



## COMPROMISE AND RELEASE AGREEMENTS

A permanently and totally disabled worker will receive wage loss benefits and medical expense payments on a continuing basis unless the worker and the employer or insurer agree to a compromise and release agreement in a lump sum payment in lieu of weekly wage loss benefits.

Currently, compromise and release agreements are not permitted on the future medical expense portion of benefits.

WCCA POSITION: that such agreements be allowed on medical expenses with approval of the Worker Compensation Board to ensure that the settlement amount is in the best interest of the injured worker.

## PHYSICIANS' FEES

Physicians treating injured workers often incur additional costs to provide employers or insurers with written reports on the treatment given. These costs are passed on as additional fees which is appropriate and equitable. However, there are not adequate means of limitation on the many fees charged by different physicians for the identical services.

WCCA POSITION: that the Division of Worker's Compensation accumulate and publish "average or customary" fees charged for specific treatments by physicians. This publication should be used to evaluate the propriety of fees charged for worker's compensation injuries.

## DELAYS IN HEARINGS AND RULINGS

The Division of Worker's Compensation has not been provided a sufficient budget to staff the Board sufficiently to expedite hearings and rulings. As a result, a worker can be without income for extended period of time until the backlog before the Board is cleared. Disputes between workers and employers or insurers over benefits must be resolved quickly to prevent any undue hardship.

WCCA POSITION: that the Division of Worker's Compensation should be funded to hire additional qualified (as needed) hearing officers to expedite decisions. It is further recommended that initial hearings should be conducted by one hearing officer and that appeals should be presented to the entire Board in a timely manner.

## BROCHURE

Small employers and most workers within the state do not have a clear understanding of the benefits and responsibilities accruing from the Worker's Compensation Laws in Alaska. This is true in almost all other states as well.

The State of California has addressed this problem by developing an easy-to-read brochure for workers describing the benefit plans, claim filing procedures, grievances and differences with insurers. Although voluntary, insurers have provided these brochures to insured employers for distribution to workers.

WCCA POSITION: developing and distributing such a brochure (voluntary) in Alaska will improve the knowledge of workers

regarding the benefits and procedures applicable under Alaska Worker's Compensation Laws. This should result in reduced hearings to resolve compensation disputes and also reduce the need for attorneys costs on behalf of injured workers unsure of certain legal rights.

#### SELF INSURANCE

Self-insurance is a legitimate means for a large organization to provide benefits to injured workers directly from the assets of the company or corporation rather than purchasing insurance coverage from an insurer. The Worker's Compensation Division is granted the authority to approve self-insurance plans but lacks the staff and technical knowledge necessary to evaluate the ability of a self-insured organization to absorb the cost of claims. Without appropriate evaluation, there is a substantial risk that an organization will not be able to fulfill its financial responsibilities to the injured.

WCCA POSITION: that the Worker's Compensation Division develop a unit to monitor activity and effectively regulate self-insured organization to ensure that injured workers will receive all benefits due them.

#### CASH FLOW PROGRAMS

A Cash Flow Program is an alternative to self-insurance enabling the large employer to reimburse the insurer for all claims costs whenever those costs are paid. Re-insurance is usually purchased for costs exceeding a specific amount, (usually \$100,000.00 or more) on any one claim.

Under this concept, premiums are not paid to the insurer until after the claims payments have been made. The employer (by irrevocable bond or bank letter of credit) is generally required to guarantee payment of premiums when due.

Currently, the State of Alaska does not allow premiums receivable (under Cash Flow Programs) to be included in the assets of an insurer.

WCCA POSITION: that the Division of Insurance develop regulations which will allow Cash Flow Programs to be utilized as outlined above by large employers and insurers.

#### HEALTH CARE INSURERS

Large employers must administer plans for health and disability insurance through Health Care Insurers. Worker's Compensation on the other hand, is administered through Casualty Insurers. Large employers may also utilize self-insurance plans.

Employers are not presently permitted to utilize Health Care Insurance for the purchase of Worker's Compensation insurance. Although there is not assurance that cost savings may result from combining health and disability insurance and Worker's Compensation insurance into a single plan with one insurer, employers should be allowed an opportunity to pursue such combined insurance plans.

WCCA POSITION: that the Division of Insurance develop regulations permitting coverage as outlined above on a combined basis.

#### ACCIDENT YEAR STATISTICS

The National Council on Compensation Insurance (NCCI) is a

statistics gathering organization licensed by the Division of Insurance. NCCI computes Worker's Compensation costs in Alaska and proposes premium rate levels for each of the (approximately) five hundred (500) classifications of work activity. Each insurer is required to submit its Worker's Compensation data for Alaska to the organization on a timely schedule.

The NCCI currently uses two methods to record and analyze Worker's Compensation experience:

- A. POLICY YEAR DATA: using this method, premiums and cumulative losses attributable to claims occurring during a particular policy year are then collected (over time) to provide indications of necessary rate changes.
- B. CALENDAR YEAR DATA: using this method, premiums collected and claims costs incurred during a calendar year are reviewed to provide indications of necessary rate changes.

Policy year data is considered more accurate than calendar year data. Calendar year data however, requires a period of at least eighteen (18) months for an accurate picture of loss payout, (for a twelve (12) month period). Claims remaining open after eighteen (18) months must continue to be reported by insurers for each year they remain active.

In 1977, a study conducted by order of Legislative Affairs Agency recommended that a third method of analyzing experience be used, the accident year method. Experience in other states shows that the accident year method is more accurate than the calendar year data and more recent than policy year data.

WCCA POSITION: that the Division of Insurance direct the NCCI to accumulate accident year data and to utilize this data for premium rate level analysis in lieu of any other method.

#### SAFETY GROUPS

Employer trade associations can reduce their insurance costs through the effective use of safety groups. Under the Safety Group Concept, employers may purchase needed insurance through one insurer and receive a portion of the profit as returnable premiums or dividends should the experience warrant same. In the event the group has been unprofitable for the insurer, additional charges would result. The Trade Association would aid in monitoring and promoting safety programs for member employers to reduce costs through fewer or less serious injuries.

Safety Groups are more common in other states, and have been a benefit to the consumer insurance market.

WCCA POSITION: that industry Trade Groups investigate and explore opportunities for Safety Group Programs more fully for use in Alaska.

#### ASSIGNED RISK POOL SERVICING CARRIERS

Currently, insurers who act as servicing carriers for the assigned risk pool are paid 37.5% of assigned risk premium for the expense of handling assigned risk accounts. Rates developed for voluntary risks, however, reflect an allowance of 31.6% of premiums.

WCCA POSIT .: that the Division of Insurance reduce the expense allowance for assigned risk pool servicing carriers to the per cent allowed for expenses for voluntary risks; currently 31.5% of premiums.

SECTION III: SECOND INJURY FUND

## SECOND INJURY FUND

The term "second injury" classifies a worker's injury as the result of a pre-existing impairment from a prior work-related injury.

A Second Injury Fund exists in Alaska to pay the benefits for second injuries after a period of one hundred four (104) weeks. The funds to pay these benefits are contributed by insurers and for each permanent partial injury benefit paid (for second injury), an additional eight per cent (8%) surcharge is paid into the Second Injury Fund.

The purpose of the Fund is to encourage the hiring of previously disabled workers by funding the long term costs of a second injury, should it occur.

Review by claims adjustment personnel and Second Injury Fund Management, indicates some question as to the ability of the fund to pay potential claims.

WCCA POSITION: that rather than increasing the surcharge which in turn increases premium rates, general fund revenues should be utilized for anticipated costs which exceed current surcharge premium levels.

## MEDICAL EXPENSES UNDER SECOND INJURY FUND

Currently only wage loss payments are covered by the Second Injury Fund. However, there is no clear evidence as to the reason for non-inclusion of medical expenses to be paid from the fund.

WCCA POSITION: that medical expenses be covered by the Second Injury Fund for any claims which otherwise meet the criteria for Second Injury Fund Payment.

#### SECOND INJURY FUND, FIRST INJURY PROOF

In order to use the Second Injury Fund, an employer or insurer is required to show written evidence of a prior injury before the second injury occurs. This results in additional costs to screen, document and preserve the medical history of all injured workers.

WCCA POSITION: that the employer or insurer not be required to prove written documentation preceding the second injury. If the above can prove the existence of a prior injury at any time before or after the second injury, then use of the Second Injury Fund shall be allowed.

#### LUMP SUM SETTLEMENT FROM SECOND INJURY FUND

WCCA POSITION: that the Second Injury Fund be allowed and be properly funded to make lump sum reimbursements to any carrier or employer who provides a lump sum payment to an injured worker, this to include self-insured as well.

HB 159/SB 179  
Section by Section Analysis

- Section 1-2. Section analysis by the Department of Commerce and Economic Development, Division of Insurance.
- Section 3. This section prevents discriminatory employment practices on the part of employers towards employees who have filed a claim for workers' compensation benefits. The same prohibition is cross-referenced in AS 23.30.263 under Section 61.
- Section 4-7. Section analysis by the Department of Commerce and Economic Development, Division of Insurance.
- Section 8. This section adds an additional panel to the Alaska Workers' Compensation Board which may sit in any judicial district in the event regular panel members are unable to attend scheduled hearings. Members of the board, except the Chairman or his designees, are citizens appointed pursuant to AS 23.30.005 and at times have scheduling conflicts with their own occupational duties. The amendment will insure that disputed claims are heard expeditiously by a full board panel and will provide the resources to conduct additional board hearings when the workload requires.
- Section 9-12. The term "benefits" is substituted for "compensation" to achieve consistency throughout AS 23.30 in conformity with court and board interpretations. The term "benefits" is defined in AS 23.30.265(28) under Section 66 to mean "compensation and medical and related benefits." The definitions for "compensation" and "medical and related benefits" already exist under AS 23.30.265(8) and (16). This amendment will clarify current misunderstandings in interpreting these terms.
- Section 13-14. Section analysis by the Department of Commerce and Economic Development, Division of Insurance. Section 14 also includes substitution of "benefits" for "compensation" where applicable.
- Section 15. The repeal and reenactment of AS 23.30.040 is necessary if the second injury fund is to continue to meet its statutory obligations to rehabilitate the injured and disabled worker and to reimburse employers/carriers on subsequent injury claims.
- This section expands the base for contributions to the second injury fund and incorporates a contribution schedule which will insure the solvency of the fund. It changes the base for payments to the fund from permanent partial disability to permanent total, permanent partial, temporary

total and temporary partial disabilities. Under Section 69, an initial contribution rate of 6 percent is established, which will build reserves before a sliding rate scale takes effect in 1983. It also allows a more realistic maintenance allowance of \$200 a month and total maximum expenditures for retraining to \$10,000 in order to adequately cover the inflationary rise in expenses encountered for rehabilitation or retraining. The section also transfers the administrative expenses of the state from the resources of the second injury fund to the general fund.

Section 16-17. Substitution of "benefits" for "compensation" where applicable.

Section 18. This section allows placement of disabled employees who are being rehabilitated for gainful employment into work situations where the employer is willing to pay some wages to the trainee but does not want the risk of new injury to the handicapped person and the consequent increase in employer's insurance premiums; or if no other employees, having to obtain workers' compensation insurance just for the trainee. Successful rehabilitation will result in getting the handicapped employee back to a self sustaining, tax paying citizen of the state and is worth the investment by the state in accepting the risk of his being re-injured while learning a new occupation. This amendment will also encourage employers to pay wages to the trainee and reduce costs to the rehabilitation agency sponsoring the trainee.

The section also permits the Department of Labor to place eligible persons in rehabilitation programs with an employer in the event a request is not made through the office of vocational rehabilitation.

Section 19-20. Section analysis by the Department of Commerce and Economic Development, Division of Insurance.

Section 21-26. Sections include substitution of "benefits" for "compensation" where applicable and analysis by the Department of Commerce and Economic Development, Division of Insurance.

Section 27. Adds a subsection which stiffens the penalties to employers who fail to insure or provide security for workers' compensation liability to their employees and provides the Board with the means to enforce that statutory requirement through stop order authority. Failure to enforce the requirement that all employers secure liability for workers' compensation results in a disparity to the employer who does insure and must figure the costs of insurance into his costs of doing business and forces the injured worker to rely on medical care and funds from public assistance programs.

- Section 28-30. Section analysis by the Department of Commerce and Economic Development, Division of Insurance. Also includes substitution of "benefits" for "compensation" where applicable.
- Section 31. This section deletes wording which makes it necessary for an injured employee to appeal to the Alaska Workers' Compensation Board if the need for medical treatment due to work injury extends beyond two years. The board has repeatedly held that if continued medical treatment is required due to the injury, the costs should be paid by the employer's insurance carrier regardless of whether the need for medical treatment has lasted for over two years, yet, some adjusters continue to stop medical costs and advise the employee that the law provides for only two years of medical coverage. The employee then either hires an attorney or petitions the board for help and often the matter must be heard and ruled on by the board before the carrier will pay additional medical costs. As a result the board is required to hold unnecessary hearings, the carrier incurs unnecessary attorney fees and the general costs of the workers' compensation program is unnecessarily increased.
- The section also deletes wording that requires an employee, if he wishes to change doctors, to do so "in accordance with rules prescribed by the board." The board is adverse to setting out rules, which would in any way, hamper the recovery process or the employee's right to the selection of the treating physician. If the employee abuses this right, the employer/carrier may seek relief through board hearing.
- Section 32. This section encourages prompt reporting of treatment by doctors treating injured workers. Some doctors now file a report of first treatment but fail to notify the carrier of follow-up treatment. When the doctor gets around to billing some months later, the bill is considerable. Some doctors have continued to treat an employee after sending a first report indicating further care was not necessary, or would be minimal. By the time the carrier gets a bill and a follow-up report, the bill is for many hundreds of dollars. This change will also provide the board and employer/carrier with the current medical status on the employee so that his progress can be better monitored.
- Section 33. This section deletes language left over in the Act from the days when the employer selected the physician. Experience has shown that the employee never exercises this right except upon the urging of his doctor or attorney. This situation delays resolution of disputed claims and allows some doctors to unnecessarily increase the costs of workers' compensation while they stand around watching another doctor perform an examination of an injured worker. This process is duplicative, involves at least 4 parties and wastes time. Section also includes substitution of "benefits" for "compensation" where applicable.

Section 34-36. Substitutes "benefits" for "compensation" where applicable.

Section 37. This section deletes ambiguous language which is the result of incomplete amending in 1962 to the statute of limitations provision for filing a claim.

In W. R. Grasle Co. v. Alaska Workmen's Compensation Board, 517 p.2d 999 (Alaska 1974), the Supreme Court found no time frame in which the four-year statute may operate subsequent to the 1962 amendment.

The section also includes substitution of "benefits" for "compensation" where applicable.

Section 38-40. Substitutes "benefits" for "compensation" where applicable.

Section 41. This section provides realistic time frames in the board hearing process and rids the statute of board authorization to rule on a claim without benefit of the parties to be heard. The change from 10 to 20 days for service of notice of hearing will allow sufficient time for the parties to properly prepare the case for board hearing, thereby reducing the number of continuances or further hearings, and will enable conformance with 8 AAC 45.070(b). Due to the time required for the board to adequately research the difficult legal issues involved in many cases and the geographic separation of some members, the board has consistently been unable to comply with the statutory requirement of 20 days for issuance of its written decision and order. The change from 20 to 30 days is proposed to grant sufficient research time for the board to set forth its findings and conclusions according to proper statutory criteria, thereby reducing the number of hearings resulting from remands or requests for modification of award, and to allow additional time for the order to be sent to the board members for their review and signature.

The section also deletes the portion of the provision authorizing the board to rule on a claim without benefit of hearing. This portion has never been used by the board as it precludes the right of the parties to be heard or the opportunity for cross-examination on the issues of the claim.

Includes substitution of benefits for compensation where applicable.

Section 42-45. Substitutes "benefits" for "compensation" where applicable.

- Section 46. The amendments in AS 23.30.155 are essentially "house-keeping" changes and are aimed primarily towards reducing litigation and administrative delays in processing claims. These changes address serious problems or gaps in the Act which mislead or confuse employees, employers, and insurance carriers and which result in needless litigation. This section 1) clarifies a controverted claim and the requirements under which a notice of controversion must be filed; 2) requires notice be filed with the board whenever payment of compensation has begun, terminated or changed and provides penalties for failure to file such notice; 3) includes substitution of "benefits" for "compensation" where applicable; 4) requires board approval for reimbursement of advance payments or overpayments of compensation from unpaid installments; 5) requires that compensation be paid by a check or draft which may be immediately cashed; 6) authorizes the board to order lump sum payments for both scheduled and unscheduled permanent partial disabilities under AS 23.30.190, whenever it is in the interest of the injured employee and will not cause substantial hardship to the employer (the board currently is authorized to order lump sum settlements for unscheduled permanent partial disability under AS 23.30.190(20)); and 7) requires periodic reporting of all payments made on claims which will be used to provide the public and private sectors with current and accurate injury statistical data.
- Section 47-49. Substitutes "benefits" for "compensation" where applicable.
- Section 50. This section changes the method by which the average weekly wage is determined in all jurisdictions for purposes of computing compensation and provides for a consistent and equitable means to adjust compensation rates for claims being paid to out-of-state recipients.
- Section 51. This section clarifies the rules under which compensation rates are adjusted for recipients not residing in Alaska consistent with legislative intent and regulations, insures adequate benefit levels for those recipients and provides for an annual adjustment in the compensation rate commensurate with changes in average weekly wages.
- Section 52. This section deletes language now provided for in AS 23.30.155(n) under Section 46.

Section 53.

This section provides for payment of compensation to an injured worker at his temporary total disability rate while undergoing rehabilitation or retraining. This change is consistent with interpretations set forth in Supreme Court decisions and with current board practice.

AS 23.30.191 was enacted in 1963 when there was a limit on compensation paid for both temporary and permanent partial disabilities. It was often the case that an injured worker would be paid the maximum, but required rehabilitation to return to the work force. To provide rehabilitation to those no longer entitled to temporary disability compensation, payment of one-half the rate was paid under Section 191. For injuries after May 22, 1975, there is no maximum limit for payment of temporary disability and such compensation should be continued while undergoing rehabilitation if the worker is incapacitated from earning the wages as before injury.

In Phillips Petroleum Company v. Alaska Industrial Board, 17 Alaska (1958), the Supreme Court stated:

"The period of temporary total disability is defined as: the healing period or the time during which the workman is wholly disabled and unable by reason of his injury to work."

Our statute defines "disability as the incapacity because of injury to earn the wages which the employee was receiving at the time of injury. When such a condition is temporary, AS 23.30.185 requires the payment of temporary total disability compensation during the continuance of the disability.

The intent of the Act is to encourage injured workers who are totally or partially incapacitated for their normal occupation, to undergo vocational rehabilitation efforts aimed toward return to gainful employment. This not only benefits the worker, but reduces the future liability of the employer for payment of permanent partial or permanent total disabilities. To reduce the compensation rate by one-half when the worker does undertake such a program discourages rather than encourages participation in retraining.

Section 54. This section provides for the modification of a compromise and release agreement to the degree that a board order can be modified.

AS 23.30.210(b) grants the employee and the employer the right to enter into an agreement to resolve a disputed claim. The board must approve the compromise and release for the agreement to be valid and, if approved, the agreement is enforceable the same as an order of the board. If the language of the Act is strictly construed, however, the agreement cannot be modified within one year for a mistake of fact or a change in condition as is allowed in the board's orders. Fraud, actual or constructive, is the only ground for modification. The board, based on its experience with hardships and harsh results in cases involving change of condition, latent injury or mistake of fact in cases where compromise and release agreements have been approved, believes an agreement should be modifiable at least to the degree that an order can be modified.

Section also includes substitution of "benefits" for "compensation" where applicable.

Section 55. This section provides for inflationary increases in funeral expenses on death claims. The current limit for reasonable and necessary funeral expenses are not adequate and result in a hardship to the family of the deceased or the employer for payment of the additional costs.

Section 56-57. Sections substitute "benefits" for "compensation" where applicable.

Section 58. This section provides stiffer penalties for employees who wilfully misrepresent a claim to collect benefits.

Section 59-60. Sections substitute "benefits" for "compensation" where applicable.

Section 61. See Section 3.

Section 62. Section substitutes "benefits" for "compensation" where applicable.

Section 63. Section amends definition of "medical and related benefits" to include pain clinic services.

Section 64. Section analysis by the Department of Commerce and Economic Development, Division of Insurance. Also includes substitution of benefits for Compensation where applicable.

- Section 65. This section clarifies the definition of "wages" for purposes of computing an employee's average weekly wage. The deletion of "in force at the time of the injury" is necessary to make the definition consistent with the method by which the average weekly wage is determined under AS 23.30.220 as a result of the 1977 amendments.
- Section 66. This section is amended to include a definition for "benefits" as explained in Section 9-12, and defines the term "reserve rate" as used in Section 15.
- Section 67. Section deletes inconsistent and ambiguous language in the Act and those provisions that are repealed by the proposed legislation.
- Section 68. This section clarifies that the amount of payment to the second injury fund and the conditions under which payment is required, is in accordance with the version of AS 23.30.040(b) that was in effect on the date of injury to the employee.
- Section 69. See Section 15.
- Section 70. This section provides for an effective date for the bill of July 1, 1981.

THE LEGISLATURE OF THE STATE OF ALASKA

TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. Committee Substitute for House Bill No. 159 (L & C)  
 Title "An Act relating to workers' compensation, and providing for an effective . . ."  
 Requested by Labor and Commerce Committee Date 3/1/82

II. FISCAL DETAIL

Agency Affected Labor  
 Program Category Affected Worker Protection  
 BRU, Program, or Subprogram(s) Affected Workers' Compensation  
 (Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
100 PERSONAL SERVICES		161.8	178.0	195.8	215.4	236.9
200 TRAVEL		20.0	22.0	24.2	26.6	29.3
300 CONTRACTUAL		122.3	71.3	78.4	86.2	94.9
400 COMMODITIES		3.4	3.7	4.1	4.5	4.9
500 EQUIPMENT		10.4	0	0	0	0
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL	0	317.9	275.0	302.5	332.7	366.0

FUNDING (Thousands of Dollars)

GENERAL FUND	0	(132.3)	(197.2)	(216.9)	(238.6)	(262.5)
FEDERAL FUNDS						
OTHER (Specify Fund Source)						
**Second Injury Fund		450.2	472.2	519.4	571.3	628.5

POSITIONS

FULL TIME	0	4	4	4	4	4
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

It is the intent of the Legislature that an injured worker receive rehabilitation services which enhance returning to work as quickly as possible at earnings as close as possible to the worker's gross earnings at the time of the injury. The implementation of a delivery system to provide timely and adequate rehabilitation services is fundamental in meeting this objective.

This fiscal note provides that the state administrative costs for rehabilitation under the proposed AS 23.30.041 be paid from the Second Injury Fund. This includes the costs of four new positions, plus the cost of four existing positions which entails a transfer in funding source from General Funds to Second Injury Funds.  
 (Continued page 2)

IV. DATE 3/2/82 PREPARED BY Nico Bus  
 AGENCY Labor  
 PHONE 465-2720

Original: Legislative Finance  
 cc: Budget and Management  
 Prime Sponsor (First Legislator Named)

FISCAL NOTE

THE LEGISLATURE OF THE STATE OF ALASKA

TWELFTH LEGISLATURE (Continued)

TITLE: An Act relating to workers' compensation, and providing for an effective . . ."

Agency Affected: Department of Labor

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1. Assumes an inflation rate of 10% per annum after FY '83.
2. Assumes an effective date of July 1, 1982.
3. The total cost for FY'83 for the four new positions is detailed on attached forms 13. In addition the following items are included in the FY '83 costs.

A Workers' Compensation Officer I reclassification to a Workers' Compensation Officer II with related travel and contractual services. Cost \$16.6

100 Personal Services	\$ 5.5
200 Travel	5.0
300 Auto, Lease, Indirect, etc.	6.1
	<u>\$16.6</u>

The data processing operations cost will increase by \$14.0 because of enhancements for a tickler system, running two systems parallel and the files expansion to retain the addresses of all claimants.

The printing of 10,000 Workers' Compensation Acts and 25,000 Employee Information booklets. \$35.0

The design and printing of new forms. \$2.5

Computer program modifications to implement the changes introduced by the bill. \$20.0

Equipment expense for computer terminals, panelling, cabinets, and files. \$6.0

Included one-time items in FY '83

Equipment	\$10.4
Booklets and Acts	35.0
Design and printing of new forms	2.5
Computer programs	20.0
	<u>\$67.9</u>

Funding Change

Items included in the FY 83 Governor's budget that will change funding sources from General Fund to the Second Injury Fund.

4 positions (including benefits)	\$141.3
Non-personal service costs relating to these 4 existing positions	
200: travel	9.9
300: contractual	25.8
400: commodities	2.3
	<u>179.3</u>

FISCAL NOTE

THE LEGISLATURE OF THE STATE OF ALASKA

TWELFTH LEGISLATURE (Continued)

TITLE: An Act relating to workers' compensation, and providing for an effective . . ."

Agency Affected: Department of Labor

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FY'83 Component Breakdown:

<u>Workers' Compensation Administration</u>		<u>Second Injury Fund</u>	
PS			\$161.8
Travel			20.0
Contract*	\$47.0		75.3
Commodities			3.4
Equipment			10.4
TOTAL	<u>\$47.0</u>		<u>\$270.9</u>
<u>Funding</u>		General Fund	Second Injury
Funding transfer		(179.3)	179.3
Rehabilitation Services/ delivery system		47.0	270.9
		<u>(132.3)</u>	<u>450.2</u>

\*\$3,000 Workers Compensation Acts and Information Booklets; \$12,000 Data Processing

\*\*Second Injury Fund is currently being reviewed to determine whether revenues are sufficient to cover the cost of rehabilitation. It may be necessary to amend AS 23.30.040 to increase the maximum percentage contribution rate.

1	POSITION TITLE Rehabilitation Administrator				RANGE/STEP 22A	BARG. UNIT.	LOCATION EiBA	GOV.	APPROV.	DIGAPP.	
2	TYPE OF POSITION PFT	STAFF MONTHS 12	RP No. N/A	PCN No. New Position	PRIORITY	FORM 12 N/A	PAGE/LINE	LEG.			
3	TYPE OF EXPENDITURE			AMOUNT		JUSTIFICATION:					
	1	2	3								
4	PERSONAL SERVICES:										
	SALARY 3714 x 12		44,568								
5	BENEFITS .1592		7,095								
6	SBS .0613		2,189								
7	FIXED BENEFITS 183 x 12		2,190								
8	TOTAL PERSONAL SERVICES	01	6,047								
9	TRAVEL	02	10,000								
10	CONTRACTUAL	03	15,607								
11	COMMODITIES	04	850								
12	EQUIPMENT	05	1,600								
13	OTHER										
14	TOTAL COST		84,104								
	RECEIPT CODE	FUNDING SOURCE									
15		FED RCPTS. 1002									
16		GF MATCH. 1003									
17	100	GEN. FUND 1004									
18		I-A RCPTS. 1005									
19		PGM RCPTS 1028									
20	841	OTHER Second Injury Fund		84,104							
21	CONTINUATION										
22	ADDITION	X	FOR B&M USE ONLY								
4A	KEY NUMBER	COLUMN NO.									

It is the intent of the Legislature that an injured worker receive rehabilitation services which enhance returning to work as quickly as possible at earnings as close as possible to the worker's gross earnings at the time of the injury. The implementation of a delivery system to provide timely and adequate rehabilitation services is fundamental in meeting this objective.

The rehabilitation administrator is necessary to develop and implement a workers' compensation rehabilitation program designed to administer and monitor the rehabilitation benefits of industrially injured workers covered by the Alaska Workers' Compensation Act.

Extensive travel within the state is necessary to provide assistance to approximately 12,000 employers in developing programs for re-employment of injured workers and coordinating counselor services with workers, insurers/employers, labor unions, and rehabilitation providers.

9. Travel: \$10,000 (20 trips @ \$500 per trip)  
 10. Contractual: Space \$3,100 (to be transferred to D0A)  
 Auto Lease & Operating Costs \$5,600  
 Indirect (11.46% x 44,568 = \$5,107)  
 Other costs which include communications, equipment rental, etc., \$1,800  
 11. Commodities: Cost per position  
 12. Equipment: Desk, desk chair, side chairs, bookcase, file - \$1,600

AGENCY Labor PROGRAM Worker Protection  
 BRU Workers' Compensation  
 COMPONENT Second Injury Fund

**13** REQUEST FOR NEW POSITION

**FY 83**

1	POSITION TITLE Workers Compensation Officer II			RANGE/STEP 18A	BARG. UNIT. GBU	LOCATION JBA	GOV.	APPROV.	B:APP.
2	TYPE OF POSITION PFT	STAFF MONTHS 12	RP No. N/A	PCN No. New Position	PRIORITY	FORM 12 N/A	PAGE/LINE	LEG.	

3	TYPE OF EXPENDITURE	AMOUNT
	1	2
4	PERSONAL SERVICES: SALARY 3249 x 12	38,988
5	BENEFITS .1592	6,207
6	SBS .0613	2,188
7	FIXED BENEFITS 183 x 12	2,196
8	TOTAL PERSONAL SERVICES 01	49,579
9	TRAVEL 02	5,000
10	CONTRACTUAL 03	14,968
11	COMMODITIES 04	850
12	EQUIPMENT 05	1,395
13	OTHER	0
14	TOTAL COST	71,792

**JUSTIFICATION:**  
It is the intent of the Legislature that an injured worker receive rehabilitation services which enhance returning to work as quickly as possible at earnings as close as possible to the worker's gross earnings at the time of the injury. The implementation of a delivery system to provide timely and adequate rehabilitation services is fundamental in meeting this objective.

The workers' compensation officer is necessary to coordinate with workers, employers, insurers and rehabilitation providers to expedite the retraining and re-employment of injured workers. Travel within the Fairbanks and Northern regions will be necessary to coordinate this effort.

	RECEIPT CODE	FUNDING SOURCE
15		FED RCPTS. 1002
16		GF MATCH. 1003
17	100	GEN. FUND 1004
18		I-A RCPTS. 1005
19		PGM RCPTS 1008
20	841	OTHER Second Injury Fund 71,792

- 9. Travel: \$5,000 (10 trips @ \$500 per trip)
- 10. Contractual: Space \$3,100 (to be transferred to DOA) Auto Lease, Maintenance Agreement & Operating Costs \$5,600 Indirect Costs (11.46% x 38,988 = \$4,468) Other costs which include communications, equipment rental, etc. \$1,800
- 11. Commodities: Cost per position
- 12. Equipment: Desk, desk chair, side chair, file, work-table, bookcase \$1,395

21	CONTINUATION		<b>FOR B&amp;M USE ONLY</b>
22	ADDITION	X	
4A KEY NUMBER		COLUMN NO.	

AGENCY Labor PROGRAM Worker Protection  
Workers' Compensation  
 BRU Second Injury Fund  
 COMPONENT \_\_\_\_\_

**13 REQUEST FOR NEW POSITION.**

**FY 83**

1	POSITION TITLE Workers Compensation Officer II				RANGE/STEP 18A	BARG. UNIT. GBU	LOCATION JBA	GOV.	APPROV.	DIBAPP.
2	TYPE OF POSITION PFT	STAFF MONTHS 12	RP No. N/A	PCN No. New Position	PRIORITY		FORM 12 PAGE/LINE N/A	LEG.		

3	TYPE OF EXPENDITURE		AMOUNT
	1	2	3
4	PERSONAL SERVICES:		
	SALARY 3249 x 12		38,988
5	BENEFITS .1592		6,207
6	SBS .0613		2,188
7	FIXED BENEFITS 183 x 12		2,196
8	TOTAL PERSONAL SERVICES 01		49,579
9	TRAVEL 02		5,000
10	CONTRACTUAL 03		14,968
11	COMMODITIES 04		850
12	EQUIPMENT 05		1,395
13	OTHER		0
14	TOTAL COST		71,792

**JUSTIFICATION:**

It is the intent of the Legislature that an injured worker receive rehabilitation services which enhance returning to work as quickly as possible at earnings as close as possible to the worker's gross earnings at the time of the injury. The implementation of a delivery system to provide timely and adequate rehabilitation services is fundamental in meeting this objective.

The workers' compensation officer is necessary to coordinate with workers, employers, insurers and rehabilitation providers to expedite the retraining and re-employment of injured workers. Travel within the Fairbanks and Northern regions will be necessary to coordinate this effort.

9. Travel: \$5,000 (10 trips @ \$500 per trip)

10. Contractual: Space \$3,100 (to be transferred to DOA) Auto Lease, Maintenance Agreement & Operating Costs \$5,600 Indirect Costs (11.46% x 38,988 = \$4,468) Other costs which include communications, equipment rental, etc. \$1,800

11. Commodities: Cost per position

12. Equipment: Desk, desk chair, side chair, file, work-table, bookcase \$1,395

	RECEIPT CODE	FUNDING SOURCE	
15		FED RCPTS. 1002	
16		GF MATCH. 1003	
17	100	GEN. FUND 1004	
18		I-A RCPTS. 1005	
19		PGM RCPTS 1008	
20	841	OTHER Second Injury Fund	71,792

21	CONTINUATION		<b>FOR B&amp;I. USE ONLY</b>
22	ADDITION	X	

4A KEY NUMBER ..... COLUMN NO. ....

AGENCY Labor PROGRAM Worker Protection

BRU Workers' Compensation

COMPONENT Second Injury Fund

**13** REQUEST FOR NEW POSITION.

**FY 83**

POSITION TITLE Clerk Typist III				RANGE/STEP 8B	BARG. UNIT. GRU	LOCATION AWA	GOV.	APPROV.	DISAPP.
TYPE OF POSITION PFT	STAFF MONTHS 12	RP No. N/A	PCN No. New Position	PRIORITY		FORM 12 N/A	PAGE/LINE	LEG.	

TYPE OF EXPENDITURE		AMOUNT
1	2	3
PERSONAL SERVICES:		
SALARY 1530 x 12	18,360	
BENEFITS .1592	2,923	
SBS .0613	1,125	
FIXED BENEFITS 183 x 12	2,196	
TOTAL PERSONAL SERVICES 01		24,604
TRAVEL 02		
CONTRACTUAL 03		7,004
COMMODITIES 04		850
EQUIPMENT 05		700
OTHER		
TOTAL COST		33,158

## JUSTIFICATION:

It is the intent of the Legislature that an injured worker receive rehabilitation services which enhance returning to work as quickly as possible at earnings as close as possible to the worker's gross earnings at the time of the injury. The implementation of a delivery system to provide timely and adequate rehabilitation services is fundamental in meeting this objective.

The Clerk III position will provide clerical assistance to the Workers' Compensation Officer in the Juneau Second Injury Fund office and will be responsible for providing and coordinating distribution of information from the claim files to the other regions.

10. Contractual: Space \$3,100 (to be transferred to DOA) Indirect (11.46% x 18,360 = \$2,104) Other costs which include communications, equipment rental, etc. \$1,800

11. Commodities: Cost per position

12. Equipment: Desk, desk chair \$700

RECEIPT CODE	FUNDING SOURCE	
	FED RCPTS. 1002	
	GF MATCH. 1003	
100	GEN. FUND 1004	
	I-A RCPTS. 1005	
	PGM RCPTS 1028	
841	OTHER Second Injury Fund	33,153

CONTINUATION	
ADDITION	X

FOR B&amp;M USE ONLY

KEY NUMBER \_\_\_\_\_ COLUMN NO. \_\_\_\_\_

Labor

PROGRAM Worker Protection

BRU Workers' Compensation

COMPONENT Second Injury Fund

Page 3 of 4

REVISED DATE \_\_\_\_\_

**13** REQ JEST FOR NEW  
POSITION.

FY 83

1	POSITION TITLE Clerk IV				RANGE/STEP 9B	BARG. UNIT. GBU	LOCATION EBA	GOV.	APPROV.	DISAPP.
2	TYPE OF POSITION PFT	STAFF MONTHS 12	RP No. N/A	PCN No. New Position	PRIORITY		FORM 12 PAGE/LINE N/A	LEG.		

3	TYPE OF EXPENDITURE		AMOUNT
	1	2	3
4	PERSONAL SERVICES: SALARY 1627 x 12		19,524
5	BENEFITS .1592		3,108
6	SBS .0613		1,197
7	FIXED BENEFITS	183 x 12	2,196
8	TOTAL PERSONAL SERVICES 01		26,025
9	TRAVEL 02		0
10	CONTRACTUAL 03		7,137
11	COMMODITIES 04		850
12	EQUIPMENT 05		700
13	OTHER		
14	TOTAL COST		34,712

**JUSTIFICATION:**  
It is the intent of the Legislature that an injured worker receive rehabilitation services which enhance returning to work as quickly as possible at earnings as close as possible to the worker's gross earnings at the time of the injury. The implementation of a delivery system to provide timely and adequate rehabilitation services is fundamental in meeting this objective.

The Clerk IV position will provide clerical assistance to the Rehabilitation Administrator and Workers' Compensation Officer and will be responsible for maintaining follow-up on all rehabilitation files.

10. Contractual: Space \$3,100 (to be transferred to DOA) Indirect (11.46% x \$19,524 = \$2,237) Other costs which include communications, equipment rental, etc. \$1,800

11. Commodities: Cost per position

12. Equipment: Desk and desk chair \$700

	RECEIPT CODE	FUNDING SOURCE	
15		FED RCPTS. 1002	
16		GF MATCH. 1003	
17	100	GEN. FUND 1004	
18		I-A RCPTS. 1005	
19		PGM RCPTS 1028	
20	841	OTHER Second Injury Fund	34,712
21	CONTINUATION		
22	ADDITION	X	

**FOR R&M USE ONLY**

4A KEY NUMBER \_\_\_\_\_ COLUMN NO. \_\_\_\_\_

AGENCY Labor PROGRAM Worker Protection

BRU Workers' Compensation

COMPONENT Second Injury Fund

**13 REQUEST FOR NEW POSITION.**

**FY 83**

Page 4 of 4 REVISED DATE \_\_\_\_\_

SECTION 3. (p. 2 1.19)

Change "AS 20.30.041" to "AS 23.30.041"

SECTION 5. (p. 3 1.26)

AS 23.30.041 Rehabilitation Program

Note

(Insert in place of HB 159 Section 23.30.041(c), (d),(e),(f), and (g))

- (c) When an employee suffers a permanent disability which precludes his return to suitable gainful employment, he shall be entitled to be fully evaluated for participation in a rehabilitation program within 90 days after date of injury. The full evaluation shall be performed by a qualified rehabilitation professional. The reasonable costs of the evaluation shall be at the expense of the employer. If in the opinion of the qualified rehabilitation professional, the medical, physical or emotional state of the employee is such that a full evaluation cannot then be made, the rehabilitation professional shall prepare a preliminary evaluation.
- (d) The full evaluation by the qualified rehabilitation professional shall determine if the employee would benefit from a rehabilitation program. The determination shall be based on the following criteria:
- (1) The rehabilitation program will restore the employee to a position to accept suitable, gainful employment equal to or as near as possible to that of his pre-injury employment. An employee is restored to a position of suitable gainful employment if he can return to (in the order of preference)
    - i) work at the same or similar job with the same employer or employer in the same industry as the employer at the time of injury.
    - ii) A job using essentially the same skills as the job at time of injury but in a different industry.
    - iii) A job using different skills but the academic achievement level as attained at the time of injury.
    - iv) A job requiring an academic achievement level which is different from that attained at the time of injury, but which rehabilitation evaluation determines is attainable by the employee and which job is believed to be available to the employee in his community at the time academic training is completed.

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ELY, GUPBS & RUDD  
Insurance Company

- (2) The employee cannot be restored to a position to accept suitable gainful employment without the rehabilitation program.
- (3) The cost of the rehabilitation program, including all costs to be incurred by the employer for and during the rehabilitation program, plus an estimate of continuing benefits due to the employee after the conclusion of the rehabilitation program are equal to or less than the benefits due the employee under this Act, assuming no rehabilitation program is implemented and assuming no discounting or lump-sum payment of benefits.
- (4) The rehabilitation program may consist of any of the following, however, if the employee may be restored to a suitable gainful employment with rehabilitation programs of high preference, then a rehabilitation program of a lower preference need not be offered by the employer.

In order of preference rehabilitation programs are:

- i) Prosthetic devices and training enabling work at the same or similar employment as at the time of injury.
  - ii) Work site modification and vocational training to the same or similar occupation.
  - iii) On the job training for a new occupation.
  - iv) Vocational training for a new occupation.
  - v) Academic training for a new occupation.
- (5) A vocational rehabilitation program may not exceed 37 weeks, except that such services may be extended an additional 37 weeks if the rehabilitation administrator determines that special circumstances exist. Nothing in this subsection prohibits an employer or carrier from providing extended vocational rehabilitation services on a voluntary basis. If rehabilitation requires residence away from the employee's customary residence, reasonable cost of board, lodging, and travel shall be paid by the employer. Temporary disability under AS 23.30.185 or AS 23.30.200 shall be paid throughout the rehabilitation process.

- (e) A preliminary evaluation shall include the reasons why a full evaluation cannot be rendered, an opinion as to when the employee will be eligible for a full evaluation, any information which would be included in a full evaluation which can be determined and reported by the rehabilitation professional at the time of the preliminary evaluation.
- (f) If the full evaluation or preliminary evaluation is not timely scheduled for an employee entitled thereto by the employer, the employee or the Board may designate a qualified rehabilitation professional to perform the evaluation, the reasonable costs of which shall be paid by the employer.
- (g) Refusal by an injured employee to participate in an evaluation or a rehabilitation plan offered by the employer results in forfeiture of disability compensation for the period the refusal continues. However, if an employee begins participation in an evaluation or rehabilitation plan within two months from the date of refusal, and successfully completes the evaluation and rehabilitation plan and becomes employed for a period of 30 consecutive business days following the completion of the rehabilitation program, the employee shall receive a lump-sum payment of 25 percent of the compensation forfeited by him. The lump-sum payment is available only once to an employee refusing rehabilitation. The Board may find that an employee refuses to participate in an evaluation or rehabilitation plan if the employee fails to cooperate with the qualified rehabilitation professional.
- (h) The employer responsible for the benefits under this Act shall be liable for, and any subsequent employer hiring the employee during and as part of the rehabilitation program shall not be liable for, benefits under this Act for injuries occurring to the employee while engaged in job training, work readiness, work therapy experience or work sampling which is part of the rehabilitation program offered by the employer and the earnings for which, if any, are credited to gross wages upon which compensation benefits are calculated.
- (e) In this section
  - 1) "Suitable gainful employment" means employment that is reasonably attained in light of an individual's age, education, previous occupation, and injury, and that offers an opportunity to restore the individual as soon as practical to a remunerative occupation and as nearly as possible to his average weekly wage as determined at the time of injury.

- ii) "Qualified rehabilitation professional" means a person who by education, professional training and experience has the skills to make judgements, administer and interpret tests, counsel, and make recommendations with respect to a persons medical, intellectual, emotional, physical or motivational capacity to accept and perform suitable gainful employment, and to design, implement and supervise programs which tend to enhance a person's medical, intellectual, emotional, physical or motivational capacity to accept suitable gainful employment.

SECTION 7.

Remove.

SECTION 12.

Remove and adopt a new section to read:

add to Chapter 23.30 a section to read  
"AS 23.30.096."

Upon the filing of a claim under this Act, an employee thereby authorizes all providers of medical treatment pertaining to the injury or rendered prior to the date of injury to release information to the employer. If requested by the employer, the employee shall execute all releases to facilitate access to that information.

SECTION 14.

Acceptable except add to subsection (c) the following additional sentence to read:

"If a claim is controverted by the employer and the employee does not request a hearing for a period of two years following the date of controversion, the claim is deemed denied by the Board."

SECTION 15. (p. 8 1.25)

Strike "occasioned solely" and insert in lieu "proximately caused".

SECTION 16. (p. 9 1.3)

Add after ". . . is conclusive" and before "even if . . ." a phrase to read:

", provided there is some evidence of record to support the finding,"

SECTION 17.

Strike and instead add a section to read:

"AS 23.30.155(j) if an employer has made advance payments or overpayments of compensation, he is entitled to be reimbursed out of any unpaid installment or installments of compensation due up to an amount equal to twenty per cent of each of the subsequent installments. If the employer seeks to offset by more than twenty per cent of the amount of each subsequent installment, prior Board approval is required.

SECTION 24.

Add to subsection (12) (p. 13 1.3) a clause to read:

"but no benefit is payable for loss of hearing above 3,000 cycles per second unless hearing above 3,000 cycles per second is a requirement of the job held at the time of injury."

SECTION 31. (p. 18 1.13)

Change "occasioned solely" to "proximately caused"

SECTION 35. (p. 20 1.10)

Add after ". . . of injury" and before ";" a phrase to read:

"up to the amount which when added to all other components of gross earnings brings gross weekly earnings up to the state's average weekly wage"

SECTION 35. (p. 20 1. 17-21)

Should be amended to read:

"and (b) the amount that is or would be deducted or withheld as of January 1, preceding the injury under the Social Security Act of 1935 from the earnings of"

SECTION 39.

Add new section to read:

SEC. 23.30.125 add new subsection

23.30.125(✓) An order of determination of the propriety of a rehabilitation program pursuant to AS 23.30.041 issued by the Commissioner or his designated representative acting alone, may be heard before a full panel upon the petition of employee or employer filed within 10 days after issuance of the order.

The Board shall give priority in calendaring its cases for hearing to hearings to determine the propriety of a rehabilitation program pursuant to AS 23.30.041.

SECTION 40.

SEC. 3.30.005(f) is amended to read:

- (f) Two members of a panel constitute a quorum for hearing claims, and the action taken by a quorum of a panel is considered the action of the full Board; the Commissioner or his designated representative acting alone shall constitute a quorum for making determinations of propriety of a rehabilitation program pursuant to AS 23.30.041.

SECTION 41.

This Act shall take effect July 1, 1982, and shall effect only claims occurring on or after the effective date hereof.

OF COUNSEL  
M. E. MONAGLE

R. E. ROBERTSON (1885-1961)  
F. O. EASTAUGH  
J. B. BRADLEY  
WILLIAM G. RUDDY  
L. B. JACOBSON  
JAMES F. CLARK  
PAUL M. HOFFMAN  
J. F. LANGEN  
D. ELIZABETH CUADRA  
HAROLD E. SNOW, JR.  
PAMELA L. FINLEY  
STEVEN W. SILVER

**JUNEAU OFFICE**

210 FERRY WAY, 2ND FLOOR  
POST OFFICE BOX 1211  
JUNEAU, ALASKA 99802  
PHONE (907) 586-3340  
CABLE: ROMEA  
TELEX: 099-48-376

**ROBERTSON, MONAGLE, EASTAUGH & BRADLEY**

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

POST OFFICE BOX 1211  
JUNEAU, ALASKA 99802

ROBERT B. BAKER  
MICHAEL T. THOMAS  
LEROY J. BARKER  
L. O. BERRY  
C. R. RICH  
CARL W. WINNER  
SUSAN L. MENDENHALL  
JILL A. DRIVER

**ANCHORAGE OFFICE**

601 WEST FIFTH, SUITE 510  
ALASKA MUTUAL BANK BLDG.  
POST OFFICE BOX 679  
ANCHORAGE, ALASKA 99510  
PHONE (907) 277-8693  
CABLE: ROMEA  
TELEX: 090-26-486

March 19, 1982

Honorable Albert P. Adams  
Chairman, House Finance Committee  
Alaska State Legislature  
Pouch V  
Juneau, AK 99811

Re: HB 159

Dear Chairman Adams:

On behalf of the American Insurance Association, a trade association of casualty and property insurers, I wanted to write you and alert you and the members of the Finance Committee to a concern with regard to Section 2 of the above Bill. Section 2 adds a subsection to AS 23.30.025 to permit deductible insurance to be offered in worker's compensation policies.

Our concern is directed primarily to the situation where a deductible policy is taken out by a small employer. Because the amount of the deductible will be paid ultimately by the employer, it is likely that in many cases an employer will delay in making reports, or make no report at all, to the insurer in the case of an injury. This would be true because the employer would thereby improve his statistics for the purposes of a rate modification based on his experience. Experience rating is based much more upon frequency than it is upon severity of injury. Accordingly, if many of the small injuries are not reported, the employer will know that his rates will go down. To the extent that this is a valid concern, it also may mean that claims will be handled in house by people who are not experienced and competent at managing industrial claims. Proper management and expedient vocational rehabilitation management and counseling are essential to the best recovery of a worker.

In addition, an insured may have collectability problems with small employers, unless the insurer requires a letter of credit or other absolute assurance that the money will be available.

Honorable Albert P. Adams  
March 19, 1982  
Page Two

We understand that there is presently a plan approved by the Director for an Alaskan company writing worker's compensation insurance. That plan requires that in order to qualify, an employer having net worth of not less than \$5,000,000.00.

We also suggest that it would be very useful to have the statute set forth priorities for the kinds of rehabilitation to be sought in the case of an industrial injury. Properly drafted, such a priority system would encourage an employer to take an injured employee back; would tend to make the system work more quickly and effectively; and would tend to make the system less expensive. The following language could be inserted at an appropriate point in the rehabilitation sections of the Bill:

"The following priorities are hereby established for use in developing alternative rehabilitation plans. No higher numbered priority may be utilized unless all lower numbered priorities have been determined by the rehabilitation administrator to be unlikely to result in returning the employee to suitable, gainful employment.

Priority #1. Modification of previous job with the same employer, including a transitional return to work.

Priority #2. A new job with the same employer in keeping with any limitations or restrictions of the employee.

Priority #3. Modification of previous job with a new employer.

Priority #4. A new job with a new employer as a result of direct job placement based upon transferable skills.

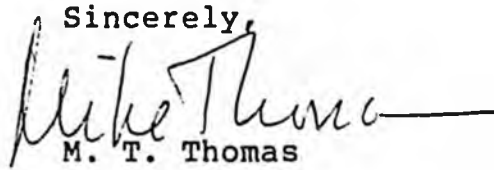
Priority #5. A new job with a new employer involving on-the-job training.

Priority #6. Retraining and job placement consistent with the purposes of rehabilitation.

These priorities, we believe, are consistent with the testimony of the persons with expert knowledge on such matters before the Committee on Labor and Commerce.

Honorable Albert P. Adams  
March 19, 1982  
Page Three

Please let us know if we can provide further information that would be of assistance with regard to this Bill. Thank you for your time.

Sincerely,  
  
M. T. Thomas

MTT/kmp

cc: Rep. Terry Martin  
Sen. Bob Mulcahy  
Don Koch  
Jackie McClintock

Sofo ✓✓✓

Original sponsor: Rules/Legislative Council

1 IN THE HOUSE

BY THE LABOR AND  
COMMERCE COMMITTEE

2 CS FOR HOUSE BILL NO. 159 (L&C)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - SECOND 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:

*Sec 66 P44*

9 ~~Section 18.80.200(4)~~ is amended to read:

*Same as New Draft Sec*

10 *Raw Change* (4) an employer, labor organization or employment agency to  
11 discharge, expel or otherwise discriminate against a person because he  
12 has

13 (A) opposed any practices forbidden under AS 18.80.200 -  
14 18.80.280; [OR BECAUSE HE HAS]

15 (B) filed a complaint, testified or assisted in a pro-  
16 ceeding under this chapter; or

17 (C) filed a claim for workers' compensation benefits  
18 under AS 23.30; *Sec 13 P13*

19 \* Sec. 2. AS 23.30.025 is amended by adding a new subsection to read:

20 (c) An insurer may issue a policy of insurance insuring the payment  
21 of benefits under this chapter which provides for a deductible amount to  
22 be paid by the employer. A policy with a deductible provision must be  
23 approved by the director of insurance and must provide that the deduct-  
24 ible amount be paid by the insurer to the employee on behalf of the  
25 employer. After payment of the deductible by the insurer, the insurer  
26 may recover the deductible amount from the employer. The failure of an  
27 employer to reimburse an insurer for the deductible amount does not  
28 relieve the insurer from any other obligation it may have under the  
29 policy of insurance. An insurer is not required to apply for a deviation

1 under AS 21.39.070 in order to issue a policy under this subsection.  
 2 This subsection does not apply to a policy of excess insurance purchased  
 3 by a self-insurer.

*SEC 17 P17*

*Administrative  
Employee Board  
for Strong  
administration*

\* Sec. 3. AS 23.30.045(c) is amended to read:

5 (c) For a person eligible for vocational rehabilitation service  
 6 under this chapter or AS 23.15.080 [AND] who is placed with an employer  
 7 for service [WITHOUT WAGES] at the request of the board or the division  
 8 [OFFICE] of vocational rehabilitation to give him on the job training,  
 9 work readiness, [OR] work therapy experience [,] or work sampling, the  
 10 liability set out in (a) of this section applies to the state rather  
 11 than to the employer.

*SEC 26 P22*

\* Sec. 4. AS 23.30.080 is amended by adding a new subsection to read:

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

*SEC 30 P23*

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

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

1 IT SHALL BE ADDITIONALLY PROVIDED THAT, IF CONTINUED TREATMENT OR CARE  
 2 OR BOTH BEYOND THE TWO-YEAR PERIOD IS INDICATED, THE INJURED EMPLOYEE  
 3 HAS THE RIGHT OF REVIEW BY THE BOARD. THE BOARD MAY AUTHORIZE CONTINUED  
 4 TREATMENT OR CARE OR BOTH AS THE PROCESS OF RECOVERY MAY REQUIRE]. When  
 5 medical care is required, the injured employee may designate a health  
 6 care provider [LICENSED PHYSICIAN] inside the state to render the care  
 7 except in cases where, in the judgment of the board, care or treatment  
 8 or both can best be administered by the selection of another health care  
 9 provider [PHYSICIAN]. Upon procuring the services of a health care  
 10 provider [PHYSICIAN], the injured employee shall give proper notifica-  
 11 tion of his selection to the employer within a reasonable time after  
 12 first being treated. [IF FOR ANY REASON DURING THE PERIOD WHEN MEDICAL  
 13 CARE IS REQUIRED THE EMPLOYEE WISHES TO CHANGE TO ANOTHER PHYSICIAN, HE  
 14 MAY DO SO IN ACCORDANCE WITH RULES PRESCRIBED BY THE BOARD.]

15 \* ~~Sec. 6. AS 23.30.095(b)~~ is amended to read:

16 (b) If the employee is unable to designate a health care provider  
 17 [PHYSICIAN] and the emergency nature of the injury requires immediate  
 18 medical care, or if he does not desire to designate a health care pro-  
 19 vider [PHYSICIAN] and so advises the employer, the employer shall desig-  
 20 nate the health care provider [PHYSICIAN]. Designation under this  
 21 subsection, however, does not prevent the employee from subsequently  
 22 designating a health care provider [PHYSICIAN] for continuance of re-  
 23 quired medical care.

24 \* Sec. 7. AS 23.30.095(c) <sup>SEC 31 P24,25</sup> is amended to read:

25 (c) No claim for medical or surgical treatment is valid and en-  
 26 forceable as against the employer unless, within 20 [TWENTY] days follow-  
 27 ing the first treatment ~~and following the time set by the board for~~  
 28 ~~notice of subsequent treatments,~~ the health care provider [PHYSICIAN]  
 29 giving the treatment or the employee receiving it furnishes to the

1 employer and the board notice of the injury and treatment, preferably on  
2 a form prescribed by the board. The board shall [MAY], however, excuse  
3 the failure to furnish notice within 20 days when it finds it to be in  
4 the interest of justice to do so, and it may, upon application by a  
5 party in interest, make an award for the reasonable value of the medical  
6 or surgical treatment so obtained by the employee.

7 \* Sec. 8. <sup>Sec 32 P24</sup> AS 23.30.095(e) is amended to read:

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

1 state or their whereabouts can be reasonably ascertained, of the time  
 2 and place of the autopsy and reasonable time and opportunity given the  
 3 widow or widower or next of kin to have a representative present to  
 4 witness the autopsy. If no adequate notice is given, the findings from  
 5 the autopsy may be suppressed on motion made to the board or to the  
 6 superior court, as the case may be.

7 \* Sec. 9. AS 23.30.105(a) is amended to read:  
*Sec 36 P 2b*

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

22 \* Sec. 10. AS 23.30.110(c) is amended to read:  
*Sec 40 P 30*

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

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

SEC 45 P33

\* Sec. 11. AS 23.30.155(j) is amended to read:

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

SEC 46 P33

\* Sec. 12. AS 23.30.155 is amended by adding new subsections to read:

12 (n) Compensation owed to an injured employee in the state shall be  
 13 paid by a check or draft that may be cashed on the first banking day  
 14 after it is received by the employee and on any succeeding banking day.

15 (o) If the board determines that it is in the interest of an  
 16 injured employee and that a substantial hardship will not be imposed on  
 17 the employer, the liability of the employer for all or part of compensa-  
 18 tion payable under AS 23.30.190 may be discharged by the payment of a  
 19 lump sum.

SEC 51 P36

\* Sec. 13. AS 23.30.175(b) is repealed and reenacted to read:

21 (b) After June 30 and before December 1 of each year, the commis-  
 22 sioner shall adopt and publish the average weekly wage for each jurisdic-  
 23 tion for the preceding calendar year as published by the United States  
 24 Secretary of Labor for the purposes of unemployment insurance. In  
 25 determining the rate of compensation the commissioner shall use the  
 26 average weekly wage figure for each jurisdiction, including Alaska, for  
 27 which the Secretary of Labor computes an average weekly wage. These  
 28 figures are the applicable average weekly wages for those jurisdictions  
 29 for the following calendar year.

Sec 52 P 36, 37

1 \* Sec. 14. AS 23.30.175(c) is repealed and reenacted to read:

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

4 (1) The weekly rate of compensation shall be calculated by  
5 multiplying the recipient's average weekly wage times the ratio of the  
6 average weekly wage of the jurisdiction in which the recipient resides  
7 to the average weekly wage of Alaska. The rate is based on the average  
8 weekly wages in effect when the recipient leaves Alaska and shall be  
9 adjusted annually upon publication of the average weekly wages for all  
10 jurisdictions.

11 (2) The calculation required by this subsection does not  
12 apply if the recipient is absent from Alaska for medical or rehabilita-  
13 tion services not reasonably available in Alaska.

14 (3) If the average weekly wage of the recipient and the  
15 resulting compensation rate is determined under AS 23.30.220(2) the  
16 calculation required by this subsection applies to only those wages  
17 earned in Alaska.

18 (4) Application of this subsection may not result in a reduc-  
19 tion of the weekly compensation rate to less than \$65 a week except as  
20 provided in (a) of this section.

21 \* Sec. 15. AS 23.30.175(d) is repealed and reenacted to read:

22 (d) In a jurisdiction for which no average weekly wage is computed  
23 by the United States Secretary of Labor for the purposes of unemployment  
24 insurance, the average weekly wage shall be as determined by the commis-  
25 sioner.

Sec 55 P 38, 39, 40

26 \* Sec. 16. AS 23.30.190(a)(20) is amended to read:

27 (20) in all other cases in this class of disability the  
28 compensation is  $66\frac{2}{3}$  percent of the difference between his average  
29 weekly wages and his wage-earning capacity after the injury in the same

1 employment or otherwise, payable during the continuance of the partial  
 2 disability, but subject to reconsideration of the degree of the impair-  
 3 ment by the board on its own motion or upon application of a party in  
 4 interest; [WHENEVER THE BOARD DETERMINES THAT IT IS IN THE INTEREST OF  
 5 JUSTICE, THE LIABILITY OF THE EMPLOYER FOR COMPENSATION, OR ANY PART OF  
 6 IT AS DETERMINED BY THE BOARD, MAY BE DISCHARGED BY THE PAYMENT OF A  
 7 LUMP SUM;]

*Sec 56 P40*

\* Sec. 17. AS 23.30.191 is repealed and reenacted to read:

8  
 9 Sec. 23.30.191. EXPENSES FOR REHABILITATING INJURED EMPLOYEES. An  
 10 employee, who, as a result of injury, is or may be expected to be totally  
 11 or partially incapacitated for his normal occupation and who, under the  
 12 direction of the board, is being rehabilitated to engage in a remunera-  
 13 tive occupation, may receive compensation necessary for his rehabilita-  
 14 tion of 66-2/3 percent of his average weekly wage subject to the maximum  
 15 payable under AS 23.30.175.

*Sec 58 P41*

\* Sec. 18. AS 23.30.215(a)(1) is amended to read:

16  
 17 (1) reasonable and necessary funeral expenses *and body transportation* not exceeding  
 18 ~~\$2,500~~ [\$1,000];

~~Sec. 19. AS 23.30.220(1)~~ is amended to read:

19  
 20 (2) the average weekly wage is [THAT MOST FAVORABLE TO THE  
 21 EMPLOYEE] calculated by dividing <sup>(156)</sup> 456 [52] into the total wages earned,  
 22 including self-employment, in the highest paid three consecutive years  
 23 out of [ANY ONE OF] the five [THREE] calendar years immediately preced-  
 24 ing the injury; *Sec 63 P43*

\* Sec. 20. AS 23.30.250 is amended to read:

25  
 26 Sec. 23.30.250. PENALTY FOR MISREPRESENTATION. A person who wil-  
 27 fully makes a false or misleading statement or representation for the  
 28 purpose of obtaining a benefit or payment under this chapter is guilty  
 29 of theft as defined in AS 11.46.100(3) and is punishable as provided in

1 AS 11.46.120 - 11.46.150 [A MISDEMEANOR, AND UPON CONVICTION IS PUNISH-  
 2 ABLE BY A FINE OF NOT MORE THAN \$1,000, OR BY IMPRISONMENT FOR NOT MORE  
 3 THAN ONE YEAR, OR BY BOTH].

4 \* Sec. 21. AS 23.30.265(16) is amended to read:

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

12 \* Sec. 22. AS 23.30.265(20) is amended to read:

13 (20) "wages" means the money rate at which the service ren-  
 14 dered is recompensed under the contract of hiring [IN FORCE AT THE TIME  
 15 OF THE INJURY,] and includes the reasonable value of board, rent,  
 16 housing, lodging, or similar advantage received from the employer, and  
 17 gratuities received in the course of employment from other [OTHERS] than  
 18 the employer;

19 \* Sec. 23. AS 23.30.265 is amended by adding new paragraphs to read:

20 (29) "benefits" means compensation and medical and related  
 21 benefits;

22 (30) "health care provider" means a chiropractor licensed  
 23 under AS 08.20; a dental hygienist licensed under AS 08.32; a dentist  
 24 licensed under AS 08.36; a nurse licensed under AS 08.68; a dispensing  
 25 optician licensed under AS 08.71; an optometrist licensed under AS 08.72;  
 26 a pharmacist licensed under AS 08.80; a physical therapist licensed  
 27 under AS 08.84; a physician licensed under AS 08.64; a podiatrist; a  
 28 psychologist and a psychological associate licensed under AS 08.86; and  
 29 a hospital as defined in AS 18.20.130, including a governmentally owned

1 or operated hospital; a corporate entity covered under AS 21.88.050-  
 2 (b)(12); an employee of a health care provider acting within the course  
 3 and scope of his employment; and persons comparably licensed in other  
 4 jurisdictions to provide health care;

5 (31) "in the course of employment" includes travel to and from  
 6 a remote job site but does not include activities outside of working  
 7 hours off a site provided by the employer that are not under the super-  
 8 vision or control of the employer.

9 \* Sec. 24. AS 23.30.095(g), 23.30.125(b), 23.30.175(e) and (f), and  
 10 23.30.225(b) are repealed. *Sec 72 P 41*  
*adjust to current red. statutes.*

11 \* Sec. 25. This Act takes effect July 1, 1982. *Sec 73 P 46*

*Amend from 1982*

## SIGN-IN SHEET

Name (please print)	Address	Representing	Testify? (YES or NO)	Phone Number
Eileen Blate	.	Dep. F. Labor	NO	465-2700
Jack Thompson	2216 Post Rd Anch 99501	WCCA / ACE		272 0506
DON KOCH	FOUCH D. JUNEAU 99803	DIV OF INSURANCE	NO OBSERVE ANSWER QUESTIONS	465-2577
Jim Robinson	Box 899 ANCH 99570	w/c - A.S.D.C. L.	Depends	276-1640
DON ROULEAU	Box 4-2653 <sup>ANCH.</sup> 99509	A.S.D.C. L.	NO	274-5464
Julie McCreath	P.O. Box 1149 JUNO	w/c DW.		465-2796
M C MORGAN	9170 GLACIERWOOD DR	DIV. VOC. REHAB	NO	586-6500
George Kruse	310 2nd St Juneau	AK State C of C	No	586-2323
James R. Wakefield	369 S. Franklin	Labourers Local # 942	NO	586-3880
Michael Thomas	Box 1211 Juneau AK	American Insurance Assn.	No	586 3340
Jean Kline		A.H.C		586-1741
Wileen		A.C.C.		
Dorothy Ward	134 W Franklin	ARCO	No	586-3680
Wes Coyner	3111 Douglas Hwy.	ANIC		586-7931
J. McHEAN	Box 1774 JUNO.	AK Ins. Assn.	No	

*call Jackie McClinton*

# WCCA NEWSLETTER

## HELPING ALL ALASKANS THRU A BETTER WORKERS COMPENSATION LAW

February 1982

WCCA has been involved with a joint effort of management and labor to correct some of the problems in HB159 now under consideration by the House Labor and Commerce Committee. Labor representatives include the AFL-CIO, District Council of Laborers, the Ironworkers, and the Teamsters. Management representatives of WCCA are from WIEN, Unit Construction, and Air Van Lines on the smaller joint labor-management subcommittee which meets nearly daily following the larger WCCA meeting which set direction on February 5, 1982.

While the area of workers' compensation is large and complex, the following five topics have been selected for detailed examination and hopefully consensus and legislative response in this session:

- ✱ Bunkhouse rule, which covers a worker at a remote site.
- ✱ No compensation payable to a worker injured while under the influence of intoxicating beverage or drugs not taken according to prescription direction.
- ✱ Determination of the wage base for setting compensation in an equitable manner for employee and employer (the average weekly wage setting process).
- ✱ Use of a spendable income approach in setting compensation to reduce disincentive to return to work due to higher compensation payments than net take-home pay. Iowa has addressed this issue.
- ✱ Establish a Vocational Rehabilitation monitoring capability within the Division of Workers' Compensation to obtain a quick response of all parties in a case involving rehabilitation. Guidelines for vocational rehabilitation services would be developed to assure a high quality of service.

Both labor and management representatives would like to have an expanded membership participation on the working committee and be able to address other aspects of workers' compensation in the future. These could include the use of modified work including union members and an examination of a wage loss system.

Due to the imminent legislative committee action, please contact one of the following board members with your ideas or concerns:

✱Richard Cattanach 349-4568

✱Jack Thompson 272-0536

**" OUR SUPPORT DEPENDS ON YOUR SUPPORT "**

LABOR/MANAGEMENT WORK DRAFT

FEBRUARY 13, 1982

Original Sponsor: Rules/Legislative Council

IN THE HOUSE

BY THE LABOR AND  
COMMERCE COMMITTEE

CS FOR HOUSE BILL NO. 159 (L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWELFTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to workers' compensation; and providing for an effective date."

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

\* Section 1. AS 23.30.025 is amended by adding a new subsection to read:

*Sec 2  
No Change*

(c) An insurer may issue a policy of insurance insuring the payment of benefits under this chapter which provides for a deductible amount to be paid by the employer. A policy with a deductible provision must be approved by the director of insurance and must provide that the deductible amount be paid by the insurer to the employee on behalf of the employer. After payment of the deductible by the insurer, the insurer may recover the deductible amount from the employer. The failure of an employer to reimburse an insurer for the deductible amount does not relieve the insurer from any other obligation it may have under the policy of insurance. An insurer is not required to apply for a deviation under AS 21.39.070 in order to issue a policy under this subsection. This subsection does not apply to a policy of excess insurance purchased by a self-insurer.

\* Sec. 2. AS 23.30.040(e) is repealed and reenacted to read:

*NEW*

(e) The board may authorize payment from the second injury fund of:

(1) up to \$200 per month for maintenance to an employee being rehabilitated under § 41 of this chapter who suffers an extreme financial hardship;

(2) rehabilitation expenses exclusive of costs for provider services and testing.

\* Sec. 3. LEGISLATIVE INTENT. It is the intent of the legislature that an injured worker receive rehabilitation services which enhance returning to work as quickly as possible at earnings as close as possible to his gross earnings at the time of the injury. The legislature recognizes five rehabilitation goals in a workers' compensation program:

- NEW*
- (1) Early identification of injured workers who will eventually need rehabilitation;
  - (2) Use of competent rehabilitation providers;
  - (3) Opportunities for return to direct employment;
  - (4) Maintaining an atmosphere conducive to rehabilitation;
  - (5) Providing incentives and removing disincentives to rehabilitation.

The Department of Labor shall adopt regulations in accordance with AS 23.30.005 to accomplish these goals.

*NEW*

\* Sec. 4. The board shall select and employ a rehabilitation administrator and may authorize the rehabilitation administrator to select and employ rehabilitation monitors.

*NEW*

\* Sec. 5. The rehabilitation administrator is a partially exempt service under AS 39.25.120. The monthly salary of the rehabilitation administrator is equal to Step A, Range 22 of the salary schedule in AS 39.27.011(a) for Anchorage.

\* Sec. 6 AS 23.30 is amended by adding a new section to read:

Sec. 23.30.041. REHABILITATION OF INJURED WORKERS. (a) The rehabilitation administrator shall implement the provisions of this section. The rehabilitation administrator shall continuously study the issue of rehabilitation, both physical and vocational, and shall investigate and maintain a directory of all qualified rehabilitation facilities, agencies, and providers, both public and private.

(b) When an employee suffers an injury covered by this chapter which precludes his return to suitable gainful employment, he shall be entitled to prompt rehabilitation services. The employer or carrier, at its own expense, shall provide for necessary and appropriate rehabilitation services. If rehabilitation services are not voluntarily offered, the rehabilitation

administrator, if he deems the services necessary and appropriate, may retain a rehabilitation provider at the expense of the employer or carrier.

(c) Rehabilitation services shall not exceed 37 weeks, provided, however, the rehabilitation services may be extended an additional 37 weeks if the rehabilitation administrator determines that special circumstances exist. Nothing in this subsection precludes an employer or carrier from providing rehabilitation services beyond such period on a voluntary basis. Where rehabilitation requires residence at or near a facility or institution, away from the employee's customary residence, reasonable cost of board, lodging and travel shall be paid by the employer.

(d) Temporary disability benefits paid pursuant to §§ 185 or 200 of this chapter shall include such period as may be reasonably required for training in the use of artificial members and appliances, and shall be paid throughout the rehabilitation process.

(e) The rehabilitation provider shall file a plan for approval with the rehabilitation administrator in accordance with board regulations. Within ten (10) days of the rehabilitation administrator's decision any party may seek review of the decision by requesting a hearing in accordance with § 110 of this chapter. A decision by the rehabilitation administrator is presumed valid absent a showing of clear error.

(f) Refusal by an injured employee to participate in an evaluation or a plan approved by the rehabilitation administrator shall result in a forfeiture of disability compensation for the period such refusal persists. However, if an employee commences participation in an evaluation or plan of rehabilitation within two months from the date of such refusal, and successfully completes such rehabilitation plan or evaluation by becoming employed for a period of thirty consecutive business days following the completion of the rehabilitation program, he shall receive a lump sum payment of 25% of the compensation forfeited by him. Such lump sum payment is available only once to an employee refusing rehabilitation. The rehabilitation administrator may find that an employee refuses to participate in an evaluation or vocational plan if, the employee fails to cooperate with the rehabilitation provider, or if the employee, or anyone acting on the employee's behalf, interferes with the rehabilitation process.

\* Sec. 7. AS 23.30.045 (a) is amended to read:

(a) An employer is liable for and shall secure the payment to his employees of the compensation payable under §§ 41, 50, 95, 145, and 180 - 215 of this chapter. If the employer is a subcontractor, the contractor is liable for and shall secure the payment of the compensation to employees of the subcontractor unless the subcontractor secures the payment.

\* Sec. 8. AS 23.30.045 (c) is amended to read:

? (c) For a person eligible for vocational rehabilitation service under this chapter or AS 23.15.080 [AND] who is placed with an employer for service [WITHOUT WAGES] at the request of the board or the division [OFFICE] of vocational rehabilitation to give him on the job training, work readiness, [OR] work therapy experience [,] or work sampling, the liability set out in (a) of this section applies to the state rather than to the employer.

\* Sec. 9. AS 23.30.080 is amended by adding a new subsection to read:

(d) If an employer fails to insure or provide security as required by AS 23.30.075, the board <sup>shall</sup> may issue a stop order prohibiting the use of employee labor by the employer until the employer insures or provides security as required by AS 23.30.075. [The failure of an employer to file evidence of compliance as required by AS 23.30.085 shall create a rebuttable presumption that the employer has failed to insure or provide security as required by AS 23.30.075.] If an employer fails to comply with a stop order issued under this section, the board shall assess a civil penalty of \$1,000 per day. The employer may not obtain a public contract with the state or any of its political subdivisions for three years following the violation of the stop order.

\* Sec. 10. AS 23.30.095(e) is amended to read:

(e) The employee shall, after an injury, at reasonable times during the continuance of his disability if requested by his employer or, when ordered by the board, submit himself to an examination by a physician or surgeon authorized to practice medicine under the laws of the state in which the employee may be found, furnished and paid for by the employer. [THE EMPLOYEE HAS THE RIGHT TO HAVE A PHYSICIAN, PAID FOR BY THE EMPLOYER, PRESENT AT THE EXAMINATION OR

EXAMINATIONS.] No fact relative to the injury or claim communicated to or otherwise learned by physician or surgeon who may have attended or examined the employee, or who may have been present at an examination is privileged, either in the hearings provided for in this chapter or an action to recover damages against an employer who is subject to the compensation provisions of this chapter. If an employee refuses to submit himself to any examination provided for in this section [HEREIN], his rights to compensation shall be suspended until the obstruction or refusal ceases, and his compensation during the period of suspension may, in the discretion of the board or the court determining an action brought for the recovery of damages under this chapter [HEREUNDER], be forfeited. The board in any case of death may require an autopsy at the expense of the party requesting the autopsy. No autopsy may be held without notice first being given to the widow or widower or next of kin if they reside in the state or their whereabouts can be reasonably ascertained, of the time and place of the autopsy and reasonable time and opportunity given the widow or widower or next of kin to have a representative present to witness the autopsy. If no adequate notice is given, the findings from the autopsy may be suppressed on motion made to the board or to the superior court, as the case may be.

\* Sec. 11. AS 23.30.095 is amended by adding a new section to read:

(j) the board shall adopt and use a schedule for determining the existence and degree of permanent impairment based upon medically or scientifically demonstrable findings.

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

AS 23.30.097. RELEASE OF INFORMATION. Upon request the employee shall provide written authority to the employer, carrier, rehabilitation provider and rehabilitation administrator to obtain medical and rehabilitation information relative to his injury.

\* Sec. 13. AS 23.30.<sup>100</sup>~~105~~(d)(2) is amended to read:

2. If the board excuses the failure on the ground that for some satisfactory reason notice could not be given; however, when the delay in giving notice is so excused, notwithstanding the provisions of AS 23.30.120, the burden of proof as to the validity of the claim shall shift to the employee;

\* Sec. 14. AS 23.30.110(c) is amended to read:

(c) The board shall make the investigation which it considers necessary with [IN] respect to [OF] the claim, and upon application of an interested party shall provide an opportunity for [ORDER] a hearing on it. If a hearing on a claim is ordered, the board shall give the claimant and other interested parties at least 10 days' notice of hearing, served personally upon the claimant and other interested parties or sent by registered mail, and shall, within 30 [20] days after the hearing record closes [IS HAD], by order, reject the claim or make an award in respect to it. If a hearing is continued by the board, additional notice under this subsection is not required. [IF NO HEARING IS ORDERED WITHIN 20 DAYS AFTER NOTICE IS GIVEN AS PROVIDED IN (b) OF THIS SECTION, THE BOARD SHALL BY ORDER REJECT THE CLAIM OR MAKE AN AWARD IN RESPECT TO IT.]

\* Sec. 15. AS 23.30.120(3) is amended to read:

(3) The injury was not proximately caused by the employee being under the influence of an intoxicating liquor or drugs [OCCASIONED SOLELY BY THE INTOXICATION OF THE INJURED EMPLOYEE];

\* Sec. 16. AS 23.30 is amended by adding a new section to read:

Sec. 23.30.122. CREDIBILITY OF WITNESSES. The board has the sole power to determine the credibility of a witness. A finding by the board concerning the weight to be accorded any witnesses testimony, including medical testimony and reports, is conclusive even though the evidence is conflicting or susceptible to contrary conclusions. The findings of the board shall be subject to the same standard of review as a jury's finding in a civil action.

\* Sec. 17. AS 23.30.155(j) is amended to read:

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

\* Sec. 18. AS 23.30.155 is amended by adding new subsection to read:

(n) If the board determines that it is in the interest of an injured employee, and the parties agree, the liability of the employer for all or part of compensation payable under AS 23.30.190 <sup>(a)(1)-(17)</sup> may be discharged by the payment of a lump sum.

\* Sec. 19. AS 23.30.175(a) is amended to read:

(a) The weekly rate of compensation for disability or death for a recipient residing in Alaska may not exceed the percentage of the Alaska average weekly wage in effect on the date of injury as determined by the table contained in this subsection and initially may not be less than \$110 [65] a week. However, if the board determines that the employee's spendable [AVERAGE] weekly wages are less than \$110 [65] a week as computed under § 220 of this chapter, it shall issue an order decreasing the weekly rate of compensation to a rate equal to the employee's spendable [AVERAGE] weekly wages, and payments made earlier in excess of the decreased rate shall be deducted from the unpaid compensation in the manner the board determines. In any case, the employer shall pay timely compensation.

On	The Rate Shall Be
July 1, 1975	80% of the Alaska Average Weekly Wage
January 1, 1976	100% of the Alaska Average Weekly Wage
January 1, 1977	133.3% of the Alaska Average Weekly Wage
January 1, 1979	166.6% of the Alaska Average Weekly Wage
January -, 1981	200% of the Alaska Average Weekly Wage

\* Sec. 20. AS 23.30.175(b) is repealed and reenacted to read:

(b) After June 30 and before December 1 of each year, the commissioner shall adopt and publish the average weekly wage for each jurisdiction for the preceding calendar year as published by the United States Secretary of Labor for the purposes of unemployment insurance. In determining the rate of compensation the commissioner shall use the average weekly wage figure for each jurisdiction, including Alaska, for which the Secretary of Labor computes an average weekly wage. These figures are the applicable average weekly wages for those jurisdictions for the following calendar year.

\* Sec. 21. AS 23.30.175(c) is repealed and reenacted to read:

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

(1) The weekly rate of compensation shall be calculated by multiplying the recipient's weekly compensation rate calculated in accordance with § 180, 185, 190, 200 or 215 of this chapter times the ratio of the average weekly wage of the jurisdiction in which the recipient resides to the average weekly wage of Alaska. The rate is based on the average weekly wages in effect when the recipient leaves Alaska and shall be adjusted annually upon publication of the average weekly wages for all jurisdictions.

(2) The calculation required by this subsection does not apply if the recipient is absent from Alaska for medical or rehabilitation services not reasonably available in Alaska.

(3) If the spendable weekly wage of the recipient and the resulting compensation rate is determined under AS 23.30.220(2) the calculation required by this subsection applies to only those gross earnings earned in Alaska.

(4) Application of this subsection may not result in a reduction of the weekly compensation rate to less than \$110 a week except as provided in (a) of this section.

\* Sec. 22. AS 23.30.175(d) is repealed and reenacted to read:

(d) In a jurisdiction for which no average weekly wage is computed by the United States Secretary of Labor for the purposes of unemployment insurance, the average weekly wage shall be as determined by the commissioner.

\* Sec. 23. AS 23.30.180 is amended to read:

Sec. 23.30.180. PERMANENT TOTAL DISABILITY. In case of total disability adjudged to be permanent 80 [66-2/3] per cent of the injured employee's spendable [AVERAGE] weekly wages shall be paid to the employee during the continuance of the total disability. Loss of both hands, or both arms, or both feet, or both legs, or both eyes, or of any two of them, in the absence of conclusive proof to the contrary, constitutes permanent total disability. In all other cases permanent total disability is determined in accordance with the facts.

\* Sec. 24. AS 23.30.185 is amended to read:

Sec. 23.30.185. COMPENSATION FOR TEMPORARY TOTAL DISABILITY. In case of disability total in character but temporary in quality 80 [66-2/3] per cent of the injured employee's spendable [AVERAGE] weekly wages shall be paid to the employee during the continuance of the disability.

\* Sec. 25. AS 23.30.190 is amended to read:

Sec. 23.30.190. COMPENSATION FOR PERMANENT PARTIAL DISABILITY. (a) In case of disability partial in character but permanent in quality the compensation is 80 [66-2/3] per cent of the injured employee's spendable [AVERAGE] weekly wages in addition to compensation for temporary total disability or temporary partial disability paid in accordance with §§ 185 or 200 of this chapter, respectively, and shall be paid to the employee as follows:

- (1) arm lost, 280 weeks compensation, not to exceed \$59,000 [\$43,680];
- (2) leg lost, 248 weeks compensation, not to exceed \$54,400 [\$40,320];
- (3) hand lost, 212 weeks compensation, not to exceed 45,400 [\$33,600];
- (4) foot lost, 173 weeks compensation, not to exceed 39,700 [\$28,700];
- (5) eye lost, 140 weeks compensation, not to exceed \$30,200 [\$22,400];
- (6) thumb lost, 51 weeks compensation, not to exceed \$14,000 [\$10,400];
- (7) first finger lost, 28 weeks compensation, not to exceed \$8,700 [\$6,440];
- (8) great toe lost, 26 weeks compensation, not to exceed \$7,200 [\$5,320];
- (9) second finger lost, 18 weeks compensation, not to exceed \$5,700 [\$4,200]; third finger lost, 18 weeks compensation, not to exceed \$4,700 [\$3,500];
- (10) toe other than great toe lost, 8 weeks compensation, not to exceed \$3,000 [\$2,240];
- (11) fourth finger lost, 7 weeks compensation, not to exceed <sup>2,80</sup>~~\$2,000~~ [\$2,100];

- (12) loss of hearing of one ear, 52 weeks compensation, not exceeding \$9,800 [\$7,280]: loss of hearing of both ears, 200 weeks compensation, not to exceed \$37,800 [\$28,000] No benefit is payable for loss of hearing above 3,000 cycles per second;
- (13) compensation for loss of more than one phalange of a digit shall be the same as for loss of the entire digit; compensation for loss of the first phalange is one-half of the compensation for loss of the entire digit;
- (14) amputation between the elbow and the wrist is considered equivalent to the loss of an arm, and amputation between the knee and ankle is considered equivalent to the loss of a leg;
- (15) compensation for loss of binocular vision or for 80 per cent or more of the vision of an eye is the same as for loss of the eye;
- (16) compensation for loss of two or more digits, or one or more phalanges of two or more digits of a hand or foot may be proportioned to the resulting loss of use of the injured hand or foot, but may not exceed the compensation for loss of a hand or foot;
- (17) compensation for permanent total loss of use of a member is the same as for loss of the member;
- (18) compensation for permanent partial loss or loss of use of a member may be for proportionate loss or loss of use of the member;
- (19) in addition to other allowable compensation, the board shall award proper and equitable compensation up to \$10,000 for
- (A) serious disfigurement of face, head and, when such disfigurement is likely to handicap the employee in securing or holding employment, for serious disfigurement of neck or limbs normally exposed, or
- (B) partial or total loss of or loss of use of a part or function of the body not otherwise provided for under this section;
- (20) in all other cases in this class of disability the compensation is 80 [66-2/3] per cent of the difference between his spendable [AVERAGE] weekly wages and his wage-earning capacity after the injury in the same employment or otherwise, payable during the continuance of the partial disability, but subject to modification [RECONSIDERATION OF THE DEGREE OF THE IMPAIRMENT] by the board on its own motion or upon application of a party in interest; Whenever the board determines that it is in the interest of justice, the liability of the employer for compensation, or any part if it as determined by the board, may be discharged by the payment of a lump sum;
- (21) in a case in which there is a loss of, or loss of use of more than one member or parts of more than one member set out in (1) - (18) of this section, not amounting to permanent total disability, the award of compensation is for the loss of, or loss of use of, each member or part of the member, which awards shall run consecutively, except that where the injury affects only two or more digits of the same hand or foot, (16) of this section applies.
- (b) Total compensation paid under (a)(20) of this section may not exceed \$75,000 [60,000].

\* Sec. 26. AS 23.30.200 is amended to read:

Sec. 23.30.200. TEMPORARY PARTIAL DISABILITY. In case of temporary partial disability resulting in decrease of earning capacity the compensation shall be 80 [66-2/3] per cent of the difference between the injured employee's spendable [AVERAGE] weekly wages before the injury and his wage earning capacity after the injury in the same or another employment, to be paid during the continuance of the disability, but not to be paid for more than five years.

\* Sec. 27. AS 23.30.210 is amended to read:

Sec. 23.30.210. DETERMINATION OF WAGE-EARNING CAPACITY. (a) In a case of partial disability under § 190(20) or 200 of this chapter the wage-earning capacity of an injured employee is determined by his actual spendable weekly wage [EARNINGS] if the actual spendable weekly wage [EARNINGS] fairly and reasonably represents his wage-earning capacity. If the employee has no actual spendable weekly wage [EARNINGS] or his actual spendable weekly wage [EARNINGS] does not fairly and reasonably represent his wage-earning capacity, the board may, in the interest of justice, fix the wage-earning capacity which is reasonable, having due regard to the nature of his injury, the degree of physical impairment, his usual employment, and any other factors or circumstances in the case which may affect his capacity to earn wages in his disabled condition, including the effect of disability as it may naturally extend into the future.

\* Sec. 28. AS 23.30.215(a) is amended to read:

(a) If the injury causes death, the compensation is known as a death benefit and is payable in the following amounts to and for the benefit of the following persons:

(1) reasonable and necessary funeral expenses not exceeding \$2,500 [\$1,000];

(2) if there is a widow or widower or a child or children of the deceased, the following percentages of the spendable [AVERAGE] weekly wages of the deceased:

(A) 80 [66-2/3] per cent for the widow or widower with no children;

(B) 40 [33-1/3] per cent for the widow or widower with one child and 40 [33-1/3] per cent for the child;

- (C)  $\frac{25}{55}$  [20] per cent for the widow or widower with two or more children and  $\frac{55}{55}$  [46-2/3] per cent divided equally among the children'
- (D) [deleted]
- (E)  $\frac{80}{55}$  [66-2/3] per cent for an only child when there is no widow or widower;
- (F) [deleted]
- (G)  $\frac{80}{55}$  [66-23/] per cent, divided equally, if there are two more more children and no widow or widower:

(3) if the widow or widower remarries, she or he is entitled to be paid in one sum an amount equal to the compensation to which the widow or widower would otherwise be entitled in the two years commencing on the date of remarriage as full and final settlement of all sums due the widow or widower;

(4) if there is no widow or widower or child or children, then for the support of father, mother, grandchildren, brothers, and sisters, if dependent upon the deceased at the time of injury,  $\frac{40}{55}$  [35] per cent of the spendable [AVERAGE] weekly wage of the deceased to such beneficiaries, share and share alike, not to exceed \$20,000 in the aggregate.

\* Sec. 29. AS 23.30.215(b) is amended to read:

(b) In computing death benefits, the spendable [AVERAGE] weekly wage of the deceased shall be computed under § 220 of this chapter and shall be paid in accordance with § 155 of this chapter and subject to the weekly maximum limitation in the aggregate as provided in § 175 of this chapter, but the total weekly compensation may not be less than  $\frac{75}{55}$  [45] for a widow or widower nor less than  $\frac{25}{55}$  [15] weekly to a child or  $\frac{50}{55}$  [30] for children.

\* Sec. 30. AS 23.30.220 is repealed and reenacted to read:

Sec. 23.30.220 DETERMINATION OF SPENDABLE WEEKLY WAGE. Except as otherwise provided in this chapter, the spendable weekly wage of the injured employee at the time of the injury is the basis for computing compensation, and shall be the employee's gross weekly earnings minus payroll tax deductions. The gross weekly earnings shall be calculated as follows:

(1) if at the time of the injury the employee has been in the gainful employ of the employer for the full reporting quarter immediately preceding the time of injury, the gross weekly earnings shall be computed by dividing by thirteen the gross earnings said employee earned in the employ of the employer in that reporting quarter.

(2) if at the time of the injury the employee has not been in the employ of the employer for the full reporting quarter immediately preceding the time of injury, the gross weekly earnings shall be computed by dividing 100 into the gross earnings of the employee in the two calendar years immediately preceding the injury.

(3) if the board determines that the gross weekly earnings at the time of the injury cannot be fairly calculated under (1) or (2) of this section, or cannot otherwise be ascertained without undue hardship to the employee, the gross weekly earnings for calculating compensation shall be the usual gross earnings for similar service rendered by paid employees under similar circumstances as determined by the board;

(4) if an employee is a minor or an apprentice, or a trainee, as determined by the board, when injured, and under normal conditions his wages would increase during the period of disability, this fact may be considered by the board in computing his gross weekly earnings;

(5) if the employee is injured while performing his duties as a volunteer ambulance attendant, policeman or fireman, the gross weekly earnings calculating compensation shall be the minimum gross weekly earnings paid a full-time ambulance attendant, policeman or fireman employed, at a reasonable figure previously set by the subdivision to make this determination and in no case may the gross weekly earnings for calculating compensation be less than the minimum wage computed on the basis of 40 hours work per week.

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

Sec. 23.30.227. OTHER BENEFITS. No compensation shall be payable to an employee under §§ 180 or 185 of this chapter for any week in which the employee receives unemployment benefits (AS 23.20).

\* Sec. 32. AS 23.30.235 is repealed and reenacted to read:

Sec. 23.30.235 CASES IN WHICH NO COMPENSATION IS PAYABLE. No compensation under this chapter shall be allowed for an injury:

(1) proximately caused by the employee's willful intent to injure himself or to willfully injure another;

(2) proximately caused by the employee being under the influence of an intoxicating liquor or drugs unless such drugs are being taken in quantities prescribed by employee's physician.

\* Sec. 33. AS 23.30.250 is amended to read:

Sec. 23.30.250. PENALTY FOR MISREPRESENTATION. A person who willfully makes a false or misleading statement or representation for the purpose of obtaining a benefit or payment under this chapter is guilty of theft as defined in AS 11.46.100(3) and is punishable as provided in AS 11.46.120 - 11.46.150 [A MISDEMEANOR, AND 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].

\* Sec. 34. The board shall publish Sections 32 and 33 of this Act in a booklet defining the employee's rights and obligations under the Alaska Workers Compensation Act. The booklet shall be mailed to an injured worker upon notice of an injury.

\* Sec. 35. AS 23.30.265 is amended by adding new paragraphs to read:

(29) "arising out of and in the course of employment" includes employer required or supplied travel to and from a remote job site; activities performed at the direction or under the control of the employer; and employer sanctioned activities at employer provided facilities; but excludes activities of a personal nature away from employer provided facilities.

(30) "under the influence of an intoxicating liquor or drugs" means not only all well-known and easily recognized conditions and degrees of intoxication, but any abnormal mental or physical condition which is the result of indulging intoxicating liquors or drugs, and which, to an appreciable degree, deprives one of that clearness of intellect and control of himself which he would otherwise possess.

(31) "drugs" means a controlled substance or cannabis as further defined in AS. 11.81.900.

(32) "gross earnings" means recurring payments by employer to the employee for employment before any authorized or lawfully required deduction or withholding of funds by the employer, excluding irregular bonuses, reimbursement of expenses, expense allowances, and any benefit or payment to the employee which is not taxable to the employee during the pay period. The value of room and board to the employee may be considered in determining gross earnings for those employees with gross weekly earnings which are less than the Alaska average weekly wage at the time of injury.

(33) "payroll taxes" means the following:

(a) An amount equal to the amount which would be withheld pursuant to withholding tables in effect on July 1 preceding the injury under the Internal Revenue Code of 1954, and regulations pursuant thereto, as amended, as though the employee had elected to claim the maximum number of dependants for actual dependency, blindness and old age to which the employee is entitled on the date on which he was injured; and,

(b) An amount equal to the amount required on July 1 preceding the injury by the Social Security Act of 1935 as amended to be deducted or withheld from the amount of earnings of the employee at the time of the injury as if the earnings were earned at the beginning of the calendar year in which he was injured; and,

(c) And any other legislative mandated deductions including but not limited to ESC and FUTA;

(d) The Commissioner shall annually prepare formulas which shall be used to calculate an employee's spendable weekly wage on the basis of his gross weekly earnings, number of dependants, marital status and payroll tax deductions.

(34) "reporting quarter" means one of the 3 month periods (January through March, April through June, July through September, October through December) used to report employee wages to the Internal Revenue Service.

(35) "Suitable Gainful Employment" means employment which is reasonably attainable in light of the individuals age, education, previous occupation, and injury, and which offers an opportunity to restore the individual as soon as practical and as nearly as possible to his gross earnings as determined at the time of injury.

\* Sec. 36. AS 23.30.095(g), 23.30.125(b), 23.30.175(e) and (f), AS 23.30.191 and AS 23.30.265(20) are repealed.

\* Sec. 37. AS 39.25.120 is amended by adding a new paragraph to read:

(20) the rehabilitation administrator of the Workers' Compensation Board.

\* Sec. 38. This act takes effect July 1, 1982.

See Jacobs on B. Dresser's  
concern of 55¢ payment etc.  
separate amendment.

Make sure drafter copy has  
typo corrections.

LABOR/MANAGEMENT WORK DRAFT

Bill Beer

FEBRUARY 13, 1982

3867  
3868

Original Sponsor: Rules/Legislative Council

IN THE HOUSE *accept in concept.*

BY THE LABOR AND  
COMMERCE COMMITTEE

*Fiscal note*

CS FOR HOUSE BILL NO. 159 (L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWELFTH LEGISLATURE - SECOND SESSION

A BILL

*#320,000*

*4 - Staff  
1 Aud - 1 Trk  
Travel monies*

For an Act entitled: "An Act relating to workers' compensation; and providing for an effective date."

*reprint booklet  
computer update*

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

*\* Should be on Title 21 - Insurance Code*

*Estimate of Savings -*

\* Section 1. AS 23.30.025 is amended by adding a new subsection to read:

*this in substance is already being done.*

*present in  
1/25/82*

(c) An insurer may issue a policy of insurance insuring the payment of benefits under this chapter which provides for a deductible amount to be paid by the employer. A policy with a deductible provision must be approved by the director of insurance and must provide that the deductible amount be paid by the insurer to the employee on behalf of the employer. After payment of the deductible by the insurer, the insurer may recover the deductible amount from the employer. *Be very careful of this* The failure of an employer to reimburse an insurer for the deductible amount does not relieve the insurer from any other obligation it may have under the policy of insurance. An insurer is not required to apply for a deviation under AS 21.39.070 *maybe 659* in order to issue a policy under this subsection. This subsection does not apply to a policy of excess insurance purchased by a self-insurer.

\* Sec. 2. AS 23.30.040(e) is repealed and reenacted to read:

(e) The board may authorize payment from the second injury fund of:

*OK in addition to T.T.P.*

(1) up to \$200 per month for maintenance to an employee being rehabilitated under § 41 of this chapter who suffers an extreme financial hardship;

(2) rehabilitation expenses exclusive of costs for provider services and testing.

*1) What type of deductibles should be enforced?*

*Leave for special Letter of Intent*  
\*

20 \* Sec. 3. LEGISLATIVE INTENT. It is the intent of the legislature that an injured worker receive rehabilitation services which enhance returning to work as quickly as possible at earnings as close as possible to his gross earnings at the time of the injury. The legislature recognizes five rehabilitation goals in a workers' compensation program:

- (1) Early identification of injured workers who will eventually need rehabilitation;
- (2) Use of competent rehabilitation providers;
- (3) Opportunities for return to direct employment;
- \* (4) Maintaining an atmosphere conducive to rehabilitation;
- (5) Providing incentives and removing disincentives to rehabilitation.

The Department of Labor shall adopt regulations in accordance with AS 23.30.005 to accomplish these goals. *List responsibilities - Reg 4/5 Leg*

*Zee Jackson report*  
\* Sec. 4. The board shall select and employ a rehabilitation administrator and may authorize the rehabilitation administrator to select and employ rehabilitation monitors. *5% of cost total 20% of cost*

*Zee Jackson report*  
Sec. 5. The rehabilitation administrator is a partially exempt service under AS 39.25.120. The monthly salary of the rehabilitation administrator is equal to Step A, Range 22 of the salary schedule in AS 39.27.011(a) for Anchorage. *by region of residence*

\* Sec. 6 AS 23.30 is amended by adding a new section to read:

*Zee Jackson report*  
Sec. 23.30.041. REHABILITATION OF INJURED WORKERS. (a) The rehabilitation administrator shall implement the provisions of this section. The rehabilitation administrator shall continuously study the issue of rehabilitation, both physical and vocational, and shall investigate and maintain a directory of all qualified rehabilitation facilities, agencies, and providers, both public and private.

(b) When an employee suffers an injury covered by this chapter which precludes his return to suitable gainful employment, he shall be entitled to prompt rehabilitation services. The employer or carrier, at its own expense, shall provide for necessary and appropriate rehabilitation services. If rehabilitation services are not voluntarily offered, the rehabilitation

administrator, if he deems the services necessary and appropriate, may retain a rehabilitation provider at the expense of the employer or carrier.

*Vocational*  
(c) Rehabilitation services shall not exceed 37 weeks, provided, however, the rehabilitation services may be extended an additional 37 weeks if the rehabilitation administrator determines that special circumstances exist.

Nothing in this subsection precludes an employer or carrier from providing rehabilitation services beyond such period on a voluntary basis. Where rehabilitation requires residence at or near a facility or institution, away from the employee's customary residence, reasonable cost of board, lodging and travel shall be paid by the employer.

(d) Temporary disability benefits paid pursuant to §§ 185 or 200 of this chapter shall include such period as may be reasonably required for training in the use of artificial members and appliances, and shall be paid throughout the rehabilitation process.

(e) The rehabilitation provider shall file a plan for approval with the rehabilitation administrator in accordance with board regulations. Within ten (10) days of the rehabilitation administrator's decision any party may seek review of the decision by requesting a hearing in accordance with § 110 of this chapter. A decision by the rehabilitation administrator is presumed valid absent a showing of clear error.

(f) Refusal by an injured employee to participate in an evaluation or a plan approved by the rehabilitation administrator shall result in a forfeiture of disability compensation for the period such refusal persists. However, if an employee commences participation in an evaluation or plan of rehabilitation within two months from the date of such refusal, and successfully completes such rehabilitation plan or evaluation by becoming employed for a period of thirty consecutive business days following the completion of the rehabilitation program, he shall receive a lump sum payment of 25% of the compensation forfeited by him. Such lump sum payment is available only once to an employee refusing rehabilitation. The rehabilitation administrator may find that an employee refuses to participate in an evaluation or vocational plan if, the employee fails to cooperate with the rehabilitation provider, or if the employee, or anyone acting on the employee's behalf, interferes with the rehabilitation process.

\* Sec. 7. AS 23.30.045 (a) is amended to read:

(a) An employer is liable for and shall secure the payment to his employees of the compensation payable under §§ 41, 50, 95, 145, and 180 - 215 of this chapter. If the employer is a subcontractor, the contractor is liable for and shall secure the payment of the compensation to employees of the subcontractor unless the subcontractor secures the payment.

\* Sec. 8. AS 23.30.045 (c) is amended to read:

*prov-159*  
(c) For a person eligible for vocational rehabilitation service under this chapter or AS 23.15.080 [AND] who is placed with an employer for service [WITHOUT WAGES] at the request of the board or the division [OFFICE] of vocational rehabilitation to give him on the job training, work readiness, [OR] work therapy experience [,] or work sampling, the liability set out in (a) of this section applies to the state rather than to the employer.

\* Sec. 9. AS 23.30.080 is amended by adding a new subsection to read:

*prov 159*  
(d) If an employer fails to insure or provide security as required by AS 23.30.075, the board <sup>shall</sup> ~~may~~ issue a stop order prohibiting the use of employee labor by the employer until the employer insures or provides security as required by AS 23.30.075. The failure of an employer to file evidence of compliance as required by AS 23.30.085 shall create a rebuttable presumption that the employer has failed to insure or provide security as required by AS 23.30.075. If an employer fails to comply with a stop order issued under this section, the board shall assess a civil penalty of \$1,000 per day. The employer may not obtain a public contract with the state or any of its political subdivisions for three years following the violation of the stop order.

*x insert prov. Sec. 7 of 159*

\* Sec. 10. AS 23.30.095(e) is amended to read:

*prov sec. 8*  
(e) The employee shall, after an injury, at reasonable times during the continuance of his disability if requested by his employer or, when ordered by the board, submit himself to an examination by a physician or surgeon authorized to practice medicine under the laws of the state in which the employee may be found, furnished and paid for by the employer. [THE EMPLOYEE HAS THE RIGHT TO HAVE A PHYSICIAN, PAID FOR BY THE EMPLOYER, PRESENT AT THE EXAMINATION OR

EXAMINATIONS.] No fact relative to the injury or claim communicated to or otherwise learned by physician or surgeon who may have attended or examined the employee, or who may have been present at an examination is privileged, either in the hearings provided for in this chapter or an action to recover damages against an employer who is subject to the compensation provisions of this chapter. If an employee refuses to submit himself to any examination provided for in this section [HEREIN], his rights to compensation shall be suspended until the obstruction or refusal ceases, and his compensation during the period of suspension may, in the discretion of the board or the court determining an action brought for the recovery of damages under this chapter [HEREUNDER], be forfeited. The board in any case of death may require an autopsy at the expense of the party requesting the autopsy. No autopsy may be held without notice first being given to the widow or widower or next of kin if they reside in the state or their whereabouts can be reasonably ascertained, of the time and place of the autopsy and reasonable time and opportunity given the widow or widower or next of kin to have a representative present to witness the autopsy. If no adequate notice is given, the findings from the autopsy may be suppressed on motion made to the board or to the superior court, as the case may be.

*new - maybe needs diff. language*

\* Sec. 11. AS 23.30.095 is amended by adding a new section to read:

(j) the board shall adopt and use a schedule for determining the existence and degree of permanent impairment based upon medically or scientifically demonstrable findings. *consistent with Am. Med. Assn. Guidelines*

*new sec.*

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

AS 23.30.097. RELEASE OF INFORMATION. Upon request the employee shall provide written authority to the employer, carrier, rehabilitation provider and rehabilitation administrator to obtain medical and rehabilitation information relative to his injury. *? → clarify to claimant employers.*

\* Sec. 13. AS 23.30.<sup>100</sup>~~105~~(d)(2) is amended to read:

2. If the board excuses the failure on the ground that for some satisfactory reason notice could not be given; however, when the delay in giving notice is so excused, notwithstanding the provisions of AS 23.30.120, the burden of proof as to the validity of the claim shall shift to the employee;

*Be sure that there is proof that employers shows he has received claim of injury from Employee.*

from Gov's bill  
Sec. 14. AS 23.30.110(c) is amended to read:

*Sec. 10 of recent draft*

(c) The board shall make the investigation which it considers necessary with [IN] respect to [OF] the claim, and upon application of an interested party shall provide an opportunity for [ORDER] a hearing on it. If a hearing on a claim is ordered, the board shall give the claimant and other interested parties at least 10 days' notice of hearing, served personally upon the claimant and other interested parties or sent by registered mail, and shall, within 30 [20] days after the hearing record closes [IS HAD], by order, reject the claim or make an award in respect to it. if a hearing is continued by the board, additional notice under this subsection is not required. [IF NO HEARING IS ORDERED WITHIN 20 DAYS AFTER NOTICE IS GIVEN AS PROVIDED IN (b) OF THIS SECTION, THE BOARD SHALL BY ORDER REJECT THE CLAIM OR MAKE AN AWARD IN RESPECT TO IT.]

\* Sec. 15. AS 23.30.120(3) is amended to read:

*AS 23.30.275*  
(3) The injury was not proximately caused by the employee being under the influence of an intoxicating liquor or drugs [OCCASIONED SOLELY BY THE INTOXICATION OF THE INJURED EMPLOYEE];

\* Sec. 16. AS 23.30 is amended by adding a new section to read:

Sec. 23.30.122. CREDIBILITY OF WITNESSES. The board has the sole power to determine the credibility of a witness. A finding by the board concerning the weight to be accorded any witnesses testimony, including medical testimony and reports, is conclusive even though the evidence is conflicting or susceptible to contrary conclusions. The findings of the board shall be subject to the same standard of review as a jury's finding in a civil action.

*Gov's Bill*  
*prev. Sec. 11*

\* Sec. 17. AS 23.30.155(j) is amended to read:

(j) If an employer has made advance payments or overpayments of compensation, he is entitled to be reimbursed, <sup>23 maybe consider deleting -</sup> after approval by the board <sup>off set is subsequent payments</sup> out of any unpaid installments or installments of compensation due.

\* Sec. 18. AS 23.30.155 is amended by adding new subsection to read:

*Gov's Bill*  
*Index?* (n) If the board determines that it is in the interest of an injured employee, and the parties agree, the liability of the employer for all or part of compensation payable under AS 23.30.190 <sup>(a)(1)-(19)</sup> may be discharged by the payment of a lump sum.

*Consider for HB659*

\* Sec. 19. AS 23.30.175(a) is amended to read:

(a) The weekly rate of compensation for disability or death for a recipient residing in Alaska may not exceed the percentage of the Alaska average weekly wage in effect on the date of injury as determined by the table contained in this subsection and initially may not be less than \$110 [65] a week. However, if the board determines that the employee's spendable [AVERAGE] weekly wages are less than \$110 [65] a week as computed under § 220 of this chapter, it shall issue an order decreasing the weekly rate of compensation to a rate equal to the employee's spendable [AVERAGE] weekly wages, and payments made earlier in excess of the decreased rate shall be deducted from the unpaid compensation in the manner the board determines. In any case, the employer shall pay timely compensation.

On	The Rate Shall Be
July 1, 1975	80% of the Alaska Average Weekly Wage
January 1, 1976	100% of the Alaska Average Weekly Wage
January 1, 1977	133.3% of the Alaska Average Weekly Wage
January 1, 1979	166.6% of the Alaska Average Weekly Wage
January 1, 1981	200% of the Alaska Average Weekly Wage

*Gov's Sec. 14, 15, 18 of 159*

\* Sec. 20. AS 23.30.175(b) is repealed and reenacted to read:

(b) After June 30 and before December 1 of each year, the commissioner shall adopt and publish the average weekly wage for each jurisdiction for the preceding calendar year as published by the United States Secretary of Labor for the purposes of unemployment insurance. In determining the rate of compensation the commissioner shall use the average weekly wage figure for each jurisdiction, including Alaska, for which the Secretary of Labor computes an average weekly wage. These figures are the applicable average weekly wages for those jurisdictions for the following calendar year.

*Sec. 14 of 159*

\* Sec. 21. AS 23.30.175(c) is repealed and reenacted to read:

*Gov's* (c) The following rules apply to recipients who do not reside in Alaska:

(1) The weekly rate of compensation shall be calculated by multiplying the recipient's weekly compensation rate calculated in accordance with § 180, 185, 190, 200 or 215 of this chapter times the ratio of the average weekly wage of the jurisdiction in which the recipient resides to the average weekly wage of Alaska. The <sup>ratio</sup>~~rate~~ is based on the average weekly wages in effect when the recipient leaves Alaska and shall be adjusted annually upon publication of the average weekly wages for all jurisdictions.

(2) The calculation required by this subsection does not apply if the recipient is absent from Alaska for medical or rehabilitation services not reasonably available in Alaska.

(3) If the spendable weekly wage of the recipient and the resulting compensation rate is determined under AS 23.30.220(2) the calculation required by this subsection applies to only those gross earnings earned in Alaska.

(4) Application of this subsection may not result in a reduction of the weekly compensation rate to less than \$110 a week except as provided in (a) of this section.

\* Sec. 22. AS 23.30.175(d) is repealed and reenacted to read:

*Gov's* (d) In a jurisdiction for which no average weekly wage is computed by the United States Secretary of Labor for the purposes of unemployment insurance, the average weekly wage shall be as determined by the commissioner.

\* Sec. 23. AS 23.30.180 is amended to read:

Sec. 23.30.180. PERMANENT TOTAL DISABILITY. In case of total disability adjudged to be permanent 80 [66-2/3] per cent of the injured employee's spendable [AVERAGE] weekly wages shall be paid to the employee during the continuance of the total disability. Loss of both hands, or both arms, or both feet, or both legs, or both eyes, or of any two of them, in the absence of conclusive proof to the contrary, constitutes permanent total disability. In all other cases permanent total disability is determined in accordance with the facts.

\* Sec. 24. AS 23.30.185 is amended to read:

Sec. 23.30.185. COMPENSATION FOR TEMPORARY TOTAL DISABILITY. In case of disability total in character but temporary in quality 80 [66-2/3] per cent of the injured employee's spendable [AVERAGE] weekly wages shall be paid to the employee during the continuance of the disability.

\* Sec. 25. AS 23.30.190 is amended to read:

Sec. 23.30.190. COMPENSATION FOR PERMANENT PARTIAL DISABILITY. (a) In case of disability partial in character but permanent in quality the compensation is 80 [66-2/3] per cent of the injured employee's spendable [AVERAGE] weekly wages in addition to compensation for temporary total disability or temporary partial disability paid in accordance with §§ 185 or 200 of this chapter, respectively, and shall be paid to the employee as follows:

- (1) arm lost, 280 weeks compensation, not to exceed \$59,000 [\$43,680];
- (2) leg lost, 248 weeks compensation, not to exceed \$54,400 [\$40,320];
- (3) hand lost, 212 weeks compensation, not to exceed 45,400 [\$33,600];
- (4) foot lost, 173 weeks compensation, not to exceed 39,700 [\$28,700];
- (5) eye lost, 140 weeks compensation, not to exceed \$30,200 [\$22,400];
- (6) thumb lost, 51 weeks compensation, not to exceed \$14,000 [\$10,400];
- (7) first finger lost, 28 weeks compensation, not to exceed \$8,700 [\$6,440];
- (8) great toe lost, 26 weeks compensation, not to exceed \$7,200 [\$5,320];
- (9) second finger lost, 18 weeks compensation, not to exceed \$5,700 [\$4,200]; third finger lost, 18 weeks compensation, not to exceed \$4,700 [\$3,500];
- (10) toe other than great toe lost, 8 weeks compensation, not to exceed \$3,000 [\$2,240];
- (11) fourth finger lost, 7 weeks compensation, not to exceed \$2,100 [\$2,100];

*35% increase in ceilings*

*2,800*

- (12) loss of hearing of one ear, 52 weeks compensation, not exceeding \$9,800 [\$7,280]; loss of hearing of both ears, 200 weeks compensation, not to exceed \$37,800 [\$28,000] No benefit is payable for loss of hearing above 3,000 cycles per second;
- (13) compensation for loss of more than one phalange of a digit shall be the same as for loss of the entire digit; compensation for loss of the first phalange is one-half of the compensation for loss of the entire digit;
- (14) amputation between the elbow and the wrist is considered equivalent to the loss of an arm, and amputation between the knee and ankle is considered equivalent to the loss of a leg;
- (15) compensation for loss of binocular vision or for 80 per cent or more of the vision of an eye is the same as for loss of the eye;
- (16) compensation for loss of two or more digits, or one or more phalanges of two or more digits of a hand or foot may be proportioned to the resulting loss of use of the injured hand or foot, but may not exceed the compensation for loss of a hand or foot;
- (17) compensation for permanent total loss of use of a member is the same as for loss of the member;
- (18) compensation for permanent partial loss or loss of use of a member may be for proportionate loss or loss of use of the member;
- (19) in addition to other allowable compensation, the board shall award proper and equitable compensation up to \$10,000 for
- (A) serious disfigurement of face, head and, when such disfigurement is likely to handicap the employee in securing or holding employment, for serious disfigurement of neck or limbs normally exposed, or
- (B) partial or total loss of or loss of use of a part or function of the body not otherwise provided for under this section;
- (20) in all other cases in this class of disability the compensation is 80 [66-2/3] per cent of the difference between his spendable [AVERAGE] weekly wages and his wage-earning capacity after the injury in the same employment or otherwise, payable during the continuance of the partial disability, but subject to modification [RECONSIDERATION OF THE DEGREE OF THE IMPAIRMENT] by the board on its own motion or upon application of a party in interest; Whenever the board determines that it is in the interest of justice, the liability of the employer for compensation, or any part if it as determined by the board, may be discharged by the payment of a lump sum;
- (21) in a case in which there is a loss of, or loss of use of more than one member or parts of more than one member set out in (1) - (18) of this section, not amounting to permanent total disability, the award of compensation is for the loss of, or loss of use of, each member or part of the member, which awards shall run consecutively, except that where the injury affects only two or more digits of the same hand or foot, (16) of this section applies.
- (b) Total compensation paid under (a)(20) of this section may not exceed \$75,000 [60,000].

\* Sec. 26. AS 23.30.200 is amended to read:

Sec. 23.30.200. TEMPORARY PARTIAL DISABILITY. In case of temporary partial disability resulting in decrease of earning capacity the compensation shall be 80 [66-2/3] per cent of the difference between the injured employee's spendable [AVERAGE] weekly wages before the injury and his wage earning capacity after the injury in the same or another employment, to be paid during the continuance of the disability, but not to be paid for more than five years.

\* Sec. 27. AS 23.30.210 is amended to read:

Sec. 23.30.210. DETERMINATION OF WAGE-EARNING CAPACITY. (a) In a case of partial disability under § 190(20) or 200 of this chapter the wage-earning capacity of an injured employee is determined by his actual spendable weekly wage [EARNINGS] if the actual spendable weekly wage [EARNINGS] fairly and reasonably represents his wage-earning capacity. If the employee has no actual spendable weekly wage [EARNINGS] or his actual spendable weekly wage [EARNINGS] does not fairly and reasonably represent his wage-earning capacity, the board may, in the interest of justice, fix the wage-earning capacity which is reasonable, having due regard to the nature of his injury, the degree of physical impairment, his usual employment, and any other factors or circumstances in the case which may affect his capacity to earn wages in his disabled condition, including the effect of disability as it may naturally extend into the future.

\* Sec. 28. AS 23.30.215(a) is amended to read:

(a) If the injury causes death, the compensation is known as a death benefit and is payable in the following amounts to and for the benefit of the following persons:

- see 18 of 157*
- (1) reasonable and necessary funeral expenses not exceeding \$2,500 [\$1,000];
  - (2) if there is a widow or widower or a child or children of the deceased,

the following percentages of the spendable [AVERAGE] weekly wages of the deceased:

(A) 80 [66-2/3] per cent for the widow or widower with no children;

(B) 40 [33-1/3] per cent for the widow or widower with one child and 40 [33-1/3] per cent for the child;

- (C) 25 [20] per cent for the widow or widower with two or more children and 55 [46-2/3] per cent divided equally among the children'
- (D) [deleted] ~~Sec. 159~~ *also deleted in 159*
- (E) 80 [66-2/3] per cent for an only child when there is no widow or widower;
- (F) [deleted] ~~also~~ *also*
- (G) 80 [66-23/] per cent, divided equally, if there are two ~~more~~ <sup>or</sup> more children and no widow or widower;

(3) if the widow or widower remarries, she or he is entitled to be paid in one sum an amount equal to the compensation to which the widow or widower would otherwise be entitled in the two years commencing on the date of remarriage as full and final settlement of all sums due the widow or widower;

(4) if there is no widow or widower or child or children, then for the support of father, mother, grandchildren, brothers, and sisters, if dependent upon the deceased at the time of injury, 40 [35] per cent of the spendable [AVERAGE] weekly wage of the deceased to such beneficiaries, share and share alike, not to exceed \$20,000 in the aggregate.

\* Sec. 29. AS 23.30.215(b) is amended to read:

(b) In computing death benefits, the spendable [AVERAGE] weekly wage of the deceased shall be computed under § 220 of this chapter and shall be paid in accordance with § 155 of this chapter and subject to the weekly maximum limitation in the aggregate as provided in § 175 of this chapter, but the total weekly compensation may not be less than \$75 [45] for a widow or widower nor less than \$25 [15] weekly to a child or \$50 [30] for children.

\* Sec. 30. AS 23.30.220 is repealed and reenacted to read:

Sec. 23.30.220 DETERMINATION OF SPENDABLE WEEKLY WAGE. Except as otherwise provided in this chapter, the spendable weekly wage of the injured employee at the time of the injury is the basis for computing compensation, and shall be the employee's gross weekly earnings minus payroll tax deductions. The gross weekly earnings shall be calculated as follows:

(1) if at the time of the injury the employee has been in the gainful employ of the employer for the full reporting quarter immediately preceding the time of injury, the gross weekly earnings shall be computed by dividing by thirteen the gross earnings said employee earned in the employ of the employer in that reporting quarter.

(2) if at the time of the injury the employee has not been in the employ of the employer for the full reporting quarter immediately preceding the time of injury, the gross weekly earnings shall be computed by dividing 100 into the gross earnings of the employee in the two calendar years immediately preceding the injury.

*current act. b. (3)*  
*maybe reword this. ?!!*  
(3) if the board determines that the gross weekly earnings at the time of the injury cannot be fairly calculated under (1) or (2) of this section, or cannot otherwise be ascertained without undue hardship to the employee, the gross weekly earnings for calculating compensation shall be the usual gross earnings for similar service rendered by paid employees under similar circumstances as determined by the board;

*current but slow*  
(4) if an employee is a minor or an apprentice, or a trainee, as determined by the board, when injured, and under normal conditions his wages would increase during the period of disability, this fact may be considered by the board in computing his gross weekly earnings;

(5) if the employee is injured while performing his duties as a volunteer ambulance attendant, policeman or fireman, the gross weekly earnings calculating compensation shall be the minimum gross weekly earnings paid a full-time ambulance attendant, policeman or fireman employed, at a reasonable figure previously set by the subdivision to make this determination and in no case may the gross weekly earnings for calculating compensation be less than the minimum wage computed on the basis of 40 hours work per week.

*amend #4*  
\* Sec. 31. AS 23.30 is amended by adding a new section to read:

*For total disability*  
↓  
Sec. 23.30.227. OTHER BENEFITS. (No compensation shall be payable to an employee under §§ 180 or 185 of this chapter for any week in which the employee receives unemployment benefits (AS 23.20).

\* Sec. 32. AS 23.30.235 is repealed and reenacted to read:

Sec. 23.30.235 CASES IN WHICH NO COMPENSATION IS PAYABLE. No compensation under this chapter shall be allowed for an injury:

(1) proximately caused by the employee's willful intent to injure himself or to willfully injure another;

*a high degree of proof in going to be used to prove for intoxication of employee.*  
(2) proximately caused by the employee being under the influence of an

intoxicating liquor or drugs unless such drugs are being taken in quantities prescribed by employee's physician.

*prev. Sec. 20 of 159*

\* Sec. 33. AS 23.30.250 is amended to read:

Sec. 23.30.250. PENALTY FOR MISREPRESENTATION. A person who willfully makes a false or misleading statement or representation for the purpose of obtaining a benefit or payment under this chapter is guilty of theft as defined in AS 11.46.100(3) and is punishable as provided in AS 11.46.120 - 11.46.150 [A MISDEMEANOR, AND 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].

\* Sec. 34. The board shall publish Sections 32 and 33 of this Act in a booklet defining the employee's rights and obligations under the Alaska Workers Compensation Act. The booklet shall be mailed to an injured worker upon notice of an injury.

*Suggest Leg. intent.*

\* Sec. 35. AS 23.30.265 is amended by adding new paragraphs to read:

(29) "arising out of and in the course of employment" includes employer required or supplied travel to and from a remote job site; activities performed at the direction or under the control of the employer; and employer sanctioned activities at employer provided facilities; but excludes activities of a personal nature away from employer provided facilities.

*Black's Law Dictionary*

*may be better definition.*  
(30) "under the influence of an intoxicating liquor or drugs" means not only all well-known and easily recognized conditions and degrees of intoxication, but any abnormal mental or physical condition which is the result of indulging intoxicating liquors or drugs, and which, to an appreciable degree, deprives one of that clearness of intellect and control of himself which he would otherwise possess.

*See Title 17 for cross reference.*

(31) "drugs" means a controlled substance or cannabis as further defined in AS 11.81.900. *check new drug laws - make sure same number.*

(32) "gross earnings" means recurring payments by employer to the employee for employment before any authorized or lawfully required deduction or withholding of funds by the employer, excluding irregular bonuses, reimbursement of expenses, expense allowances, and any benefit or payment to the employee which is not taxable to the employee during the pay period. The value of room and board to the employee may be considered in determining gross earnings for those employees with gross weekly earnings which are less than the Alaska average weekly wage at the time of injury.

(33) "payroll taxes" means the following:

*check update language - check with Dept. of Rev.*  
(a) An amount equal to the amount which would be withheld pursuant to withholding tables in effect on July 1 preceding the injury under the Internal Revenue Code of 1954, and regulations pursuant thereto, ~~which are~~ as amended, as though the employee had elected to claim the maximum number of dependants for actual dependency, blindness and old age to which the employee is entitled on the date on which he was injured; and,

*check for those who have opted out of SS*  
(b) An amount equal to the amount required on July 1 preceding the injury by the Social Security Act of 1935 as amended to be deducted or withheld from the amount of earnings of the employee at the time of the injury as if the earnings were earned at the beginning of the calendar year in which he was injured; and,

(c) And any other legislative mandated deductions including but not limited to ESC and FUTA;

(d) The Commissioner shall annually prepare formulas which shall be used to calculate an employee's spendable weekly wage on the basis of his gross weekly earnings, number of dependants, marital status and payroll tax deductions.

(34) "reporting quarter" means one of the 3 month periods (January through March, April through June, July through September, October through December) used to report employee wages to the Internal Revenue Service.

(35) "Suitable Gainful Employment" means employment which is reasonably attainable in light of the individuals age, education, previous occupation, and injury, and which offers an opportunity to restore the individual as soon as practical and as nearly as possible to his gross earnings as determined at the time of injury.

*superfluous*

*on 1-7- physician of choice paying on own*

*→ appeal to full board. now we have 3 panels*

*→ Gov's - adjustments out of state.*

*→ new off. S.D. 17 of prec. 159*

\* Sec. 36. AS 23.30.095(g), 23.30.125(b), 23.30.175(e) and (f), AS 23.30.191 and

AS 23.30.265(20) are repealed.

*↓ def of wages - now gross earnings.*

*Sec. 040(b)*

*need to consider Barbara Weston concern*

\* Sec. 37. AS 39.25.120 is amended by adding a new paragraph to read:

(20) the rehabilitation administrator of the Workers' Compensation Board.

\* Sec. 38. This act takes effect July 1, 1982.

A M E N D M E N T

Offered in the HOUSE

By Rogers

TO: CSHB 159(L&C)

Page 2, after line 6: insert the following new material:

\* Sec. 3. AS 23.30.040(a) is repealed and reenacted to read:

(a) There is created a second injury fund, administered by the commissioner. Money in the second injury fund may be used only for

(1) payments for the benefit of persons entitled to benefits from the second injury fund under this chapter as ordered or awarded by the board; and

(2) the cost of the rehabilitation services administered under AS 23.30.041.

Renumber subsequent bill sections.

A M E N D M E N T

Offered in the HOUSE

By Rogers

TO: CSFB 159(L&C)

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(2) the cost of the rehabilitation services administered under AS 23.30.041.

Renumber subsequent bill sections.

A M E N D M E N T

Offered in the HOUSE

By Martin

TO: CSHB 159(L&C)

Page 3, line 19:

After "staff." insert the following:

"For administration purposes only the rehabilitation administrator and his staff shall be considered employees of the division of vocational rehabilitation in the Department of Education."

Alaska State Chamber of Commerce · HB159  
Legislature Position Papers - 1982

WORKERS' COMPENSATION

Encouraged by the preliminary work of the legislature's Workers' Compensation Study Commission, the Alaska State Chamber of Commerce supports the commission's efforts to (1) improve the administration of the system, (2) make the compensation insurance program more competitive and (3) encourage changes in the rate-making process which would create more competition within the insurance industry.

The Chamber further believes that the commission's recommendations must also encourage realistic benefit revisions necessary to restore the incentive for injured workers to return to productive employment and remove the excesses in employers' workers' compensation costs.



# Alaska National INSURANCE COMPANY

*A policy of service and protection*

February 24, 1982

Labor and Commerce Committee  
House of Representatives  
State of Alaska  
Pcuch Y  
Juneau, Alaska 91011

ATT: Honorable Terry Martin, Chairman

RE: HB 159 - Proposed Amendments to the Current Requirements for  
Reporting to the Division of Workers' Compensation

Dear Representatives:

In the last session, the Legislature adopted in Chapter 59 of 1981 Laws (CSHB 94 (Fin)am) which, among other things, amended Section 155 of the Alaska Workers' Compensation Act to materially extend the requirements imposed upon insurance companies to file reports of current cases with the Workers' Compensation Board.

The legislation went into effect July 11, 1981, and spawned one of the most prolific paper burdens faced by the insurance industry today.

It will be the purpose of this letter to urge the Committee to include in HS 159 the attached proposed amendments which would have the effect of materially reducing the reporting obligations of insurance carriers to the Board, but will recognize the need for continuing the provision of relevant information to claimants.

It is my understanding that the Division of Workers' Compensation, shortly after the adoption of that amendment and I believe pursuant to some discussions prior to the legislative enactment of those provisions, developed an extremely complex computer system for digesting all of the reported information.

At the invitation of Jackie McLintock, the Director of the Division of Workers' Compensation, I visited their office and reviewed the computer system, watched it work and tested the data it contains.

Frankly, I must state to the Committee that the computer system works well, provides a wide array of information and is basically a well conceived interacting data processing system for manipulation and presentation of the data that goes into the computer. Although I am frank to admit the workability of the system, I have no information as to its cost or as to the practicality of its function except as I will set forth below.

Shortly after the adoption of the legislation, the Division of Workers' Compensation promulgated some early proposed instructions on how to prepare the necessary forms to make the system operative. The book which is 107 pages long explains in intimate detail how to fill out each of the blanks on each of the several forms.

Even with our limited experience in handling workers' compensation claims under the new system, we can tell you that the precision that is required in filling these forms out and the time consumed in answering the several questions contained on these complex forms is enormous. There is even a provision in the statute and implemented by the Division's set of instructions that requires a form be filed on the anniversary date of the claim even though there has been no change in the status of that claim.

We have two very serious concerns about this new law and the way it is being administered:—

1. There is an overriding major concern which we have concerning the recent activities and proposals from the Division of Workers' Compensation and the Board. It is our belief that primary responsibility for the day to day management of all workers' compensation claims lies with the insurance carrier or the self-insurance workers' compensation claims administrator. The Division of Workers' Compensation should exercise its responsibility to resolve disputes through the Board hearing process. We also recognize that the Division of Workers' Compensation has a responsibility to assure that the system is working equitably.

Although we recognize that the Division has specific complaints about particular insurance carriers' handling of some claims, or the handling of some claims by workers' compensation self-insurance claims administrators, we believe that on balance most all of the workers' compensation claims in the state are being handled quickly and fairly and in accordance with the law. The Division of Workers' Compensation has authority, as does the Division of Insurance, to investigate insurance carriers and workers' compensation self-insurance claim administrators and to review claim files to determine that they are being handled properly, and we believe that to be a more effective enforcement mechanism than inordinate reportings by all carriers in all cases.

We reject the notion that the Division of Workers' Compensation should thrust itself into the position of becoming the entity primarily responsible for assuring the rights of the injured worker. If that is carried to its logical extreme, the Division of Workers' Compensation will have as many claim adjusters as there are in the whole industry.