract of hire shall be construed as an agreement on the part
13 of the employer to pay and on the part of the employee to accept
14 benefits [COMPENSATION] in the manner provided in this chapter for all
15 personal injuries sustained.

16 * Sec. 12. AS 23.30.025(b) is amended to read:

17 (b) All policies of insurance companies insuring the payment of
18 benefits [COMPENSATION] under this chapter are conclusively presumed to
19 cover all the employees and the entire benefits [COMPENSATION] liability
20 of the insured employer employed at or in connection with the business
21 of the employer carried on, maintained, or operated at the location or
22 locations set out [FORTH] in that [SUCH] policy or agreement. A
23 provision in a policy attempting to limit or modify the liability of
24 the company issuing it is wholly void except as provided in (c) of this
25 section.

26 * Sec. 13. AS 23.30.025 is amended by adding a new subsection to read:

27 (c) An insurer may issue a policy of insurance insuring the
28 payment of benefits under this chapter which provides for a deductible
29 amount to be paid by the employer. A policy with a deductible provision

1 must be approved by the director of insurance and must provide that the
2 deductible amount be paid by the insurer to the employee on behalf of
3 the employer. After payment of the deductible by the insurer, the
4 insurer may recover the deductible amount from the employer. The
5 failure of an employer to reimburse an insurer for the deductible
6 amount does not relieve the insurer from any other obligation it may
7 have under the policy of insurance. An insurer is not required to
8 apply for a deviation under AS 21.39.070 in order to issue a policy
9 under this subsection. This subsection does not apply to a policy of
10 excess insurance purchased by a self-insurer.

11 * Sec. 14. AS 23.30.030 is amended to read:

12 Sec. 23.30.030. REQUIRED POLICY PROVISIONS. A policy of a
13 company insuring the payment of benefits [COMPENSATION] under this
14 chapter is considered to contain the provisions set out in (1) - (7) of
15 this section.

16 (1) The insurer assumes in full all the obligations to pay
17 physician's fees, nurse's charges, hospital services, hospital supplies,
18 medicine, prosthetic devices, transportation charges to the nearest
19 point where adequate medical facilities are available, burial expenses,
20 and compensation or death benefits imposed upon the insured under the
21 provisions of this chapter.

22 (2) The policy is made subject to the provisions of this
23 chapter and its provisions relative to the liability of the insured
24 employer to pay physician's fees, nurse's charges, hospital services,
25 hospital supplies, medicines, prosthetic devices, transportation charges
26 to the nearest point where adequate medical facilities are available,
27 burial expenses, compensation or death benefits to and for [SAID]
28 employees or beneficiaries, the acceptance of the liability by the
29 insured employer, the adjustment, trial and adjudication of claims for

1 the physician's fees, nurse's charges, hospital services, hospital
2 supplies, medicines, prosthetic devices, transportation charges to the
3 nearest point where adequate medical facilities are available, burial
4 expenses, compensation or death benefits and the liability of the
5 insurer to pay the same are considered a part of this policy contract.

6 (3) As between the insurer and the employee or his benefici-
7 aries, notice to or knowledge of the occurrence of the injury on the
8 part of the insured employer is notice or knowledge on the part of the
9 insurer; jurisdiction of the insured employer for the purpose of this
10 chapter is jurisdiction of the insurer; and the insurer, in all things,
11 is bound by and subject to the orders, awards, judgments and decrees
12 made against the insured employer under this chapter.

13 (4) The insurer will promptly pay to the person entitled to
14 them the benefits conferred by this chapter, including physician's
15 fees, nurse's charges, hospital services, hospital supplies, medicines,
16 prosthetic devices, transportation charges to the nearest point where
17 adequate medical facilities are available, burial expenses, and all
18 installments of compensation or death benefits awarded or agreed upon
19 under this chapter. The obligation of the insurer is not affected by a
20 default of the insured employer after the injury, or by default in
21 giving a notice required by this policy. The policy is a direct
22 promise by the insurer to the person entitled to physician's fees,
23 nurse's charges, fees for hospital services, charges for medicines,
24 prosthetic devices, transportation charges to the nearest point where
25 adequate medical facilities are available, and hospital supplies,
26 charges for burial, compensation or death benefits, and is enforceable
27 in the name of that person. The insurer shall provide claims facili-
28 ties through its own staffed adjusting facilities located within the
29 state, or by independent, licensed, resident adjusters with power to

1 effect settlement within the state.

2 (5) A termination of the policy by cancellation is not
3 effective as to the employees of the insured employer covered by it
4 until 20 days after written notice of the termination has been received
5 by the board. If the employer has a contract with the state or a home
6 rule or other political subdivision of the state, and his policy is
7 cancelled due to nonpayment of a premium, the termination of the policy
8 is not effective as to the employees of the insured employer covered by
9 it until 20 days after written notice of the termination has been
10 received by the contracting agency, and the agency has the option of
11 continuing the payments on behalf of the employer in order to keep the
12 policy in force. If, however, the employer has secured insurance with
13 another insurance carrier, cancellation is effective as of the date of
14 the new coverage.

15 (6) All claims for compensation, death benefits, physician's
16 fees, nurse's charges, hospital services, hospital supplies, medicines,
17 prosthetic devices, transportation charges to the nearest point where
18 adequate medical facilities are available, and burial expenses, may be
19 made directly against either the employer or the insurer, or both, and
20 the order or award of the board may be made against either the employer
21 or the insurer or both.

22 (7) If the insurer fails or refuses to pay a final award or
23 judgment (except during the pendency of an appeal) made against it, or
24 its insured, or if it fails or refuses to comply with a provision of
25 this chapter, the director of insurance [COMMISSIONER] shall revoke the
26 approval of the policy form, and may not accept further proofs of
27 insurance from it until it has paid the award or judgment or has
28 complied with the violated provision of this chapter, and has resub-
29 mitted its policy form and received the approval of the form by the

1 insurance commissioner.

2 * Sec. 15. AS 23.30.040 is repealed and reenacted to read:

3 Sec. 23.30.040. SECOND INJURY FUND. (a) There is created a
4 second injury fund, administered by the commissioner of labor. Money
5 in the second injury fund may only be paid for the benefit of those
6 persons entitled to payment of benefits from the second injury fund
7 under this chapter. Payments from the second injury fund must be made
8 by the commissioner of labor in accordance with the orders and awards
9 of the board.

10 (b) If an employee suffers a compensable injury which results in
11 temporary total disability, temporary partial disability, permanent
12 partial disability, or permanent total disability, the employer or
13 insurance carrier shall contribute to the second injury fund. The
14 contribution must be made by one year from the date of the injury or on
15 termination of the employee's claim, whichever is sooner. The amount
16 of the contribution is the product of the compensation to which the
17 employee is entitled for temporary total disability, temporary partial
18 disability, permanent partial disability, permanent total disability,
19 or for rehabilitation under AS 23.30.191 and the applicable contribution
20 rate set out in column A of this subsection. By December 15 of each
21 year the commissioner shall determine and make available to the public
22 the applicable contribution rate for the following calendar year accord-
23 ing to the reserve rate of the second injury fund in Column B of this
24 subsection:

25	Column A	Column B	
26	Second Injury Fund	Reserve Rate	
27	Contribution Rate	At Least	But Less Than
28	(Percent)	(Percent)	(Percent)
29	6	0	50

1	5	50	75
2	4	75	100
3	3	100	125
4	2	125	150
5	1	150	175
6	0	175	-

7 (c) If an employee suffers a compensable injury which results in
8 death and the employee is not survived by a widow, widower, child, or
9 dependent relative eligible to receive death benefits under AS 23.-
10 30.215, the employer or insurance carrier shall pay \$10,000 to the
11 second injury fund.

12 (d) The board may refund a payment made into the second injury
13 fund if the employer or insurance carrier shows that it made the pay-
14 ment by mistake or inadvertence, or if it shows there existed at the
15 time of the death of the employee a beneficiary entitled to benefits
16 under AS 23.30.215.

17 (e) The board may direct and provide the vocational retraining
18 and vocational rehabilitation of a permanently disabled person whose
19 condition is a result of an injury compensable under this chapter by
20 making cooperative arrangements with insurance carriers, private organi-
21 zations and institutions, or state or federal agencies. The person
22 being retrained or rehabilitated is entitled to receive additional
23 compensation from the second injury fund for maintenance during the
24 period of retraining and rehabilitation in the sum which the board
25 considers necessary, not to exceed ^{\$100}~~\$200~~ a month. The total expenditures
26 for maintenance, retraining, rehabilitation, and necessary transporta-
27 tion may not exceed ^{\$5,000}~~\$10,000~~ for one person.

28 (f) All amounts collected as civil penalties under AS 23.30.-
29 155(c) shall be paid into the second injury fund.

1 (g) The attorney general may investigate claims and hire expert
2 witnesses necessary to prevent fraudulent or excessive claims for money
3 in the second injury fund.

4 (h) Administration expenses of the state under this section and
5 AS 23.30.205 shall be paid from the general fund.

6 * Sec. 16. AS 23.30.045(a) is amended to read:

7 Sec. 23.30.045. EMPLOYER'S LIABILITY FOR BENEFITS [COMPENSATION].

8 (a) An employer is liable for and shall secure the payment to his
9 employees of the benefits [COMPENSATION] payable under AS 23.30.050,
10 23.30.095, 23.30.145, and 23.30.185 - 23.30.215. If the employer is a
11 subcontractor, the contractor is liable for and shall secure the payment
12 of the benefits [COMPENSATION] to employees of the subcontractor unless
13 the subcontractor secures the payment.

14 * Sec. 17. AS 23.30.045(b) is amended to read:

15 (b) Benefits are [COMPENSATION IS] payable irrespective of fault
16 as a cause for the injury.

17 * Sec. 18. AS 23.30.045(c) is amended to read:

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

25 * Sec. 19. AS 23.30.045(d) is amended to read:

26 (d) No contract may be awarded by the state or a home rule or
27 other political subdivision of the state to an employer unless the
28 employer [PERSON] to whom the contract is to be awarded has submitted
29 to the contracting agency proof, furnished by the insurance carrier, of

1 current coverage by workers' compensation insurance from an insurance
2 company or association authorized to transact the business of workers'
3 compensation insurance in this state or proof, furnished by the
4 director of insurance [BOARD], of a current certificate of self-
5 insurance from the director of insurance [BOARD]. The employer [PERSON]
6 to whom the contract is awarded shall keep his workers' compensation
7 insurance policy in effect during the life of the contract with the
8 state or political subdivision. If the state or the political sub-
9 division of the state fails to obtain proof of coverage or self-
10 insurance or to protect itself under (e) of this section, and an
11 employee of the contractor is injured during the term of the contract,
12 the state or the political subdivision is liable for workers' compensa-
13 tion to the employee if the employee is unable to recover from the
14 employer because of the employer's lack of financial assets. The state
15 or the political subdivision is not liable, however, to the employee
16 for workers' compensation if the employee can recover from the employer
17 under (a) and (b) of this section.

18 * Sec. 20. AS 23.30.045(e) is amended to read:

19 (e) When a contracting agency of the state or a political subdivi-
20 sion receives notice that the workers' compensation insurance policy
21 of an employer to whom the agency has awarded a contract has been
22 cancelled due to nonpayment of a premium, without being replaced by a
23 comparable policy, the agency may either terminate the contract with
24 the employer or continue the premium payments on his behalf in order to
25 keep the policy in force during the life of the agency's contract. If
26 the agency chooses to keep the policy in force, it may deduct its
27 payments from the contract price or bring an action against the employ-
28 er to recover the amount of the payments. When the contracting agency
29 receives notice that the director of insurance [BOARD] has revoked a

1 certificate of self-insurance held by a person to whom a contract has
2 been awarded, the agency may terminate the contract. This subsection
3 does not limit the causes of action or remedies which the state or
4 political subdivision may have against the employer.

5 * Sec. 21. AS 23.30.055 is amended to read:

6 Sec. 23.30.055. EXCLUSIVENESS OF LIABILITY. The liability of an
7 employer prescribed in AS 23.30.045 is exclusive and in place of all
8 other liability of the employer and any fellow employee to the employee,
9 his legal representative, husband or wife, parents, dependents, next of
10 kin, and anyone otherwise entitled to recover damages from the employer
11 or fellow employee at law or in admiralty on account of the injury or
12 death. However, if an employer fails to secure payment of benefits
13 [COMPENSATION] as required by this chapter, an injured employee or his
14 legal representative in case death results from the injury may elect to
15 claim benefits [COMPENSATION] under this chapter, or to maintain an
16 action against the employer at law or in admiralty for damages on
17 account of the injury or death. In that action the defendant may not
18 plead as a defense that the injury was caused by the negligence of a
19 fellow servant, or that the employee assumed the risk of his employ-
20 ment, or that the injury was due to the contributory negligence of the
21 employee.

22 * Sec. 22. AS 23.30.060 is amended to read:

23 Sec. 23.30.060. ELECTION OF DIRECT PAYMENT PRESUMED. (a) An
24 employer is conclusively presumed to have elected to pay benefits
25 [COMPENSATION] directly to employees for injuries sustained arising out
26 of and in the course of the employment according to the provisions of
27 this chapter, until notice in writing of insurance, stating the name
28 and address of the insurance company and the period of insurance, is
29 given to the employee.

1 (b) The notice shall be posted and kept on the premises of the
2 employer or on the premises where the employer's operations are being
3 carried on in three conspicuous places, at the office of the employer,
4 at the mess house or boarding house if there is one, and in some con-
5 spicuous place on the premises or works. The notice shall be sub-
6 stantially in the following form, and the signature shall be witnessed
7 by two witnesses:

8 EMPLOYER'S NOTICE OF INSURANCE

9 To the employees of the undersigned:

10 You and each of you are hereby notified that the undersigned
11 is insured in the.....Insurance Company, whose
12 address is.....and that the period covered
13 by the insurance.....in accordance with the
14 terms, conditions and provisions to pay benefits [COMPENSATION]
15 to employees of the undersigned for injuries received as
16 provided in the Act of the State of Alaska, known as the
17 "Alaska Workers' Compensation Act"

18 Signed.....

19

20 Witness:

21

22 * Sec. 23. AS 23.30.070(e) is amended to read:

23 (e) If the employer or the carrier has been given notice, or the
24 employer (or his agent in charge of the business in the place where the
25 injury occurred) or the carrier has knowledge of an injury or death of
26 an employee and fails, neglects, or refuses to file a report of it as
27 required by the provisions of (a) of this section, the limitations in
28 AS 23.30.105(a) do not begin to run against the claim of the injured
29 employee or his dependents entitled to benefits [COMPENSATION,] or in

1 favor of either the employer or the carrier, until the report has been
2 furnished as required by the provisions of (a) of this section.

3 * Sec. 24. AS 23.30.070(f) is amended to read:

4 (f) An employer who fails or refuses to send a report required of
5 him by this section or who fails or refuses to send the report required
6 by (a) of this section within the time required shall, if so required
7 by the board, pay the employee or his legal representative or other
8 person entitled to benefits [COMPENSATION] by reason of the employee's
9 injury or death an additional award equal to 20 percent of the compen-
10 sation [AMOUNTS] which was [WERE] unpaid when due. The award shall be
11 against either the employer or his insurance carrier, or both.

12 * Sec. 25. AS 23.30.075(a) is amended to read:

13 (a) An employer under this chapter, unless exempted, shall either
14 [,] insure and keep insured for his liability under this chapter in an
15 insurance company or association duly authorized to transact the busi-
16 ness of workers' compensation insurance in this state, or shall furnish
17 the director of insurance [BOARD] satisfactory proof of his financial
18 ability to pay directly the benefits [COMPENSATION] provided for. If
19 an employer elects to pay directly, the director of insurance [BOARD]
20 may, in his [ITS] discretion, require

21 (1) the deposit of an acceptable security, indemnity or bond
22 to secure the payment of benefit [COMPENSATION] liabilities as they are
23 incurred; and

24 (2) proof of excess insurance.

25 * Sec. 26. AS 23.30.075(b) is amended to read:

26 (b) An employer who fails to insure and keep insured employees
27 subject to this chapter or fails to obtain a certificate of self-
28 insurance from the board, upon conviction, is punishable by a fine of
29 not more than \$1,000, or by imprisonment for not more than one year, or

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1 by both. If an employer is a corporation, all persons who, at the time
2 of the injury or death, had authority to insure the [SAID] corporation
3 or apply for a certificate of self-insurance, and the person actively
4 in charge of the business of the [SUCH] corporation shall be subject to
5 the penalties prescribed herein and shall be personally, jointly, and
6 severally liable together with the corporation for the payment of all
7 [COMPENSATION OR OTHER] benefits for which the corporation is liable
8 under this chapter if the [SAID] corporation at such time is not
9 insured or qualified as a self-insurer.

10 * Sec. 27. AS 23.30.080 is amended by adding a new subsection to read:

11 (d) If an employer fails to insure or provide security as re-
12 quired by AS 23.30.075, the board may issue a stop order prohibiting
13 the use of employee labor by the employer until the employer insures or
14 provides security as required by AS 23.30.075. If an employer fails to
15 comply with a stop order issued under this section, the board shall
16 assess a civil penalty of at least \$1,000 per day. The employer may
17 not obtain a public contract with the state or any of its political
18 subdivisions for one year following the violation of the stop order.

19 * Sec. 28. AS 23.30.085(a) is amended to read:

20 (a) An employer subject to this chapter, unless exempted, shall
21 initially file evidence of his compliance with the insurance provisions
22 of this chapter with the board, in the form prescribed by it. The
23 employer shall also give evidence of compliance within 10 days after
24 the termination of his insurance by expiration or cancellation. These
25 requirements do not apply to an employer who has certification from the
26 director of insurance [BOARD] of his financial ability to pay benefits
27 [COMPENSATION] directly without insurance.

28 * Sec. 29. AS 23.30.090 is amended to read:

29 Sec. 23.30.090. SELF-INSURANCE CERTIFICATES. If an employer has

1 complied with the provisions of this chapter relating to self-insurance,
2 the director of insurance [BOARD] shall issue him a certificate which
3 shall remain in force for a period fixed by the director of insurance
4 [BOARD]. The director of insurance [BOARD] may, upon at least 10 days'
5 notice and a hearing, revoke a self-insurance certificate upon satis-
6 factory proof that an employer is no longer entitled to it. After
7 revocation the director of insurance [BOARD] may grant a new certifi-
8 cate to an employer, upon his petition and satisfactory proof of his
9 financial ability as provided in this chapter. The director of in-
10 surance shall notify the contracting agency of the state or of a
11 political subdivision of the state when it revokes the self-insurance
12 certificate of an employer holding a contract with the state or a
13 political subdivision of the state. An employer authorized as a self-
14 insurer shall provide claims facilities through its own staffed adjust-
15 ing facilities located within the state, or independent, licensed,
16 resident adjustors with power to effect settlement within the state.

17 * Sec. 30. AS 23.30.092 is amended to read:

18 Sec. 23.30.092. VOLUNTEER AMBULANCE ATTENDANTS, POLICEMEN AND
19 FIREMEN INSURANCE. A political subdivision may elect to provide bene-
20 fits [AND COMPENSATION] to its volunteer ambulance attendants, police-
21 men or firemen by obtaining insurance which would provide its volunteer
22 ambulance attendants, policemen or firemen with benefits [AND COMPENSA-
23 TION] at least equivalent to those conferred upon volunteer ambulance
24 attendants, policemen or firemen by this chapter, and the election
25 shall be considered compliance with the coverage and insurance pro-
26 visions of this chapter. The election shall be made by filing copies
27 of the insurance policy or policies with the commissioner.

28 * Sec. 31. AS 23.30.095(a) is amended to read:

29 (a) The employer shall furnish medical, surgical, and other

1 attendance or treatment, nurse and hospital service, medicine, crutches,
2 and apparatus for the period which the nature of the injury or the
3 process of recovery requires [, NOT EXCEEDING TWO YEARS FROM AND AFTER
4 THE DATE OF INJURY TO THE EMPLOYEE. HOWEVER, IF THE CONDITION REQUIRING
5 THE TREATMENT, APPARATUS, OR MEDICINE IS A LATENT ONE, THE TWO-YEAR
6 PERIOD RUNS FROM THE TIME THE EMPLOYEE HAS KNOWLEDGE OF THE NATURE OF
7 HIS DISABILITY AND ITS RELATIONSHIP TO HIS EMPLOYMENT AND AFTER-
8 DISABLEMENT. IT SHALL BE ADDITIONALLY PROVIDED THAT, IF CONTINUED
9 TREATMENT OR CARE OR BOTH BEYOND THE TWO-YEAR PERIOD IS INDICATED, THE
10 INJURED EMPLOYEE HAS THE RIGHT OF REVIEW BY THE BOARD. THE BOARD MAY
11 AUTHORIZE CONTINUED TREATMENT OR CARE OR BOTH AS THE PROCESS OF RECOVERY
12 MAY REQUIRE]. When medical care is required, the injured employee may
13 designate a licensed physician inside the state to render the care
14 except in cases where, in the judgment of the board, care or treatment
15 or both can best be administered by the selection of another licensed
16 physician. Upon procuring the services of a licensed physician, the
17 injured employee shall give proper notification of his selection to the
18 employer within a reasonable time after first being treated. [IF FOR
19 ANY REASON DURING THE PERIOD WHEN MEDICAL CARE IS REQUIRED THE EMPLOYEE
20 WISHES TO CHANGE TO ANOTHER PHYSICIAN, HE MAY DO SO IN ACCORDANCE WITH
21 RULES PRESCRIBED BY THE BOARD.]

22 * Sec. 32. AS 23.30.095(c) is amended to read:

23 (c) No claim for medical or surgical treatment is valid and
24 enforceable as against the employer unless, within 20 [TWENTY] days
25 following each visit for [THE FIRST] treatment, the physician giving
26 the treatment or the employee receiving it furnishes to the employer
27 and the board notice of the injury and treatment, preferably on a form
28 prescribed by the board. The board shall [MAY], however, excuse the
29 failure to furnish notice within 20 days when it finds it to be in the

1 interest of justice to do so, and it may, upon application by a party
2 in interest, make an award for the reasonable value of the medical or
3 surgical treatment so obtained by the employee.

4 * Sec. 33. AS 23.30.095(e) is amended to read:

5 (e) The employee shall, after an injury, at reasonable times
6 during the continuance of his disability if requested by his employer
7 or, when ordered by the board, submit himself to an examination by a
8 physician or surgeon authorized to practice medicine under the laws of
9 the state in which the employee may be found, furnished and paid for by
10 the employer. [THE EMPLOYEE HAS THE RIGHT TO HAVE A PHYSICIAN, PAID
11 FOR BY THE EMPLOYER, PRESENT AT THE EXAMINATION OR EXAMINATIONS.] No
12 fact relative to the injury or claim communicated to or otherwise
13 learned by a physician or surgeon who may have attended or examined the
14 employee, or who may have been present at an examination is privileged,
15 either in the hearings provided for in this chapter or an action to
16 recover damages against an employer who is subject to the benefits
17 [COMPENSATION] provisions of this chapter. If an employee refuses to
18 submit himself to any examination provided for in this section [HEREIN],
19 his rights to compensation shall be suspended until the obstruction or
20 refusal ceases, and his compensation during the period of suspension
21 may, in the discretion of the board or the court determining an action
22 brought for the recovery of damages under this chapter [HEREUNDER], be
23 forfeited. The board in any case of death may require an autopsy at
24 the expense of the party requesting the autopsy. No autopsy may be
25 held without notice first being given to the widow or widower or next
26 of kin if they reside in the state or their whereabouts can be reason-
27 ably ascertained, of the time and place of the autopsy and reasonable
28 time and opportunity given the widow or widower or next of kin to have
29 a representative present to witness the autopsy. If no adequate notice

1 is given, the findings from the autopsy may be suppressed on motion
2 made to the board or to the superior court, as the case may be.

3 * Sec. 34. AS 23.30.100(a) is amended to read:

4 Sec. 23.30.100. NOTICE OF INJURY OR DEATH. (a) Notice of an
5 injury or death in respect to which benefits are [COMPENSATION IS]
6 payable under this chapter shall be given within 30 days after the date
7 of the [SUCH] injury or death to the board and to the employer.

8 * Sec. 35. AS 23.30.100(b) is amended to read:

9 (b) The notice shall be in writing, contain the name and address
10 of the employee and a statement of the time, place, nature, and cause
11 of the injury or death, and be signed by the employee or by a person on
12 his behalf, or in case of death, by a person claiming to be entitled to
13 benefits [COMPENSATION] for the death or by a person on his behalf.

14 * Sec. 36. AS 23.30.100(d) is amended to read:

15 (d) Failure to give notice does not bar a claim under this
16 chapter

17 (1) if the employer (or his agent in charge of the business
18 in the place where the injury occurred) or the carrier had knowledge of
19 the injury or death and the board determines that the employer or
20 carrier has not been prejudiced by failure to give notice;

21 (2) if the board excuses the failure on the ground that for
22 some satisfactory reason notice could not be given;

23 (3) unless objection to the failure is raised before the
24 board at the first hearing of a claim for benefits [COMPENSATION] in
25 respect to the injury or death.

26 * Sec. 37. AS 23.30.105 is amended to read:

27 Sec. 23.30.105. TIME FOR FILING OF CLAIMS. (a) The right to
28 benefits [COMPENSATION FOR DISABILITY] under this chapter is barred
29 unless a claim for them [IT] is filed within two years after the

1 employee has knowledge of the nature of his disability and its relation
2 to his employment and after disablement. The [HOWEVER, THE MAXIMUM
3 TIME FOR FILING THE CLAIM IN ANY EVENT OTHER THAN ARISING OUT OF AN
4 OCCUPATIONAL DISEASE SHALL BE FOUR YEARS FROM THE DATE OF INJURY, AND
5 THE] right to benefits [COMPENSATION] for death is barred unless a
6 claim for benefits [THEREFORE] is filed within one year after the
7 death. If [, EXCEPT THAT IF] payment of benefits [COMPENSATION] has
8 been made without an award on account of the injury or death, a claim
9 may be filed within two years after the date of the last payment. It
10 is additionally provided that, in the case of a latent injury [DEFECTS
11 PERTINENT TO AND CAUSING COMPENSABLE DISABILITY], the injured employee
12 has full right to claim as shall be determined by the board, time
13 limitations notwithstanding.

14 (b) Failure to file a claim within the period prescribed in (a)
15 of this section is not a bar to benefits [COMPENSATION] unless ob-
16 jection to the failure is made at the first hearing of the claim in
17 which all parties in interest are given reasonable notice and opportu-
18 nity to be heard.

19 (c) If a person who is entitled to benefits [COMPENSATION] under
20 this chapter is mentally incompetent or a minor, the provisions of (a)
21 of this section are not applicable so long as he has no guardian or
22 other authorized representative, but are applicable in the case of a
23 person who is mentally incompetent or a minor from the date of appoint-
24 ment of a guardian or other representative, or in the case of a minor,
25 if no guardian is appointed before he becomes of age, from the date he
26 becomes of age.

27 (d) If recovery is denied to a person, in a suit brought at law
28 or in admiralty to recover damages in respect to injury or death, on
29 the ground that he was an employee and that the defendant is an employer

1 within the meaning of this chapter and that the employer has secured
2 benefits [COMPENSATION] to the employee under this chapter, the limita-
3 tion of time prescribed in (a) of this section begins to run only from
4 the date of termination of the suit.

5 * Sec. 38. AS 23.30.106(b) is amended to read:

6 (b) The payment or award of benefits under the workers' compensa-
7 tion law of another state, territory, province, or foreign nation to an
8 employee or his dependents otherwise entitled on account of the injury
9 or death to the benefits under this chapter is not a bar to a claim for
10 benefits under this chapter; however, a claim under this chapter must
11 be filed within the time limits set out in this chapter. If benefits
12 are [COMPENSATION IS] paid or awarded under this section:

13 (1) the medical and related benefits furnished or paid for
14 by the employer under another workers' compensation law on account of
15 the injury or death shall be credited against the medical and related
16 benefits to which the employee would have been entitled under this
17 chapter had claim been made solely under this chapter;

18 (2) the amount of all income benefits paid or awarded the
19 employee under another workers' compensation law shall be credited
20 against the total amount of income benefits which would have been due
21 the employee under this chapter had claim been made solely under this
22 chapter;

23 (3) the total amount of death benefits paid or awarded under
24 another workers' compensation law shall be credited against the total
25 amount of death benefits due under this chapter.

26 * Sec. 39. AS 23.30.106(c) is amended to read:

27 (c) If an employee is entitled to the benefits of this chapter by
28 reason of an injury sustained in this state in employment by an employer
29 who is domiciled in another state and who has not secured the payment

1 of benefits [COMPENSATION] as required by this chapter, the employer or
2 his carrier may file with the board a certificate, issued by the com-
3 mission or agency of the other state having jurisdiction over workers'
4 compensation claims, certifying that the employer has secured the
5 payment of benefits [COMPENSATION] under the workers' compensation law
6 of the other state and that with respect to that injury the employee is
7 entitled to the benefits provided under that law. In that event

8 (1) the filing of the certificate shall constitute an ap-
9 pointment by the employer or his carrier of the board as his agent for
10 acceptance of the service of process in a proceeding brought by the
11 employee or his dependents to enforce his or their rights under this
12 chapter on account of the injury;

13 (2) the board shall send to the employer or carrier, by
14 registered or certified mail to the address shown on the certificate, a
15 true copy of any notice of claim or other process served on the director
16 by the employee or his dependents in any proceeding brought to enforce
17 his or their rights under this chapter;

18 (3) if the employer is a qualified self-insurer under the
19 workers' compensation law of the other state, the employer, upon sub-
20 mission of evidence satisfactory to the board of his ability to meet
21 his liability to the employee under this chapter, shall be considered
22 to be a qualified self-insurer under this chapter;

23 (4) if the employer's liability under the workers' compensa-
24 tion law of another state is insured, the employer's carrier, as to the
25 employee or his dependents only, shall be considered to be an insurer
26 authorized to write insurance under and be subject to this chapter;
27 however, unless its contract with the employer requires it to pay an
28 amount equivalent to the [COMPENSATION] benefits provided by this
29 chapter, its liability for income benefits or medical and related

1 benefits may not exceed the amounts of the benefits for which the
2 insurer would have been liable under the workers' compensation law of
3 the other state;

4 (5) if the amount for which the employer's insurance is
5 liable under (3) and (4) of this subsection is less than the total [OF
6 THE COMPENSATION] benefits to which the employee is entitled under this
7 chapter, the board may, if it considers it necessary, require the
8 employer to file security satisfactory to the board to secure the
9 payment of benefits due the employee or his dependents under this
10 chapter; and

11 (6) upon compliance with the preceding requirements of (c)
12 of this section, the employer, as to the employee only, shall be
13 considered to have secured the payment of benefits [COMPENSATION] under
14 this chapter.

15 * Sec. 40. AS 23.30.110(a) is amended to read:

16 (a) Subject to the provisions of AS 23.30.105, a claim for
17 benefits [COMPENSATION] may be filed with the board in accordance with
18 its regulations at any time after the first seven days of disability
19 following an injury, or at any time after death, and the board may hear
20 and determine all questions in respect to the claim.

21 * Sec. 41. AS 23.30.110(c) is amended to read:

22 (c) The board shall make the investigation which it considers
23 necessary in respect of the claim, and upon application of an inter-
24 ested party shall order a hearing on it. If a hearing on a claim is
25 ordered, the board shall give the claimant and other interested parties
26 at least 20 [10] days' notice of the hearing, served personally upon
27 the claimant and other interested parties or sent by registered mail,
28 and shall, within 30 [20] days after the hearing is held [HAD], by
29 order, reject the claim or make an award in respect to it. If a hearing

1 is continued by the board, additional notice is not required under this
2 subsection. [IF NO HEARING IS ORDERED WITHIN 20 DAYS AFTER NOTICE
3 IS GIVEN AS PROVIDED IN (b) OF THIS SECTION, THE BOARD SHALL BY ORDER
4 REJECT THE CLAIM OR MAKE AN AWARD IN RESPECT TO IT.]

5 * Sec. 42. AS 23.30.120 is amended to read:

6 Sec. 23.30.120. PRESUMPTIONS. In a proceeding for the enforce-
7 ment of a claim for benefits [COMPENSATION] under this chapter it is
8 presumed, in the absence of substantial evidence to the contrary, that

9 (1) the claim comes within the provisions of this chapter;

10 (2) sufficient notice of the claim has been given;

11 (3) the injury was not occasioned solely by the intoxication
12 of the injured employee;

13 (4) the injury was not occasioned by the wilful intention of
14 the injured employee to injure or kill himself or another.

15 * Sec. 43. AS 23.30.130 is amended to read:

16 Sec. 23.30.130. MODIFICATION OF AWARDS. (a) Upon its own
17 initiative, or upon the application of any party in interest on the
18 ground of a change in conditions, including, for the purposes of
19 AS 23.30.175, a change in residence, or because of a mistake in its
20 determination of a fact, the board may, before one year after the date
21 of the last payment of benefits [COMPENSATION,] whether or not a
22 compensation order has been issued, or before one year after the
23 rejection of a claim, review a compensation case in accordance with the
24 procedure prescribed in respect of claims in AS 23.30.110. In accord-
25 ance with AS 23.30.110 the board may issue a new compensation order
26 which terminates, continues, reinstates, increases, or decreases the
27 compensation, or award benefits [COMPENSATION].

28 (b) A new order does not affect benefits [COMPENSATION] previously
29 paid, except that an award increasing the compensation rate may be made

1 effective from the date of the injury, and if part of the compensation
2 due or to become due is unpaid, an award decreasing the compensation
3 rate may be made effective from the date of the injury, and payment
4 made earlier in excess of the decreased rate shall be deducted from the
5 unpaid compensation, in the manner the board determines.

6 * Sec. 44. AS 23.30.140 is amended to read:

7 Sec. 23.30.140. APPOINTMENT OF GUARDIAN BY COURT. The board may
8 require the appointment of a guardian or other representative by a
9 competent court for any person who is mentally incompetent or a minor
10 to receive benefits [COMPENSATION] payable to the person under this
11 chapter and to exercise the powers granted to or to perform the duties
12 required of the person under this chapter. If the board does not
13 require the appointment of a guardian to receive the compensation of a
14 minor, appointment for this purpose is not necessary.

15 * Sec. 45. AS 23.30.145 is amended to read:

16 Sec. 23.30.145. ATTORNEY FEES. (a) Fees for legal services
17 rendered in respect to a claim are not valid unless approved by the
18 board, and the fees may not be less than 25 percent on the first \$1,000
19 of benefits [COMPENSATION] or part of the first \$1,000 of benefits
20 [COMPENSATION] and 10 percent of all sums in excess of \$1,000 of
21 benefits [COMPENSATION]. When the board advises that a claim has been
22 controverted, in whole or in part, the board may direct that the fees
23 for legal services be paid by the employer or carrier in addition to
24 benefits [COMPENSATION] awarded; the fees may be allowed only on the
25 amount of benefits [COMPENSATION] controverted and awarded. When the
26 board advises that a claim has not been controverted, but further
27 advises that bona fide legal services have been rendered in respect to
28 the claim, then the board shall direct the payment of the fees out of
29 the benefits [COMPENSATION] awarded. In determining the amount of fees

1 the board shall take into consideration the nature, length and complex-
2 ity of the services performed, transportation charges, and the benefits
3 resulting from the services to the compensation beneficiaries.

4 (b) If an employer fails to file timely notice of controversy or
5 fails to pay [COMPENSATION OR MEDICAL AND RELATED] benefits within 15
6 days after it becomes due or otherwise resists the payment of [COMPENSA-
7 TION OR MEDICAL AND RELATED] benefits and if the claimant has employed
8 an attorney in the successful prosecution of his claim, the board shall
9 make an award to reimburse the claimant for his costs in the proceed-
10 ings, including a reasonable attorney fee. The award is in addition to
11 the [COMPENSATION OR MEDICAL AND RELATED] benefits ordered.

12 (c) If proceedings are had for review of an [A COMPENSATION OR
13 MEDICAL AND RELATED BENEFITS] order before a court, the court may allow
14 or increase an attorney's fees. The fees are in addition to [COMPENSA-
15 TION OR MEDICAL AND RELATED] benefits ordered and shall be paid as the
16 court may direct.

17 * Sec. 46. AS 23.30.155 is amended to read:

18 Sec. 23.30.155. PAYMENT OF COMPENSATION. (a) Compensation
19 under this chapter shall be paid periodically, promptly, and directly
20 to the person entitled to it, without an award, except where liability
21 to pay compensation is controverted by the employer. The employer must
22 file a notice, on a form prescribed by the board, stating (1) that the
23 right of the employee to benefits is controverted; (2) the name of the
24 employee; (3) the name of the employer; (4) the date of the alleged
25 injury or death; and (5) the type of benefits and all grounds upon
26 which the right to benefits is controverted. For purposes of deter-
27 mining a penalty under (e) and (f) of this section, an employer con-
28 troverts a claim if the liability to pay benefits is denied or con-
29 tested.

1 (b) The first installment of compensation becomes due on the 14th
2 day after the employer has knowledge of the injury or death. On this
3 date all compensation then due shall be paid. Subsequent compensation
4 shall be paid in installments, every 14 days [SEMIMONTHLY], except
5 where the board determines that payment in installments should be made
6 monthly or at some other period.

7 (c) Upon making the first payment, and upon an increase, reduc-
8 tion, termination, suspension, resumption or a change in rate or type
9 of compensation paid [OF PAYMENT FOR ANY CAUSE], the employer shall
10 [IMMEDIATELY] notify the board within 14 days, on [IN ACCORDANCE WITH]
11 a form prescribed by the board, that payment of compensation has begun
12 or has been increased, reduced, terminated, resumed, changed, or sus-
13 suspended, as the case may be. If the employer fails to notify the board
14 within 14 days, the board shall assess against the employer a civil
15 penalty of \$100 plus \$25 for each day in excess of 14 days that the
16 employer fails to give notice. Total penalties under this section may
17 not exceed \$2,500 for each failure to file a required report.

18 (d) If the employer controverts the right to benefits, [COMPEN-
19 SATION] he shall file with the board on or before the 14th day after he
20 has knowledge of the alleged injury or death on or before an install-
21 ment of compensation payable without an award is due, a notice of con-
22 troversion on [, IN ACCORDANCE WITH] a form prescribed by the board
23 [, STATING THAT THE RIGHT TO COMPENSATION IS CONTROVERTED, THE NAME OF
24 THE CLAIMANT, THE NAME OF THE EMPLOYER, THE DATE OF THE ALLEGED INJURY
25 OR DEATH, AND THE GROUNDS UPON WHICH THE RIGHT TO COMPENSATION IS
26 CONTROVERTED].

27 (e) If any installment of compensation payable without an award
28 is not paid within 14 days after it becomes due, as provided in (b) of
29 this section, there shall be added to the unpaid installment an amount

1 equal to 20 percent of it, which shall be paid at the same time as, and
2 in addition to, the installment, unless notice is filed under (d) of
3 this section or unless the nonpayment is excused by the board after a
4 showing by the employer that owing to conditions over which he had no
5 control the installment could not be paid within the period prescribed
6 for the payment.

7 (f) If compensation payable under the terms of an award is not
8 paid within 14 days after it becomes due, there shall be added to that
9 [SUCH] unpaid compensation an amount equal to 20 percent of it, which
10 shall be paid at the same time as, but in addition to, the compen-
11 sation, unless review of the compensation order making the award is had
12 as provided in AS 23.30.125 and an interlocutory injunction staying
13 payments is allowed by the court.

14 [(g) WITHIN 16 DAYS AFTER FINAL PAYMENT OF COMPENSATION HAS BEEN
15 MADE, THE EMPLOYER SHALL SEND TO THE BOARD A NOTICE IN ACCORDANCE WITH
16 A FORM PRESCRIBED BY THE BOARD STATING THE FACT THAT FINAL PAYMENT HAS
17 BEEN MADE, THE TOTAL AMOUNT OF COMPENSATION PAID, THE NAME OF THE
18 EMPLOYEE AND OF ANY OTHER PERSON TO WHOM COMPENSATION HAS BEEN PAID,
19 THE DATE OF THE INJURY OR DEATH, AND THE DATE TO WHICH WHICH COMPENSA-
20 TION HAS BEEN PAID. IF THE EMPLOYER FAILS TO SO NOTIFY THE BOARD WITHIN
21 THIS TIME, THE BOARD SHALL ASSESS AGAINST THE EMPLOYER A CIVIL PENALTY
22 IN THE AMOUNT OF \$100.]

23 (h) The board may upon its own initiative at any time in a case
24 in which payments are being made with or without an award, [AND SHALL
25 IN A CASE] where right to benefits [COMPENSATION] is controverted, or
26 where payments of compensation have been increased, reduced, termin-
27 ated, changed, [STOPPED] or suspended, upon receipt of notice from a
28 person entitled to benefits [COMPENSATION], or from the employer, that
29 the right to benefits [COMPENSATION] is controverted, or that payments

1 of compensation have been increased, reduced, terminated, changed,
2 [STOPPED] or suspended, make the investigations, cause the medical
3 examinations to be made, or hold the hearings, and take the further
4 action which it considers will properly protect the rights of all
5 parties.

6 (i) When the board considers it advisable it may require an
7 employer to make a deposit with the Department of Revenue to secure the
8 prompt and convenient payment of the benefits [COMPENSATION], and pay-
9 ments from the deposit upon an award shall be made upon order of the
10 board.

11 (j) If an employer has made advance payments or overpayments of
12 compensation, he is entitled to be reimbursed, after approval by the
13 board, out of any unpaid installment or installments of compensation
14 due.

15 (k) An injured employee or in case of death his dependents or
16 personal representative, shall give receipts for payment of benefits
17 [COMPENSATION] to the employer paying it and the employer shall produce
18 them for inspection by the board, whenever required.

19 (l) repealed

OK → 20 ~~(m) Compensation owed to an injured employee in the state shall~~
21 ~~be paid by a check or ~~draft~~ which may be cashed on the first banking~~
22 ~~day after it is received by the employee and on any succeeding banking~~
23 ~~day.~~

24 ~~(n) Whenever the board determines that it is in the interest of~~
25 ~~an injured employee and that a substantial hardship will not be imposed~~
26 ~~on the employer, the liability of the employer for all or part of~~
27 ~~compensation payable under AS 23.30.190 may be discharged by the pay-~~
28 ~~ment of a lump sum.~~

→ (o) An employer shall file on or before the date one year from

1 the date of injury or upon termination of the claim, whichever is
2 sooner, a report on a form prescribed by the board, showing the total
3 amount of all benefits, legal fees, and penalties paid during the
4 ~~quarter~~ ^{year} including the name of the claimant, the date of injury, and
5 the claim number.

6 * Sec. 47. AS 23.30.160 is amended to read:

7 Sec. 23.30.160. ASSIGNMENT AND EXEMPTION FROM CLAIMS OF CREDITORS.

8 No assignment, release, or commutation of [COMPENSATION OR] benefits
9 due or payable under this chapter, except as provided by this chapter,
10 is valid, and the [COMPENSATION AND] benefits are exempt from all
11 claims of creditors and from levy, execution, and attachment or other
12 remedy for recovery or collection of a debt. This exemption may not be
13 waived.

14 * Sec. 48. AS 23.30.165 is amended to read:

15 Sec. 23.30.165. LIEN. (a) Each employee and beneficiary entitled
16 to benefits [COMPENSATION] under the provisions of this chapter has a
17 lien for the full amount of his benefits [COMPENSATION], including
18 costs and disbursements of suit and attorney fees allowed, upon all of
19 the property in connection with the construction, preservation, mainte-
20 nance or operation of which the work of the employee was being per-
21 formed at the time of his injury or death. For example: in the case
22 of an employee injured or killed while engaged in mining or in work
23 connected with mining, the lien extends to the entire mine and all
24 property used in connection with it; and in the case of an employee
25 injured or killed while engaged in fishing or in the packing, canning,
26 or salting of fish, or other branch of the fish industry, the lien
27 extends to the entire packing, fishing, salting or canning plant or
28 establishment and all property used in connection with it; and this is
29 the case with other businesses, industries, works, occupations and

1 employments.

2 (b) The lien is prior and paramount to any other lien on the
3 property, except a lien for wages or materials as provided by law, and
4 is of equal rank with a lien for wages or materials.

5 (c) The lien extends to all right, title, interest and claim of
6 the employer in the property affected by the lien.

7 (d) A person claiming a lien under this chapter shall, within one
8 year after the date of the injury from which the claim of benefits
9 [COMPENSATION] arises, file for record in the office of the recorder of
10 the recording district in which the property affected by the lien is
11 located a notice of lien signed and verified by the claimant or someone
12 on his behalf, and stating in substance, the name of the person injured
13 or killed out of which injury or death the claim of benefits [COMPENSA-
14 TION] arises, the name of the employer of the injured or deceased
15 person at the time of the injury or death, a description of the property
16 affected or covered by the lien and the name of the owner or reputed
17 owner of the property.

18 (e) The lien for benefits [COMPENSATION] provided for in this
19 section may be enforced by equitable proceedings as in the enforcement
20 of other liens upon real or personal property, within 10 months after
21 the cause of action arises. Nothing in this section prevents an
22 attachment of property as security for the payment of benefits [COMPEN-
23 SATION].

24 * Sec. 49. AS 23.30.170(a) is amended to read:

25 (a) In case of default by the employer in the payment of benefits
26 [COMPENSATION] due under an award of benefits [COMPENSATION] for a
27 period of 30 days after the benefits are [COMPENSATION IS] due, the
28 person to whom the benefits are [COMPENSATION IS] payable may, within
29 one year after the default, apply to the board making the compensation

1 order for a supplementary order declaring the amount of the default.
2 After investigation, notice, and hearing, as provided in AS 23.30.110,
3 the board shall make a supplementary order declaring the amount of the
4 default. The order shall be filed in the same manner as the compensa-
5 tion order.

6 * Sec. 50. AS 23.30.175(b) is repealed and reenacted to read:

7 (b) After June 30 and before December 1 of each year, the commis-
8 sioner shall adopt and publish the average weekly wage for the preced-
9 ing calendar year as computed by the United States Secretary of Labor
10 for the purposes of unemployment insurance. In determining the rate of
11 compensation the commissioner shall use the average weekly wage figure
12 for each jurisdiction, including Alaska, for which the Secretary of
13 Labor computes an average weekly wage. These figures are the applica-
14 ble average weekly wages for those jurisdictions for the following
15 calendar year. The average weekly wage for Alaska is the amount
16 determined by dividing (1) the total wages paid by all employers
17 covered by the Alaska Employment Security Act by (2) the average
18 monthly employment reported by those employers for the same period and
19 dividing the result by 52.

20 * Sec. 51. AS 23.30.175(c) is repealed and reenacted to read:

21 (c) The following rules apply to recipients who do not reside in
22 Alaska:

23 (1) The weekly rate of compensation shall be calculated
24 using the recipient's average weekly wage times the ratio of the aver-
25 age weekly wage of the jurisdiction in which the recipient resides to
26 the average weekly wage of Alaska. The rate is based on the average
27 weekly wages in effect when the recipient leaves Alaska and shall be
28 adjusted annually upon publication of the average weekly wages for all
29 jurisdictions.

Foreign

1 (2) The calculation required by this subsection does not
2 apply if

3 (A) the average weekly wage of the recipient and the
4 resulting compensation rate is determined under AS 23.30.220(2) by
5 use of wages earned in jurisdictions other than Alaska; or

6 (B) the absence of the recipient is for medical or
7 rehabilitation services not reasonably available in Alaska.

8 (3) Application of this subsection may not result in a
9 reduction of the weekly compensation rate to less than \$65 a week
10 except as provided in (a) of this section.

11 * Sec. 52. AS 23.30.190(20) is amended to read:

12 (20) ~~in all other cases in this class of disability the~~
13 ~~compensation is 66 2/3 percent of the difference between his average~~
14 ~~weekly wages and his wage-earning capacity after the injury in the same~~
15 ~~employment or otherwise, payable during the continuance of the partial~~
16 ~~disability, but subject to reconsideration of the degree of the impair-~~
17 ~~ment by the board on its own motion or upon application of a party in~~
18 ~~interest; [WHENEVER THE BOARD DETERMINES THAT IT IS IN THE INTEREST OF~~
19 ~~JUSTICE, THE LIABILITY OF THE EMPLOYER FOR COMPENSATION, OR ANY PART OF~~
20 ~~IT AS DETERMINED BY THE BOARD, MAY BE DISCHARGED BY THE PAYMENT OF A~~
21 ~~LUMP SUM.]~~

22 * Sec. 53. AS 23.30.191 is repealed and reenacted to read:

23 Sec. 23.30.191. EXPENSES FOR REHABILITATING INJURED EMPLOYEES.

24 An employee, who, as a result of injury, is or may be expected to be
25 totally or partially incapacitated for his normal occupation and who,
26 under the direction of the Department of Labor, is being rehabilitated
27 to engage in a remunerative occupation, may receive compensation neces-
28 sary for his rehabilitation of ~~66-2/3 percent~~ ^{not to exceed 50%} of his average weekly
29 wage subject to the maximum payable under AS 23.30.175.

OK

1 * Sec. 54. AS 23.30.210(b) is amended to read:

2 (b) At any time after death, or after 30 days subsequent to the
3 date of injury, the employer and the employee or the beneficiary or
4 beneficiaries, as the case may be, have the right to reach an agreement
5 in regard to a claim for injury or death under this chapter [HEREUNDER]
6 in accordance with the applicable schedule [HEREOF], but a memorandum
7 of the agreement in a form prescribed by the board shall be filed with
8 the board. Otherwise, the agreement is void for any purpose. If
9 approved by the board, the agreement is enforceable the same as an
10 order or award of the board and discharges the liability of the employer
11 for the benefits [COMPENSATION] notwithstanding the provisions of
12 [AS 23.30.130,] AS 23.30.160 [,] and AS 23.30.245(b) [AS 23.30.245].
13 The agreement shall be approved by the board only when the terms conform
14 to the provisions of this chapter and, if it involves or is likely to
15 involve permanent disability, the board may require an impartial medical
16 examination and a hearing in order to determine whether or not to
17 approve the agreement. The board may approve lump-sum settlements when
18 it appears to be to the best interest of the employee or beneficiary or
19 beneficiaries.

20 * Sec. 55. AS 23.30.215(a)(1) is amended to read:

21 (1) reasonable and necessary funeral expenses not exceeding
22 \$2,500; the commissioner by regulation shall annually adjust this limit
23 to reflect increased expenses resulting from inflation [\$1,000];

24 * Sec. 56. AS 23.30.235 is amended to read:

25 Sec. 23.30.235. CASES IN WHICH NO BENEFITS ARE [COMPENSATION IS]
26 PAYABLE. No benefits [COMPENSATION] may be paid if the injury was
27 occasioned solely by the intoxication of the employee or by the wilful
28 intention of the employee to injure or kill himself or another.

29 * Sec. 57. AS 23.30.245 is amended to read:

1 Sec. 23.30.245. INVALID AGREEMENTS. (a) An agreement by an
2 employee to pay a portion of the premium paid by his employer to a
3 carrier or to contribute to a benefit fund or department maintained by
4 the employer for the purpose of providing benefits [COMPENSATION OR
5 MEDICAL SERVICES AND SUPPLIES] as required by this chapter is not
6 valid. An employer who makes a deduction for this purpose from the pay
7 of an employee entitled to the benefits of this chapter is guilty of a
8 misdemeanor and upon conviction is punishable by a fine of not more
9 than \$1,000.

10 (b) An agreement by an employee to waive his right to benefits
11 [COMPENSATION] under this chapter is not valid.

12 * Sec. 58. AS 23.30.250 is amended to read:

13 Sec. 23.30.250. PENALTY FOR MISREPRESENTATION. A person who wil-
14 fully makes a false or misleading statement or representation for the
15 purpose of obtaining a benefit or payment under this chapter is guilty
16 of theft as defined in AS 11.46.100(3) and is punishable as provided in
17 AS 11.46.120 - 11.46.150 [A MISDEMEANOR, AND UPON CONVICTION IS PUNISH-
18 ABLE BY A FINE OF NOT MORE THAN \$1,000, OR BY IMPRISONMENT FOR NOT MORE
19 THAN ONE YEAR, OR BY BOTH].

20 * Sec. 59. AS 23.30.255 is amended to read:

21 Sec. 23.30.255. PENALTY FOR FAILURE TO PAY ~~BENEFITS~~ [COMPENSA-
22 TION]. (a) An employer required to secure the payment of benefits
23 [COMPENSATION] under this chapter who fails to do so is guilty of a
24 misdemeanor and upon conviction is punishable by a fine of not more
25 than \$1,000, or by imprisonment for not more than one year, or by both.
26 If the employer is a corporation, its president, secretary, and trea-
27 surer are also severally liable to the fine or imprisonment provided in
28 this section for the failure of the corporation to secure the payment
29 of benefits [COMPENSATION]. The president, secretary, and treasurer

1 are severally personally liable, jointly with the corporation, for the
2 benefits [COMPENSATION] or other benefit which accrues under this
3 chapter in respect to an injury which happens to an employee of the
4 corporation while it has failed to secure the payment of benefits
5 [COMPENSATION] as required by AS 23.30.075.

6 (b) An employer who knowingly transfers, sells, encumbers,
7 assigns, or in any manner disposes of, conceals, secretes, or destroys
8 any of his property after one of his employees has been injured within
9 the scope of this chapter, with intent to avoid the payment of benefits
10 [COMPENSATION] under this chapter to the employee or his dependents, is
11 guilty of a misdemeanor, and upon conviction is punishable by a fine of
12 not more than \$1,000, or by imprisonment for not more than one year, or
13 by both. If the employer is a corporation, its president, secretary,
14 and treasurer are also severally liable to the penalty of imprisonment
15 as well as jointly liable with the corporation for the fine.

16 (c) This section does not affect any other liability of the
17 employer under this chapter.

18 * Sec. 60. AS 23.30.260 is amended to read:

19 Sec. 23.30.260. PENALTY FOR RECEIVING UNAPPROVED FEES AND SOLICIT-
20 ING. A person is guilty of a misdemeanor, and upon conviction is
21 punishable for each offense by a fine of not more than \$1,000, or by
22 imprisonment for not more than one year, or by both, if he

23 (1) receives a fee, other consideration, or a gratuity on
24 account of services rendered in respect to a claim, unless the con-
25 sideration or gratuity is approved by the board or the court; or

26 (2) makes it a business to solicit employment for a lawyer
27 or for himself in respect to a claim or award for benefits [COMPENSA-
28 TION].

29 * Sec. 61. AS 23.30 is amended by adding a new section to read:

1 Sec. 23.30.263. UNLAWFUL EMPLOYMENT PRACTICE. It is unlawful for
2 an employer to discharge or otherwise discriminate against an employee
3 because he has filed a claim for workers' compensation benefits under
4 this chapter.

5 * Sec. 62. AS 23.30.265(9) is amended to read:

6 (9) "death" as a basis for a right to benefits [COMPENSATION]
7 means only death resulting from an injury;

8 * Sec. 63. AS 23.30.265(16) is amended to read:

9 (16) "medical and related benefits" includes but is not
10 limited to physicians' fees, nurses' charges, pain clinic services,
11 hospital services, hospital supplies, medicine and prosthetic devices,
12 physical rehabilitation, and treatment for the fitting and training for
13 use of such devices as may reasonably be required which arises out of
14 or is necessitated by an injury, and transportation charges to the
15 nearest point where adequate medical facilities are available;

16 * Sec. 64. AS 23.30.265(19) is amended to read:

17 (19) "self-insurer" means an employer who, instead of insur-
18 ing his liability under this chapter as it provides, elects to pay
19 directly the benefits [COMPENSATION] provided for, and who has furnished
20 to the director of insurance [BOARD] satisfactory proof of his financial
21 ability to make the direct payments and has been issued a self-insur-
22 ance certificate;

23 * Sec. 65. AS 23.30.265(20) is amended to read:

24 (20) "wages" means the money rate at which the service ren-
25 dered is recompensed under the contract of hiring [IN FORCE AT THE TIME
26 OF THE INJURY,] and includes the reasonable value to the employee of
27 board, rent, housing, lodging, or similar advantage received from the
28 employer, and gratuities received in the course of employment from
29 others than the employer;

1 * Sec. 66. AS 23.30.265 is amended by adding new paragraphs to read:

2 (28) "benefits" means compensation and medical and related
3 benefits.

4 (29) "reserve rate" means the unencumbered second injury fund
5 balance on October 31 of each year as a percentage of disbursements
6 from the second injury fund during the 12-month period ending on June 30
7 of the same calendar year.

8 * ~~Sec. 67. AS 23.30.005(k), 23.30.095(g), 23.30.125(b), 23.30.155(g),~~
9 ~~23.30.175(d), (e), and (f) are repealed.~~

10 * Sec. 68. *As to 2nd injury fund* The amount of a payment to the second injury fund (and the
11 conditions under which a payment is] required of an employer or insurance
12 carrier must be in accordance with the version of AS 23.30.040(b) in effect
13 on the date that the injury to the employee occurred.

14 * Sec. 69. Notwithstanding the provisions of AS 23.30.040(b) the con-
15 tribution rate shall be six percent beginning July 1, 1981, through calendar
16 year 1982 ending December 31, 1982.

17 * Sec. 70. This Act takes effect on July 1, 1981.

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