

ALASKA LEGISLATURE COMMITTEE FILES 1901-1900 86/2
4766 HJUD SB 322 (FILE 1)

338

House Judiciary Committee Workers' Comp agenda (cont.)

TUESDAY, APRIL 12 1:30 - 3:00

CONTINUATION OF APRIL 11 AGENDA IF NEEDED

OVERVIEW OF SB 322

Labor-Management Task Force - Management representatives
(Note: Task Force members will be in Juneau personally and
on line from Anchorage.)

BENEFIT STRUCTURE - PRESENT AND PROPOSED

Jaquelyn McClintock; Director, Division of Workers' Comp

Note: Committee will be on listen only teleconference

WEDNESDAY, APRIL 13 1:30 - 3:00

INDEPENDENT MEDICAL EXAM (IME)

Note: Open to public testimony specific to this topic only.

VOCATIONAL REHABILITATION

Note: Open to public testimony specific to this topic only.

LEGAL ASPECTS

Janice Hansen; Chief of Adjudications, Division of Workers'
Compensation

DISCUSSION:

Section 18 - Board IME - unanimous vote requirement

Section 10 - Vocational Rehabilitation changes

Note: Committee will be on listen-only teleconference except
as noted above.

House Judiciary Committee Workers' Comp agenda (cont.)

THURSDAY, APRIL 14 1:30 - 3:00

RATE REDUCTION

John Lewis; consultant to Labor-Management Task Force
(Note: on teleconference from Chicago)

DISCUSSION:

Pros and cons of mandated rate reductions and freezes;
The Maine experience - comparable to Alaska?

EMPLOYER TESTIMONY

Kevin James; Klukwan, Inc.

Ray Bond; R&R Scaffolding (note: on teleconference from
Anchorage)

PUBLIC TESTIMONY

Testimony will be taken on all topics related to bill.

FRIDAY, APRIL 15 1:30 - 3:00

EFFECT TO WORKERS - Temporary Total Disability (TTD) and
Permanent Partial Disability (PPD)
Chancy Croft, attorney

PUBLIC TESTIMONY

Testimony will be taken on all topics related to bill.

SATURDAY, APRIL 16

9:00 - 12:00

PUBLIC TESTIMONY

Testimony will be taken on all topics related to bill.

1:00 - 5:00

COMMITTEE AMENDMENTS

Note: Committee will remain on listen-only teleconference.

SB 322 CONFERENCE COMMITTEE

Topics under conference:

- 1) Board IME - more weight than other medical opinions *House*
House CS - page 18, line 20
Senate CS - page 16, line 23
- 2) Fines for late reporting - "or \$100, whichever is greater."
House CS - page 22, line 16 and 26 *Senate*
NOT IN SENATE CS
- 3) Hearing Preparation - whether to reinsert "all", "all", and "fully"
House CS - page 19, lines 13 and 14
NOT IN SENATE CS *Senate*
- 4) Checks drawn on in-state banks *Senate*
House CS - page 24, line 13
NOT IN SENATE CS
- 5) Stress language - perceptions/misperceptions
House CS - page 31, line 28
Senate CS - page 29, line 10 *House*

Topics under limited free conference:

- 1) Workplace Safety Program - new language? *yes*
House CS - page 2, line 27
NOT IN SENATE CS
- 2) Fine for lack of coverage - \$10,000 *sh*
House CS - page 14, line 6
- 3) Determination of gross weekly earnings - delete
"projected"
House CS - page 30, line 2 *sh*
Senate CS - page 26, line 18
- 4) Rate Reduction or freeze
House CS - page 32, line 22 *sh*
NOT IN SENATE CS
- 5) Assigned Risk Pool
House CS - page 2, line 18 *sh*
NOT IN SENATE CS

Sund

PROPOSED LANGUAGE FOR RATE REDUCTION

"Notwithstanding AS 21.39.030, rates filed by rating organizations for use in the state of Alaska may not be increased before Jan. 1, 1990.

PROPOSED LANGUAGE FOR ASSIGNED RISK POOL

Version A -

New businesses subject to surcharge for three years
No surcharge without exp. mod. debit
Surcharge = 30%

"An insurer may not impose a surcharge for assigned risk pool insurance unless the insured has not been in business in the state for three full years or the insured has received an experience modification debit. The amount of the surcharge shall be equal to 30 percent of the premium after consideration of the experience modification debit. The assigned risk pool premium for insureds who have or are entitled to an experience modification credit shall not exceed that derived from the application of standard rates for the insured's classification adjusted for the experience modification credit."

Version B -

No surcharge without exp. mod. debit - including new business
Surcharge = 25%

"An insurer may not impose a surcharge for assigned risk pool insurance unless the insured has received an experience modification debit. The amount of the surcharge shall be equal to 25 percent of the premium after consideration of the experience modification debit. The assigned risk pool premium for insureds who have or are entitled to an experience modification credit shall not exceed that derived from the application of standard rates for the insured's classification adjusted for the experience modification credit."

Version C -

New business subject to surcharge for two years
No surcharge without exp. mod. debit
Surcharge = 20%

"An insurer may not impose a surcharge for assigned risk pool insurance unless the insured has not been in business in the state for two full years or the insured has received an experience modification debit. The amount of the surcharge shall be equal to 20 percent of the premium after consideration of the experience modification debit. The assigned risk pool premium for insureds who have or are entitled to an experience modification credit shall not exceed that derived from the application of standard rates for the insured's classification adjusted for the experience modification credit."

Variables to play with: Number of years for new business and percent of surcharge.

Kelly

Replace language on lines 19 through 25 with the following:

"(c) An insurer may impose a surcharge not to exceed 25 percent of premium for assigned risk pool insurance provided that no surcharge may be applied to the first ~~\$2,500~~ of premium in any policy year."

3,500

Comment:

This provision provides a limit on pool surcharge by premium size. Only that portion of premium in excess of \$2,500 would be subject to surcharge. This provision has the advantage of being relatively simple to administer.

CONFERENCE COMMITTEE CS FOR SB 322

John Lund
5/4/88

Changes from House Judiciary CS

- 1) **Assigned Risk Pool:**
Restructure so that surcharge is increased from 20 percent to 25 percent but is not applied to the first \$3,000 of premium.
Page 2, Line 19
Note: A new effective date was added to the bill to specify that this provision applies only to new and renewing policies as of July 1, 1988.
Page 32, Line 25

- 2) **Workplace safety program:**
Rewrite so that the program is subject to the approval of the Division of Insurance.
Page 2, Line 27

- 3) **Fines for late reporting: *(payments)***
Retain 25 percent but delete "or \$100, whichever is greater."
Page 22, Lines 8 and 18

- 4) **Checks drawn on in-state banks:**
Delete entire provision
Page 24, Line 5

- 5) **Determination of gross weekly earnings:**
Delete "projected."
Page 28, Line 19

- 6) **Rate reduction:**
Rewrite so that rates are not permitted to increase before Jan. 1, 1990.
Page 32, Line 10

Rec: 4:35pm 5/4

CONFERENCE COMMITTEE REPORT

5/3/88 Date

Madam President:
Mr. Speaker:

The CONFERENCE COMMITTEE (with limited powers of free conference) considering CS FOR SENATE BILL NO. 322 (L&C) and HOUSE CS FOR CS FOR SENATE BILL NO. 322 (Judiciary) "An Act relating to workers' compensation; and providing for an effective date" recommends that

CONFERENCE CS FOR SENATE BILL NO. 322

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

(with a fiscal note)

be adopted.

Twin Kelly
Senator Kelly, Chairman

Paul Fischer
Senator Fischer

Mike Szymanski
Senator Szymanski

[Signature]
Representative Sund, Chairman

[Signature]
Representative Navarre

[Signature]
Representative Mehard

STATE OF ALASKA
1988 LEGISLATIVE SESSION

BILL VERSION: CCSSB 322

PUBLISH DATE: 5/3/88

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Labor
 Title: "An Act relating to Worker's Compensation" BRU: Worker's Compensation
 Sponsor: Senate Labor & Commerce Components: _____
 Requestor: House Labor & Commerce Worker's Compensation

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL		124.0	49.7	49.7	49.7	49.7
SUPPLIES						
EQUIPMENT						
LAND&STRUCTURES						
GRANTS,CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	124.0	49.7	49.7	49.7	49.7

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)

GENERAL FUND			(74.3)	(74.3)	(74.3)	(74.3)
FEDERAL FUNDS						
OTHER *		124.0	124.0	124.0	124.0	124.0
TOTAL	0.0	124.0	49.7	49.7	49.7	49.7

* Second Injury Fund

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

(See Attached)

Prepared by: Jacque McClintock Phone: 465-2790
 Division: Worker's Compensation Date: 3/16/88
 Approved by Commissioner: Jim Sampson Date: 3/16/88
 Agency: Department of Labor

Distribution (by preparer) :
 Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management and Budget

Analysis of Fiscal Note

For HCS SCS SB 322(L&C)

This bill would require the Department of Labor to keep track of certain Workers' Compensation information it is not currently tracking, and would also require an annual cost of living survey of the 50 states and 10 foreign countries. Details of these two additional costs are as follows:

1. Additional Information Requirements

As a result of this bill, additional detail on information items for each workers' compensation claim would have to be reported by employers/ insurers on a by claim and annual basis. This additional information would be input into our computer database which would require a change in the computer programs associated with that system. Estimated costs are \$57,500 to modify the programs, and an additional \$13,000 in CPU time to test and verify the modifications. The total one-time data processing cost would therefore be \$70,500.

2. Annual Cost of Living Survey

An annual cost of living survey would be required to adjust the compensation to those workers compensation recipients who move from Alaska. We estimate that 250 locations (an average of 5 per state) would have to be surveyed each year. In addition, we estimate that 10 foreign locations would have to be surveyed each year at an approximate cost of \$350 per site. At \$200 per site, the total cost the first year would be \$53,500. The cost of the survey in future years would decrease slightly to an estimated \$49,700 a year.

Assumptions:

1. An effective date of July 1, 1988.
2. Per the bill, Second Injury Funds will now be utilized to pay the administrative costs associated with the Second Injury program. The savings to the existing general funds in the Worker's Compensation BRU will then be available to fund the costs of this bill.

TO: Rep. John Sund
FROM: Shari Kochman
DATE: April 16, 1988
RE: All Proposed Amendments to SB 322 in all testimony

Amendment #1

This is a technical change.

The present cite in the bill for the U.S. Department of Labor Dictionary of Occupational Titles is incorrect.

Amendment #2

This is a technical change. The present cite in bill is incorrect.

Amendment #3

This would delete the definition for "suitable gainful employment" which is a term used in the present vocational rehabilitation statute, but would not be used in the proposed statute - AS 23.30.041.

Amendment #4

This would make the reporting, notification and penalties described in AS 23.30.155(c) and (m) apply to uninsured employers as well as self-insured employers.

Amendment #5

This amendment refers to penalties against employers for failure to file required reports, notify claimants of changes in compensation and make payments to claimants on time.

The amendment increases the fines for late notification of changes and late annual reports from \$100 to \$1,000 for the first day and from \$10 to \$100 for every day thereafter.

The penalty for late payment of compensation is increased from 20 percent of the compensation to 25 percent but no less than \$100. This is consistent with penalty changes already made in the House Labor and Commerce Committee and, in fact, was intended to be changed in that committee.

Amendment #6

This amendment would delete a section added in the House Labor and Commerce committee that requires compensation checks to be drawn on funds deposited in Alaska or by certified check.

The intent of this is to prevent delayed payment due to check clearing time. But it is doubtful whether this provision would accomplish that. First of all, check clearing is computerized on a national and regional basis. It could take as long to clear an Anchorage check in Ketchikan as it would a Des Moines check. Second of all, certified checks carry no more weight and are cleared no faster than personal or business checks. Third of all, I don't see how the Legislature has the authority to tell an insurance company where to do its banking. This is a commercial matter, not a workers' compensation matter.

Amendment #7

The intent of this intent language is to urge the Administration to enforce penalties in the workers' compensation statute. Currently, the board may report to the Division of Insurance that an employer is without insurance, and the Division may then pass that onto the attorney general's office, but the case dies there. We have one memo that states the case is "just not worth the state's time."

If we believe lack of workers' comp insurance is reprehensible, we need to enforce the penalties.

Amendment #8

This would delete section 4 of the bill which mandates the department to adopt new regulations if the Supreme Court finds existing regulations invalid. The intent of the task force was that new regulations be retroactive as well as prospective. There is question for the need and actual effect of this section -- which you understand better than I.

Amendment #9

This would delete the provision that an impairment rating for permanent partial disability would be reduced by an impairment from a preexisting condition.

You should note a couple of things here. The provision does not delineate whether the preexisting condition was work related -- that's not the point. The question is whether an employer should be responsible to pay for an earlier condition that is unrelated to the present injury, but may be aggravated by the present injury.

Another thing to note is that if the combination of injuries does result in permanent total disability, the worker would be compensated for PTD.

Amendment #10

This amendment refers to the methods for the board to determine spendable weekly wage, which is now one of the most litigated areas in workers' comp.

The problem is with those employees who had no earnings in the two years prior to injury or were working for only 6 months out of the previous two years. In those cases, the board is to determine compensation based on employees work history and may not exceed projected earnings.

The present language tries to exclude people, who because of lifestyle choices, have low earnings in the two years before injury. It attempts to include people who, for good reasons, have low earnings in the two years before injury.

However, it doesn't succeed. For example, an employee who works just long enough to pay for his extensive vacations would, because he was voluntarily out of the work force, be

entitled to an adjustment in his spendable weekly wage under subsection (b).

However, a person who is out of the work force for more than 18 months in the two years before injury because he is battling cancer, surely an involuntary reason for not working, would not be entitled to an adjustment to his spendable weekly wage under subsection (b). Instead, his compensation would be based on his earnings, if any, in the two years before injury divided by 100.

This amendment deletes the word "voluntarily" because of the above cited problems with definition.

Amendment #11

This amendment addresses the minimum offered wage to an injured worker that would make the worker ineligible for vocational rehabilitation. It would increase the percentage of wage at the time of injury from 60 percent to 75 percent.

Note: This was proposed by the Labor-Management Task Force as part of the amendments to the "PPD-TTD package deal."

Amendment #12

This is the new proposal for the PPD-TTD schedule. It would lower the maximum PPD payment from \$240,000 to \$135,000 and delete the adjustment factor schedule. Effects of this change are in a table that has been distributed to the committee.

In conjunction with the PPD change, the amendment would return TTD and TPD to present law which is no limit on TTD (present bill puts a two year limit on it) and a five year limit on TPD (present bill limits it to two years).

Note: The Task Force testified that TTD would go to a five-year limit to make it consistent with TPD. However, I later clarified that if the intent was actually to go to present law (which was confirmed), then TTD should be unlimited.

Amendments #13A and #13B

These are two possibilities for addressing the present requirement for a unanimous board vote to have an IME outside of the claimant's physician's speciality. Amendment 13A would simply delete any reference to the specialty and direct the board to select an IME from their list of providers.

Amendment 13B would instruct the board to conduct the IME in the same specialty as the treating physician unless the board or its designee (i.e., the pre-hearing officer) approves a different specialty.

Both amendments would prevent the costly necessity of convening the board to select an IME. It should be noted that the present language would have a fiscal impact for board meetings which has not yet been determined.

Both amendments also address the importance of this decision in comparison to other decisions made by the board. No other decision requires a unanimous vote.

The second proposal (13B), by even mentioning the specialty requirement, may open a door for litigation. The first proposal (13A) probably would not. If the overall intent of the bill is to reduce litigation, we should probably consider what new possibilities for litigation we are introducing through this legislation.

One other point. While the chiropractors do have substantial evidence that the medical professional does discriminate against them, the present language infers an expected discrimination on the part of the board. If we believe the board is discriminatory, we are in sorry shape.

Amendment #14

The proposed amendment deletes the mandated rate reduction and replaces it with a mandated rate freeze.

It also makes the freeze effective from now through 1990 -- so that new rates could not be set until 1991. That is a year later than the mandated rate reduction now in the bill specifies.

The idea of a freeze, as indicated by John Lewis, is to give time to gather experience under the law change. If we want to do that, we should consider what experience is used for determining rates. The following table explains:

<u>Date Rates Set</u>	<u>Experience Base</u>
January 1989	Jan. '86 - Jan. '88 (no experience under this bill)
January 1990	Jan. '87 - Jan. '89 (six months experience under this bill)
January 1991	Jan. '88 - Jan. '90 (18 months experience under this bill)
January 1992	Jan. '89 - Jan. '91 (24 months experience under this bill)

Therefore, if a freeze is effective until only Jan. 1990, rates will be set with very little new experience (only six months) versus 18 months of new experience come Jan. 1991.

One argument against the freeze being effective immediately is that the Jan. 1989 rates will be based on pre-legislation experience and should, therefore, be subject to modification. However, Don Koch of the Division of Insurance testified on April 11 that as of current available data, he sees either no increase or a very small (maybe 2 percent) increase in January.

Regarding the rate reduction -- the C&R Committee, on April 4, determined a 5.7 percent reduction was in line on July 1, 1988 as a result of the bill. Keep in mind two things -- the rates will be subject to an experience adjustment which could overcompensate for the law reduction (although Mr. Koch's testimony indicates otherwise). Furthermore, it is unclear which version of the bill the C&R Committee was using. The letter said "in the existing version of SB 322" which, on

April 4, was the House Labor and Commerce substitute. But some are under the impression that the committee was using the Senate version. Finally, this does not address the results of any House Judiciary and subsequent changes.

Amendment #15

This amendment addresses the assigned risk pool and prohibits the 20 percent surcharge for those pool companies that do not receive an experience modification. That really translates to all new companies in the pool and all companies with a premium under \$2,500 (because lower premiums are not rated.)

This would give immediate and extensive relief to many small employers in the state, but keep in mind the policy call this is making.

Because the pool runs at a deficit (losses were more than \$4 million in 1987), those lost surcharges will be put on the shoulders of the larger companies in the pool. Should the larger companies subsidize the smaller companies?

Also, experience mods are not always a clear reflection of actual claim losses. Let me try to explain -- but beware that I am getting into the clandestine area of actuarial science.

A \$100,000 loss is not considered a \$100,000 for purposes of experience modifications. It is actually considered a \$9,260 loss unless other circumstances (which I will not get into) make it higher. So, as is the nature with insurance, the added loss is spread among other companies.

Note also that this amendment does a curious thing in providing a disincentive for a company to want an experience rating. Let's say the company gets rid of its 20 percent surcharge because of no experience mod, and later is given a .95 mod which is a five percent reduction. Now the employer loses the exemption from the surcharge and the net effect is a 15 percent increase in rates. Of course, the question is whether the insurers will bother rating the lower premiums, but this amendment may incite them to do so -- which of course adds to their costs of doing business.

As Stan Sparks testified, the assigned risk pool is a tricky thing to address and our problem is not exclusive to Alaska. I have been told by a member of the C&R Committee that they are trying to address it and revamp the pool in some way.

Amendment #16

This is the defense attorney fees amendment which you know more about than I do.

A M E N D M E N T #1

Offered in the HOUSE

By Sund

TO: HCS CSSB 322(L&C)

Page 7, line 24:

Delete "dictionary of occupational titles"

Insert "United States Department of Labor's "Selected Characteristics of Occupations Defined in the Dictionary of Occupational Titles""

A M E N D M E N T

2

Offered in the HOUSE

By Sur

TO: HCS CSSB 322(L&C)

Page 25, line 29:

Delete "AS 23.30.041(m)(7)"

Insert "AS 23.30.041(p)" ~~AS~~

A M E N D M E N T

#3

Offered in the HOUSE

By Sund

TO: HCS CSSB 322(L&C)

Page 32, line 27:

Delete "is"

Insert "and 23.30.265(28) are"

A M E N D M E N T

F4

Offered in the HOUSE

By Sun

TO: HCS CSSB 322(L&C)

Page 23, line 14, after "self-insured"

Insert "or uninsured"

#5

A M E N D M E N T

Offered in the HOUSE

By

TO: HCS CSSB 322(L&C)

~~Page 21, line 7, after "penalty"~~
~~Insert "employee"~~

Page 21, line 8:

Delete "\$100"

Insert "\$1,000 [\$100]"

Delete "\$10"

Insert "\$100 [\$10]"

Page 21, line 10:

Delete "\$1,000"

Insert "\$10,000 [\$1,000]"

Page 22, after line 4:

Insert a new bill section to read:

"* Sec. 26. AS 23.30.155(e) is amended to read:

(e) If any installment of compensation payable without an a is not paid within seven days after it becomes due, as provided in of this section, there shall be added to the unpaid installmen amount equal to 25 [20] percent of it or \$100, whichever amount greater. This additional amount shall be paid at the same time

*Amend ment
5
(Cont.)*

and in addition to, the installment, unless notice is filed under
of this section or unless the nonpayment is excused by the board
a showing by the employer that owing to conditions over which
employer had no control the installment could not be paid within
period prescribed for the payment."

Renumber remaining bill sections accordingly.

Page 22, line 8, after "it":

Insert "or ^{\$100,} ~~\$1,000~~, whichever amount is greater"

Page 23, line 11:

Delete "\$100"

Insert "\$1,000"

Page 23, line 12:

Delete "\$10"

Insert "\$100"

Page 33, line 1:

Delete "sec. 27"

Insert "sec. 28"

Page 33, line 18:

Delete "27, 28, 40, and 44"

Insert "28, 29, 41, and 45"

Page 33, line 21:

Delete "Section 40"

Insert "Section 41"

Page 33, line 22:

Delete "sec. 40"

Insert "sec. 41"

Page 33, line 23:

Delete "Sections 40 and 47"

Insert "Sections 41 and 48"

Page 33, line 25:

Delete "39, and 41 - 46"

Insert "40, and 42 - 47"

6

A M E N D M E N T

Offered in the HOUSE

By S

TO: HCS CSSB 322(L&C)

Page 23, lines 22 - 25:

Delete all material.

A M E N D M E N T

7

Offered in the HOUSE

By S

TO: HCS CSSE 322(L&C)

Page 1, line 9, after "LEGISLATIVE":

Insert "FINDINGS AND"

After "INTENT.":

Insert a new subsection to read:

"(a) The legislature finds that, as the costs of workers compensation insurance increases, the danger that an employer will to insure or to qualify for self-insurance also increases. The lature also finds that there has been a failure on the part of state to

(1) adequately enforce AS 23.30.075(a), which require employer to either obtain workers' compensation insurance or to provide proof of the ability to self-insure; and

(2) impose the punishment authorized under AS 23.30. against those employees who do fail to obtain workers' compensation insurance or to qualify as a self-insurer."

Reletter following subsections accordingly.

A M E N D M E N T

#8

Offered in the HOUSE

By

TO: HCS CSSB 322(L&C)

Page 3, lines 9 - 13:

Delete all material.

Renumber following bill sections accordingly.

Page 32, line 29:

Delete "sec. 8"

Insert "sec. 7"

Page 33, line 1:

Delete "sec. 27"

Insert "sec. 26"

Page 33, line 13:

Delete "sec. 9"

Insert "sec. 8"

Page 33, line 18:

Delete "secs. 8, 25, 27, 28, 40, and 44"

Insert "secs. 7, 24, 26, 27, 39, and 43"

Page 33, line 21:

A M E N D M E N T

#9

Offered in the HOUSE

By S

TO: HCS CSSB 322(L&C)

Page 28, lines 6 - 8:

Delete "The impairment rating determined under (a) of this s
shall be reduced by a permanent impairment that existed before the c
sable injury."

A M E N D M E N T #10

Offered in the HOUSE

By Su

TO: HCS CSSB 322(L&C)

Page 29, line 13:

Delete "voluntarily"

A M E N D M E N T

~~10~~ 11

Offered in the HOUSE

By Su

TO: HCS CSSB 322(L&C)

Page 7, line 28:

Delete "60"

Insert "75"

A M E N D M E N T

#12

Offered in the HOUSE

By S

TO: HCS CSSB 322(L&C)

Page 26, lines 2 - 10:

Delete all material.

Renumber the remaining bill sections accordingly.

Page 26, line 15:

Delete "\$240,000"

Insert "\$135,000"

Page 26, line 18, following "considerations."

Delete all material through page 27, line 24.

Page 28, lines 12 - 21:

Delete all material.

Renumber the remaining bill sections accordingly.

Page 33, line 18:

Delete "40, and 44"

Insert "38, and 42"

Amendment #12
(Cont.)

Page 33, line 21:

Delete "40"

Insert "38"

Page 33, line 22:

Delete "40"

Insert "38"

Page 33, line 23:

Delete "40 and 47"

Insert "38 and 45"

Delete "takes"

Insert "take"

Page 33, line 25:

Delete "39, and 41 - 46"

Insert "37, and 39 - 44"

A M E N D M E N T

#13 A

Offered in the HOUSE

By S

TO: HCS CSSB 322(L&C)

Page 18, lines 1 - 5:

Delete "A physician selected by the board under this subsection be qualified in the same specialty as the treating physician select the employee, unless the board or the board's panel agrees unanimously case by case basis to approve a different selection."

#13 B

A M E N D M E N T

Offered in the HOUSE

By S

TO: HCS CSSB 322(L&C)

Page 18, line 4:

Delete "panel"

Insert "designee"

Delete "unanimously on a case by case basis"

A M E N D M E N T

#14

Offered in the HOUSE

By Sunc

TO: HCS CSSB 322(L&C)

Page 33, line 7:

Delete "REDUCTION"

Insert "FREEZE"

Page 33, lines 8 - 11:

Delete "shall provide at least a six percent reduction in the premi rate charged within the state for workers' compensation insurance, for t period beginning July 1, 1988, and ending January 1, 1990"

Insert "may not increase the premium rate charged within the state fo workers' compensation insurance during the period beginning April 18, 1988 and ending January 1, 1991"

Page 33, after line 22:

Insert a new bill section to read:

"* Sec. 48. Section 44 of this Act is retroactive to April 18, 1988."

Renumber the following bill sections accordingly.

Page 33, line 23, after "40":

Delete "and 47"

*Amendment
#14
(cont.)*

Insert ", 44, 47, and 48"

Delete "takes"

Insert "take"

Page 33, line 25:

Delete "and 41 - 46"

Insert "41 - 43, 45, and 46"

#15

A M E N D M E N T

Offered in the HOUSE

By

TO: HCS CSSB 322(L&C)

Page 2, after line 6:

Insert a new bill section to read:

"* Sec. 2. AS 21.39.155 is amended by adding a new subsection to
(c) An insurer may not impose a surcharge for assigned risk
insurance unless the insured has received an experience rating."

Renumber remaining bill sections accordingly.

Page 32, line 29:

Delete "sec. 8"

Insert "sec. 9"

Page 33, line 1:

Delete "sec. 27"

Insert "sec. 28"

Page 33, line 13:

Delete "sec. 9"

Insert "sec. 10"

Page 33, line 18:

Amendment # 15 (cont.)

Delete "secs. 8, 25, 27, 28, 40, and 44"

Insert "secs. 9, 26, 28, 29, 41, and 45"

Page 33, line 21:

Delete "Section 40"

Insert "Section 41"

Page 33, line 22:

Delete "sec. 40"

Insert "sec. 41"

Page 33, line 23:

Delete "Sections 40 and 47"

Insert "Sections 41 and 48"

Page 33, line 25:

Delete "Sections 1 - 39, and 41 - 46"

Insert "Sections 1 - 40, and 42 - 47"

A M E N D M E N T

#16

Offered in the HOUSE

By S

TO: HCS CSSB 322(L&C)

Page 31, after line 9:

Insert a new bill section to read:

"* Sec. 39. AS 23.30.260 is amended to read:

Sec. 23.30.260. PENALTY FOR RECEIVING UNAPPROVED FEES SOLICITING. A person is guilty of a misdemeanor, and upon conviction is punishable for each offense by a fine of not more than \$1,000 or by imprisonment for not more than one year, or by both, if the person

(1) receives a fee, other consideration, or a gratuity in the account of services rendered to an employer, employee, insurer, insurance adjuster regarding [IN RESPECT TO] a claim, unless such consideration or gratuity is approved by the board, a designee of the board, or the court; or

(2) makes it a business to solicit employment for a law firm or for oneself in respect to a claim or award for compensation."

Page 33, line 18:

Delete "40, and 44"

Insert "41, and 45"

Page 33, line 21:

Delete "Section 40"

Amendment #16 (cont.)

Insert "Section 41"

Page 33, line 22:

Delete "sec. 40"

Insert "sec. 41"

Page 33, line 23:

Delete "Sections 40 and 47"

Insert "Sections 41 and 48"

Page 33, line 25:

Delete "39, and 41 - 46"

Insert "40, and 42 - 47"

Other issues to address:

Section 2 -- safety program -- is it workable.

Section 7 - semi-annual payments for seasonal employers. If we want to change this, we need language from the Division of Insurance.

Section 10 - voc rehab - questions on optional versus mandatory and the time frame for requesting an evaluation.

Section 14 - treatment plan limitations and how is a "visit" defined.

Section 18 - Board IME - weight given to the Board's IME and the exemption from liability for the IME physician.

Section 20 - time frames for hearing requests and limits on continuances.

Sections 21 and 40 - stress claims.

Sections 37 and 39 - treatment of pension plans.

Amd. #4

A M E N D M E N T #1

Offered in the HOUSE

By Sund

TO: HCS CSSB 322(L&C)

Page 7, line 24:

Delete "dictionary of occupational titles"

Insert "United States Department of Labor's "Selected Characteristics
of Occupations Defined in the Dictionary of Occupational Titles""

AS 23.30.110(c) is repealed and reenacted to read:

(c) Before a hearing is scheduled, the party seeking a hearing shall file a request for a hearing together with an affidavit stating that the party has completed all necessary discovery, has obtained all evidence it needs for the hearing, and will not seek a continuance or request the hearing record remain open at the conclusion of the hearing. Within 10 days the opposing party must notify the board if it is not ready for a hearing. If the opposing party notifies the board that it is not ready for hearing, the board or a board designee will conduct a pre-hearing conference within 30 days, and determine the hearing date. If no opposition is filed, a hearing will be scheduled no later than 60 days after the receipt of the request and affidavit. The parties shall be given at least 10 days' notice of the hearing, either personally or by certified mail. Once a hearing has been scheduled, no continuances will be permitted. The board shall close the hearing record at the end of the hearing; any evidence or arguments filed after the conclusion of the hearing will be excluded from the record. The only exception will be in case of surprise as determined by the board. The board may then extend the time to file additional evidence or argument. The parties cannot stipulate to leave the hearing record open. The parties may not stipulate to change the date, cancel, postpone, or continue the hearing, except for ^{*good cause shown.} cases of illness of a party or its representative or because of a conflict with a matter scheduled by a state or federal court. If the parties reach a settlement agreement less than 14 days before the hearing, the parties shall appear at the time of the scheduled hearing to state the terms of the settlement agreement. Within 30 days after the hearing record closes, the board shall file its decision. If the employer controverts a claim on a board prescribed controversion notice and the employee does not request a hearing within two years following the filing of the controversion notice, the claim is denied.

Amd. #
5
(amended)

Taylor -
Amd. to
Amd.
#5

A M E N D M E N T

2

Offered in the HOUSE

By Sund

TO: HCS CSSB 322(L&C)

Page 25, line 29:

Delete "AS 23.30.041(m)(7)"

Insert "AS 23.30.041(p)" ~~2~~

*Ammt. # 11
adopted*

A M E N D M E N T

#3

Offered in the HOUSE

TO: HCS CSSB 322(L&C)

By Sund

*Amend. #16
accepted*

Page 32, line 27:

Delete "is"

Insert "and 23.30.265(28) are"

Am. #9

I4

A M E N D M E N T

Offered in the HOUSE

By Sund

TO: HCS CSSB 322(L&C)

Page 23, line 14, after "self-insured"

Insert "or uninsured"

A M E N D M E N T

#5

Offered in the HOUSE

By Sun

TO: HCS CSSB 322(L&C)

~~Page 21, line 7, after "penalty"~~
~~Insert "to the employee"~~

Handwritten scribble

Page 21, line 8:

Delete "\$100"

Insert "\$1,000 [\$100]"

Delete "\$10"

Insert "\$100 [\$10]"

Page 21, line 10:

Delete "\$1,000"

Insert "\$10,000 [\$1,000]"

Amndt. #7

Page 22, after line 4:

Insert a new bill section to read:

"* Sec. 26. AS 23.30.155(e) is amended to read:

(e) If any installment of compensation payable without an award is not paid within seven days after it becomes due, as provided in (b) of this section, there shall be added to the unpaid installment an amount equal to ⁵⁰25 [20] percent of it or ³⁰⁰\$100, whichever amount is greater. This additional amount shall be paid at the same time as,

Amndt. #7

and in addition to, the installment, unless notice is filed under (of this section or unless the nonpayment is excused by the board aft a showing by the employer that owing to conditions over which t employer had no control the installment could not be paid within t period prescribed for the payment."

Renumber remaining bill sections accordingly.

*amdt.
#9*

Page 22, line 8, after "it":
50% ~~300,~~
Insert "or \$1,000, whichever amount is greater"

Page 23, line 11:
Delete "\$100"
Insert "\$1,000"

Page 23, line 12:
Delete "\$10"
Insert "\$100"

Page 33, line 1:
Delete "sec. 27"
Insert "sec. 28"

Page 33, line 18:
Delete "27, 28, 40, and 44"
Insert "28, 29, 41, and 45"

Page 33, line 21:

Delete "Section 40"

Insert "Section 41"

Page 33, line 22:

Delete "sec. 40"

Insert "sec. 41"

Page 33, line 23:

Delete "Sections 40 and 47"

Insert "Sections 41 and 48"

Page 33, line 25:

Delete "39, and 41 - 46"

Insert "40, and 42 - 47"

b

A M E N D M E N T

Offered in the HOUSE

By Sund

TO: HCS CSSB 322(L&C)

Page 23, lines ~~22~~ 25: a

~~Delete all material.~~

delete all material.

Amd. #10

*Amd. #2
(deletes sec. 9)*

A M E N D M E N T

#8

Offered in the HOUSE

By Sund

TO: HCS CSSB 322(L&C)

Page 3, lines 9 - 13:

Delete all material.

Renumber following bill sections accordingly.

Page 32, line 29:

Delete "sec. 8"

Insert "sec. 7"

Page 33, line 1:

Delete "sec. 27"

Insert "sec. 26"

Page 33, line 13:

Delete "sec. 9"

Insert "sec. 8"

Page 33, line 18:

Delete "secs. 8, 25, 27, 28, 40, and 44"

Insert "secs. 7, 24, 26, 27, 39, and 43"

Page 33, line 21:

A M E N D M E N T #10

Offered in the HOUSE

By Sund

TO: HCS CSSB 322(L&C)

*Amend. # 15
adopted*

Page 29, line 13:

Delete "voluntarily"

Amnd. #3

A M E N D M E N T

11

Offered in the HOUSE

By Sund

TO: HCS CSSB 322(L&C)

Page 7, line 28:

Delete "60"

Insert "75"

Sections 32-33-34

5-1514Lee
Ford

To replace
earlier amendment

A M E N D M E N T #12

*Amend #12
adopted*

Offered in the HOUSE

By Sund

TO: HCS CSSB 322(L&C)

Page 26, lines 8 - 10:

Delete "Temporary total disability benefits may not be paid for more than two years regardless of continuance of the disability."

Page 26, line 15:

Delete "\$240,000"

Insert "\$135,000"

*Amend. #13
Adopted*

Page 26, line 18, following "considerations.":

Delete all material through page 27, line 24.

Page 28, line 19:

Delete "two [FIVE]"

Insert "five"

Amend #14

Page 33, line 23:

Delete "takes"

Insert "take"

Amend. #17

Section 1

By Sund

AMENDMENT

Offered in the House

TO: HCS CSSB 322 (L&C)

Page 2, line 7:

Insert a new subsection to read:

"(e) It is the intent of the legislature in amending AS 23.30.075 (and AS 23.30.155 that the Division of Workers' Compensation, Division of Insurance and Department of Law strictly enforce the punishment authorized under AS 23.30.075(b) and the reporting requirements ~~in~~ penalties for noncompliance with AS 23.30.155, based on findings that

- 1) there has been a failure on the part of the state to impose the punishment authorized under AS 23.30.075(b) against those employers who fail to obtain workers' compensation insurance or to qualify as a self-insurer, and
- 2) there is a lack of specific data within the Division of Workers' Compensation and Division of Insurance to adequately assess the efficiency and costs of the workers compensation system.

*Amnd. #18
adopted*

Section 2

By Sund

Amend #17

AMENDMENT

Offered in the HOUSE

TO: HCS CSSB 322 (L&C)

Page 2, lines 8 - 22:

Delete all material and write a new Sec. 2 to read:

An insurer who provides workers' compensation insurance must establish and maintain a workplace safety rate reduction program available to all insureds. The program must include:

- 1) A reduction in future workers' compensation premiums based on the insured's documented, successful implementation of a safety program, and
- 2) The availability of consulting services to the insured to establish a workplace safety program.

Sec. 7

Amendment #20

A M E N D M E N T

Offered in the HOUSE

By Sund

TO: HCS CSSB 322(L&C)

Page 3, line 29:

Delete "semiannually"

Insert "on an installment basis of not fewer than two payments"

After "insured."

Insert "Premiums paid by installment must be structured to reflect seasonal peaks in the basis of the premium."

Amend #21

Section 10

A M E N D M E N T

Offered in the HOUSE

By Sun

TO: HCS CSSB 322(L&C)

Page 6, line 23, after "has":

Delete "unusual and extenuating physical limitations that prevent"

Insert "an unusual and extenuating circumstance that prevents"

Section 10

Amd. #22

A M E N D M E N T

Offered in the HOUSE

By Sun

TO: HCS CSSB 322(L&C)

Page 8, line 1:

Delete "of injury"

Section 13

A M E N D M E N T

Amend # 23

Offered in the HOUSE

By Sur

TO: HCS CSSB 322(L&C)

Page 14, line 21:

Delete "inside the state where the employee resides to render care"

Insert "to provide all medical and related benefits"

Page 14, line 25, after "[":

Insert "INSIDE THE STATE TO RENDER THE CARE" ??

← pike explain

Section 14
Version C

*Amend #224
amended by Ulmer -*

A M E N D M E N T

Offered in the HOUSE

By Sund

TO: HCS CSSB 322(L&C)

Page 15, line 7, after "treatment":

Delete "is"

Insert ", or treatment requiring continuing and multiple treatments
a similar nature ¹⁵ ~~are~~ [IS]"

Page 15, lines 16 - 27, after "employee.":

Delete all material.

Amend #27

Sec 18 B

A M E N D M E N T

[Handwritten signature]

Offered in the HOUSE

By :

TO: HCS CSSB 322(L&C)

Page 18, lines 1 - 5:

Delete "A physician selected by the board under this subsection be qualified in the same specialty as the treating physician select the employee, unless the board or the board's panel agrees unanimously case by case basis to approve a different selection."

Amnd #23

Section 18 A

A M E N D M E N T

Offered in the HOUSE

By Sun

TO: HCS CSSB 322(L&C)

Page 18, lines 8 - 11:

Delete "The opinion of the independent medical examiner shall, in absence of clear and convincing objective evidence to the contrary, presumed to be correct."

Admt #29

Sec. 20

A M E N D M E N T

Offered in the HOUSE

By Sund

TO: HCS CSSB 322(L&C)

Page 19, lines 14 - 15:

Delete "a continuance may not be granted"

Insert "the parties may not stipulate to change the hearing date or to cancel, postpone, or continue the hearing, except for good cause as determined by the board"

Page 19, lines 16 - 19:

Delete "Evidence or arguments filed after the conclusion of the hearing may not be considered by the board, unless the board determines that good cause exists for failure to complete the hearing at the scheduled time."

Sec. 27

Amel # 30

A M E N D M E N T

Offered in the HOUSE

By Sund

TO: HCS CSSB 322(L&C)

Page 23, line 12, after "late.":

Insert "If the annual report is incomplete when filed, the insurer or adjuster shall pay a civil penalty of \$1,000."

Amendment #31

Sec. 33

A M E N D M E N T

Offered in the HOUSE

By Sund

TO: HCS CSSB 322(L&C)

Page 26, line 15:

Delete "net"

Page 26, line 16, after "person":

Delete ", and"

Insert ". The percentage of permanent impairment of the whole person is the percentage of impairment to the particular body part, system, or function converted to the percentage of impairment to the whole person as provided under (b) of this section. The compensation is"

Amend #33

Section 1

A M E N D M E N T

Offered in the HOUSE

By Sund

TO: HCS CSSB 322(L&C)

Page 1, line 27:

Delete "reduce disincentives"

Insert "increase the incentives"

Sec. 1
Version C

Amend. # 34
filed

A M E N D M E N T

Offered in the HOUSE

By Sund

TO: HCS CSSB 322(L&C)

Page 1, lines 14 - 21:

Delete all material.

Reletter following subsections accordingly.

Original sponsor: Labor and Commerce
Committee

Mountain purposes

BY THE LABOR AND
COMMERCE COMMITTEE

Corrington

1 IN THE SENATE

2 HOUSE CS FOR CS FOR SENATE BILL NO. 322 (L&C)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

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

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

9 * Section 1. LEGISLATIVE INTENT. (a) It is the intent of the legisla-
10 ture that AS 23.30 be interpreted so as to assure the quick, efficient,
11 fair, and predictable delivery of indemnity and medical benefits to injured
12 workers at a reasonable cost to the employers who are subject to the pro-
13 visions of AS 23.30.

14 (b) The legislature declares that the workers' compensation laws must
15 not be construed by the courts in favor of any party. It is the specific
16 intent of the legislature that workers' compensation cases be decided on
17 their merits, except when otherwise provided by statute. It is also the
18 intent of the legislature that the board possess the greatest possible
19 authority in the exercise of its fact finding responsibilities and that the
20 board's decisions be conclusive unless the court finds that a reasonable
21 person could not have reached the conclusion made by the board.

*original
language*

Sec 22

22 (c) It is the intent of the legislature in amending AS 23.30.175
23 regarding benefits payable to recipients not residing in the state to

24 (1) recognize the levels of workers' compensation benefits
25 brought about by the high cost of living that exists in the state as com-
26 pared to other localities;

27 (2) ^{increase incentives} reduce ~~disincentives~~ to return to work; and

28 (3) remove obstacles to the utilization of vocational rehabili-
29 tation that may be brought about by the payment of workers' compensation

1 benefits at the high levels provided by the Alaska workers' compensation
2 law to individuals residing in localities with living costs lower than
3 those in Alaska.

(d) It is the intent of the legislature to encourage employers to
improve safety practices in the workplace and to use improved safety prac-
tices to reduce work related injuries.

* Sec. 2. AS 21.89 is amended by adding a new section to read:

Sec. 21.89.015. REFUND OF WORKERS' COMPENSATION PREMIUM. (a)

An insurer who provides workers' compensation insurance by participa-
tion in an assigned risk pool under AS 21.39.155, shall refund at
least 10 percent of the premium charged an insured for the assigned
risk pool insurance if, during the period covered by the premium
payment, the insured has a safety program that complies with the
general safety code standards adopted by the department and has not
been cited for a safety or health violation for which the insured
could be fined under AS 18.60.091.

(b) An insurer shall refund at least five percent of the premium
charged for workers' compensation insurance if, during the period
covered by the premium payment, the insured has a safety program that
complies with general safety code standards adopted by the department
and has not been cited for a safety or health violation for which the
insured could be fined under AS 18.60.091.

* Sec. 3. AS 23.30.005(h) is amended to read:

(h) The department shall [MAY] adopt [IDENTICAL] rules for all
panels, and procedures for the periodic selection, retention, and re-
moval of rehabilitation specialists and physicians under AS 23.30.041
and 23.30.095, and shall [MAY] adopt regulations to carry out the
provisions of this chapter. Process and procedure under this chapter
shall be as summary and simple as possible. The department, the board

yes w/ each
Anders has problem
refund for safety program
collateral

added in l&c

5%

Amend and follow

Draft a statute or form waiver not a block benefit.
waiver - see sec 11

1 or a member of it may for the purposes of this chapter subpoena wit-
2 nesses, administer or cause to be administered oaths, and may examine
3 or cause to have examined the parts of the books and records of the
4 parties to a proceeding that relate [WHICH RELATED] to questions in
5 dispute. The superior court, on application of the department, the
6 board or any members of it, shall enforce the attendance and testimony
7 of witnesses and the production and examination of books, papers, and
8 records.

what is this about??

* Sec. 4. AS 23.30.005 is amended by adding a new subsection to read:
(m) If a regulation adopted by the department and approved by a majority of the full board is determined to be invalid by the state supreme court, the department may adopt new regulations that conform to the department's statutory authority as interpreted by the court.

can you discontinue in hiring based on physical condition?

* Sec. 5. AS 23.30.020 is amended by adding a new subsection to read:
(b) An employee who knowingly makes a false statement as to the employee's physical condition on an employment application or pre-employment questionnaire may not receive benefits under this chapter if:
(1) the employer relied upon the false representation and this reliance was a substantial factor in the hiring; and
(2) there was a causal connection between the false representation and the injury to the employee.

* Sec. 6. AS 23.30.025 is amended by adding a new subsection to read:
(c) An insurer extending coverage required under this chapter by specifying Alaska in the other states section or similar provision of the insurance policy shall provide notice to the department under AS 23.30.085.

* Sec. 7. AS 23.30.030 is amended by adding a new paragraph to read:
(8) An annual insurance premium that exceeds \$2,000 may be paid semiannually, if requested by the insured. The insurer shall

may read around for seasonal employees [Kohman]

1 include this provision in the insurance policy in a manner that clear-
2 ly informs the insured of the provision.

3 * Sec. 8. AS 23.30.040(b) is amended to read:

4 (b) If an employee suffers a compensable injury that results in
5 temporary total disability, temporary partial disability, permanent
6 partial disability, or permanent total disability, the employer or
7 insurance carrier shall contribute to the second injury fund. The
8 contribution shall be made annually at the time of the report filing
9 required by AS 23.30.155(m) [BY ONE YEAR FROM THE DATE OF THE INJURY
10 OR ON TERMINATION OF THE EMPLOYEE'S CLAIM, WHICHEVER IS SOONER. IF
11 THE CLAIM IS NOT TERMINATED WITHIN ONE YEAR, SUBSEQUENT CONTRIBUTIONS
12 SHALL BE MADE YEARLY UNTIL THE TERMINATION OF THE EMPLOYEE'S CLAIM].
13 The amount of the contribution is the product of the compensation to
14 which the employee is entitled for temporary total disability, tempo-
15 rary partial disability, permanent partial disability, or permanent
16 total disability and the applicable contribution rate set out in
17 column A of this subsection. Payment need not be made to the second
18 injury fund if the total contribution under this subsection is less
19 than \$20. By December 15 of each year the commissioner shall deter-
20 mine and make available to the public the applicable contribution rate
21 for the following calendar year according to the reserve rate of the
22 second injury fund in column B of this subsection:

23	Column A	Column B	
24	Second Injury Fund	Reserve Rate	
25	Contribution Rate	At Least	But Less Than
26	(Percent)	(Percent)	(Percent)
27	6	0	50
28	5	50	75
29	4	75	100

I thought we did this last year or year before.

1	3	100	125
2	2	125	150
3	1	150	175
4	0	175	

5 * Sec. 9. AS 23.30.040(h) is amended to read:

6 (h) Administration expenses of the state under this section and
7 AS 23.30.205 must [SHALL] be paid from the second injury [GENERAL]
8 fund.

what report on budget

9 * Sec. 10. AS 23.30.041 is repealed and reenacted to read:

10 Sec. 23.30.041. REHABILITATION OF INJURED WORKERS. (a) The
11 board shall select and employ a reemployment benefits administrator.
12 The board may authorize the administrator to select and employ addi-
13 tional staff. The administrator is in the partially exempt service
14 under AS 39.25.120.

*Classified
Service?*

15 (b) The administrator shall perform the following functions:

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

18 (2) recommend regulations for adoption by the board that
19 establish performance and reporting criteria for rehabilitation spe-
20 cialists;

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

23 (4) review on an annual basis the performance of rehabili-
24 tation specialists to determine continued eligibility for delivery of
25 rehabilitation services;

26 (5) submit to the department, on or before January 1 of
27 each year, a report of reemployment benefits provided under this
28 section for the previous fiscal year; the report must include a gener-
29 al section, sections related to each rehabilitation specialist

1 employed under this section, and a statistical summary of all reha-
2 bilitation cases, including

3 (A) the estimated and actual cost of each active
4 rehabilitation plan;

5 (B) the estimated and actual time of each rehabilita-
6 tion plan;

7 (C) a status report on all individuals completing or
8 terminating a reemployment benefits program including a return to
9 work date;

10 (D) the cost of reemployment benefits;

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

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

17 (c) If an employee suffers a compensable injury that may perma-
18 nently preclude an employee's return to the employee's occupation at
19 the time of injury, the employee or employer may request an eligibil-
20 ity evaluation for reemployment benefits. The employee shall request
21 an eligibility evaluation within 90 days after the employee gives the
22 employer notice of injury unless the administrator determines the
23 employee has unusual and extenuating physical limitations that prevent
24 the employee from making a timely request. The administrator shall,
25 on a rotating and geographic basis, select a rehabilitation specialist
26 from the list maintained under (b)(6) of this section to perform the
27 eligibility evaluation.

28 (d) Within 30 days after the referral by the administrator, the
29 rehabilitation specialist shall perform the eligibility evaluation and

6-90
proposed
Amend

How informed

Handwritten initials

1 issue a report of findings. The administrator may grant up to an
2 additional 30 days for performance of the eligibility evaluation upon
3 notification of unusual and extenuating circumstances and the re-
4 habilitation specialist's request. Within 14 days after receipt of
5 the report from the rehabilitation specialist, the administrator shall
6 notify the parties of the employee's eligibility for reemployment
7 preparation benefits. Within 10 days after the decision, either party
8 may seek review of the decision by requesting a hearing under AS 23.-
9 30.110. The hearing shall be held within 30 days after it is re-
10 quested. The board shall uphold the decision of the administrator
11 except for abuse of discretion on the administrator's part.

12 (e) An employee shall be eligible for benefits under this sec-
13 tion upon the employee's written request and by having a physician
14 predict that the employee will have permanent physical capacities that
15 are less than the physical demands of the employee's job as described
16 in the United States Department of Labor's "Selected Characteristics
17 of Occupations Defined in the Dictionary of Occupational Titles" for

18 (1) the employee's job at the time of injury; or

19 (2) other jobs that exist in the labor market that the
20 employee has held or received training for within 10 years before the
21 injury or that the employee has held following the injury for a period
22 long enough to obtain the skills to compete in the labor market,
23 according to specific vocational preparation codes as described in the
24 dictionary of occupational titles.

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

26 (1) the employer offers employment within the employee's
27 predicted post-injury physical capacities at a wage equivalent to at
28 least the state minimum wage under AS 23.10.065 or 60 percent of the
29 worker's gross hourly wages at the time of injury, whichever is

SB0322C

HCS CSSB 372(L&C)

-7-

Craft 100%

75% award

Does not apply to

Why not relate to prior existing wage capacity?

out of date

Donner/who

1 greater, [of injury] and the employment prepares the employee to be
2 employable in other jobs that exist in the labor market;

3 (2) the employee has been previously rehabilitated in a
4 former workers' compensation claim and returned to work in the same or
5 similar occupation in terms of physical demands required of the em-
6 ployee at the time of the previous injury; or

7 (3) at the time of medical stability no permanent impair-
8 ment is identified or expected.

9 (g) Within 10 days after the employee receives the adminis-
10 trator's notification of eligibility for benefits, an employee who
11 desires to use these benefits shall give written notice to the em-
12 ployer of the employee's selection of a rehabilitation specialist who
13 shall provide a complete reemployment benefits plan. If the employer
14 disagrees with the employee's choice of rehabilitation specialist to
15 develop the plan and the disagreement cannot be resolved, then the
16 administrator shall assign a rehabilitation specialist. The employer
17 and employee each have one right of refusal of a rehabilitation spe-
18 cialist.

19 (h) Within 90 days after the rehabilitation specialist's selec-
20 tion under (g) of this section, the reemployment plan must be formu-
21 lated and approved. The reemployment plan must include at least the
22 following:

23 (1) a determination of the occupational goal in the labor
24 market;

25 (2) an inventory of the employee's technical skills, phys-
26 ical and intellectual capacities, academic achievement, emotional
27 condition and family support;

28 (3) a plan to acquire the occupational skills to be employ-
29 able;

1 (4) the cost estimate of the reemployment plan, including
2 provider fees; the amount of tuition, books, tools, and supplies;
3 transportation; temporary lodging; or job modification devices;

4 (5) the estimated length of time that the plan will take;

5 (6) the date the plan will commence;

6 (7) the estimated time of medical stability as predicted by
7 the physician;

8 (8) a detailed description and plan schedule; and

9 (9) a finding by the rehabilitation specialist that the
10 inventory under (2) of this subsection indicates that the employee can
11 be reasonably expected to satisfactorily complete the plan and perform
12 in a new occupation within the time and cost limitations of the plan.

13 (i) Reemployment benefits shall be selected from the following
14 in a manner that ensures remunerative employability in the shortest
15 possible time:

16 (1) on the job training;

17 (2) vocational training;

18 (3) academic training;

19 (4) self-employment; or

20 (5) a combination of (1) - (4) of this subsection.

21 (j) The employee, rehabilitation specialist, and the employer
22 shall sign the reemployment benefits plan. If the employer and em-
23 ployee fail to agree on a reemployment plan, either party may submit a
24 reemployment plan for approval to the administrator; the adminis-
25 trator shall approve or deny a plan within 14 days after the plan is
26 submitted; within 10 days of the decision, either party may seek
27 review of the decision by requesting a hearing under AS 23.30.110; the
28 board shall uphold the decision of the administrator unless evidence
29 is submitted supporting an allegation of abuse of discretion on the

1 part of the administrator; the board shall render a decision within 30
2 days after completion of the hearing.

3 (k) Benefits related to the reemployment plan may not extend
4 past two years from date of plan approval or acceptance, whichever
5 date occurs first, at which time the benefits expire. If an employee
6 reaches medical stability before completion of the plan, temporary
7 total disability benefits shall cease and permanent impairment bene-
8 fits shall then be paid at the employee's temporary total disability
9 rate. If the employee's permanent impairment benefits are exhausted
10 before the completion or termination of the reemployment plan, the
11 employer shall provide wages equal to 60 percent of the employee's
12 spendable weekly wages but not to exceed \$525, until the completion or
13 termination of the plan. A permanent impairment benefit remaining
14 unpaid upon the completion or termination of the plan shall be paid to
15 the employee in a single lump sum. The fees of the rehabilitation
16 specialist or rehabilitation professional shall be paid by the em-
17 ployer and may not be included in determining the cost of the reem-
18 ployment plan.

19 (l) The cost of the reemployment plan incurred under this sec-
20 tion shall be the responsibility of the employer, shall be paid on an
21 expense incurred basis, and may not exceed \$10,000.

22 (m) Only a rehabilitation specialist may accept case assignments
23 as a case manager and sign eligibility determinations and reemployment
24 plans. A person who is not a rehabilitation specialist may perform
25 rehabilitation casework if the work is performed under the direct
26 supervision of a rehabilitation specialist employed in the same firm
27 and location.

28 (n) After the employee has elected to participate in reemploy-
29 *Craft* ment benefits, if the employer believes the employee has not

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1 cooperated the employer may terminate reemployment benefits on the
2 date of noncooperation. Noncooperation means unreasonable failure to

- 3 (1) keep appointments;
- 4 (2) maintain passing grades;
- 5 (3) attend designated programs;
- 6 (4) maintain contact with the rehabilitation specialist;
- 7 (5) cooperate with the rehabilitation specialist in devel-
- 8 oping a reemployment plan and participating in activities relating to
- 9 reemployability on a full-time basis;
- 10 (6) comply with the employee's responsibilities outlined in
- 11 the reemployment plan; or
- 12 (7) participate in any planned reemployment activity as
- 13 determined by the administrator.

14 (o) Upon the request of either party, the administrator shall
15 decide whether the employee has not cooperated as provided under (n)
16 of this section. A hearing before the administrator shall be held
17 within 30 days after it is requested. The administrator shall issue a
18 decision within 14 days after the hearing. Within 10 days after the
19 administrator files the decision, either party may seek review of the
20 decision by requesting a hearing under AS 23.30.110; the board shall
21 uphold the decision of the administrator unless evidence is submitted
22 supporting an allegation of abuse of discretion on the part of the
23 administrator; the board shall render a decision within 30 days after
24 completion of the hearing.

30
14
10

- 25 (p) In this section
- 26 (1) "administrator" means the reemployment benefits admin-
- 27 istrator under AS 23.30.041(a);
- 28 (2) "employability" means possessing the ability but not
- 29 necessarily the opportunity to engage in employment that is consistent

*what if work not available
unemployment?*

1 with the employee's physical status imposed by the compensable injury;

2 (3) "labor market" means a geographical area that offers
3 employment opportunities in the following priority:

- 4 (A) area of residence;
- 5 (B) area of last employment;
- 6 (C) the state;
- 7 (D) other states;

8 (4) "physical capacities" means objective and measurable
9 physical traits such as ability to lift and carry, walk, stand or sit,
10 push, pull, climb, balance, stoop, kneel, crouch, crawl, reach, han-
11 dle, finger, feel, talk, hear or see;

12 (5) "physical demands" means the physical requirements of
13 the job such as strength, including positions such as standing, walk-
14 ing, sitting, and movement of objects such as lifting, carrying,
15 pushing, pulling, climbing, balancing, stooping, kneeling, crouching,
16 crawling, reaching, handling, fingering, feeling, talking, hearing, or
17 seeing;

18 (6) "rehabilitation specialist" means a person who is a
19 certified insurance rehabilitation specialist, a certified rehabilita-
20 tion counselor, or a person who has equivalent or better qualifica-
21 tions as determined under regulations adopted by the department;

22 (7) "remunerative employability" means having the skills
23 that allow a worker to be compensated with wages or other earnings
24 equivalent to at least 60 percent of the worker's gross hourly wages
25 at the time of injury; if the employment is outside the state, the
26 stated 60 percent shall be adjusted to account for the difference
27 between the applicable state average weekly wage and the Alaska aver-
28 age weekly wage.

29 * Sec. 11. AS 23.30.055 is amended to read:

*can employer discriminate under physical injuries -
waiver under sec 5*

1 Sec. 23.30.055. EXCLUSIVENESS OF LIABILITY. The liability of an
2 employer prescribed in AS 23.30.045 is exclusive and in place of all
3 other liability of the employer and any fellow employee to the em-
4 ployee, the employee's legal representative, husband or wife, parents,
5 dependents, next of kin, and anyone otherwise entitled to recover
6 damages from the employer or fellow employee at law or in admiralty on
7 account of the injury or death. The liability of the employer is
8 exclusive even if the employee's claim is barred under AS 23.30.-
9 020(b). However, if an employer fails to secure payment of compen-
10 sation as required by this chapter, an injured employee or the em-
11 ployee's legal representative in case death results from the injury
12 may elect to claim compensation under this chapter, or to maintain an
13 action against the employer at law or in admiralty for damages on
14 account of the injury or death. In that action the defendant may not
15 plead as a defense that the injury was caused by the negligence of a
16 fellow servant, or that the employee assumed the risk of the employ-
17 ment, or that the injury was due to the contributory negligence of the
18 employee.

19 * Sec. 12. AS 23.30.075(b) is amended to read:

20 (b) If an [AN] employer ~~[WHO]~~ fails to insure and keep insured
21 employees subject to this chapter or fails to obtain a certificate of
22 self-insurance from the board, upon conviction the court shall impose
23 a fine of \$10,000 and may impose a sentence of [, IS PUNISHABLE BY A
24 FINE OF NOT MORE THAN \$1,000, OR BY] imprisonment for not more than
25 one year [, OR BY BOTH]. If an employer is a corporation, all persons
26 who, at the time of the injury or death, had authority to insure the
27 [SAID] corporation or apply for a certificate of self-insurance, and
28 the person actively in charge of the business of the [SUCH] corpo-
29 ration shall be subject to the penalties prescribed in this subsection

1 [HEREIN] and shall be personally, jointly, and severally liable to-
2 gether with the corporation for the payment of all compensation or
3 other benefits for which the corporation is liable under this chapter
4 if the [SAID] corporation at that [SUCH] time is not insured or quali-
5 fied as a self-insurer.

6 * Sec. 13. AS 23.30.095(a) is amended to read:

7 (a) The employer shall furnish medical, surgical, and other
8 attendants or treatment, nurse and hospital service, medicine, crutch-
9 es, and apparatus for the period which the nature of the injury or the
10 process of recovery requires, not exceeding two years from and after
11 the date of injury to the employee. However, if the condition requir-
12 ing the treatment, apparatus, or medicine is a latent one, the two-
13 year period runs from the time the employee has knowledge of the
14 nature of the employee's disability and its relationship to the em-
15 ployment and after disablement. It shall be additionally provided
16 that, if continued treatment or care or both beyond the two-year
17 period is indicated, the injured employee has the right of review by
18 the board. The board may authorize continued treatment or care or
19 both as the process of recovery may require. When medical care is
20 required, the injured employee may designate a licensed physician
21 inside the state where the employee resides to render the care. The
22 employee may not make more than one change in the employee's choice of
23 attending physician without the written consent of the employer.
24 Referral to a specialist by the employee's attending physician is not
25 considered a change in physicians [EXCEPT IN CASES WHERE, IN THE
26 JUDGMENT OF THE BOARD, CARE OR TREATMENT OR BOTH CAN BEST BE ADMINIS-
27 TERED BY THE SELECTION OF ANOTHER PHYSICIAN]. Upon procuring the
28 services of a physician, the injured employee shall give proper noti-
29 fication of the selection to the employer within a reasonable time

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Shippings*

23.30.265(a)

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to board*

(A)

1 after first being treated. Notice of a change in the attending physi-
2 cian shall be given before the change [IF FOR ANY REASON DURING THE
3 PERIOD WHEN MEDICAL CARE IS REQUIRED THE EMPLOYEE WISHES TO CHANGE TO
4 ANOTHER PHYSICIAN, THE EMPLOYEE MAY DO SO IN ACCORDANCE WITH REGU-
5 LATIONS ADOPTED BY THE BOARD].

6 * Sec. 14. AS 23.30.095(c) is amended to read:

7 (c) A claim for medical or surgical treatment is not valid and
8 enforceable against the employer unless, within 14 days following
9 treatment, the physician giving the treatment or the employee re-
10 ceiving it furnishes to the employer and the board notice of the
11 injury and treatment, preferably on a form prescribed by the board.
12 The board shall, however, excuse the failure to furnish notice within
13 14 days when it finds it to be in the interest of justice to do so,
14 and it may, upon application by a party in interest, make an award for
15 the reasonable value of the medical or surgical treatment so obtained

16 (d) A claim for a course of treatment requiring con-
17 tinuing and multiple treatments of a similar nature is not valid
18 unless the treatments are carried out under a written treatment plan
19 prescribed before the commencement of the course of treatment, com-
20 pleted and signed by the attending physician, and mailed to the em-
21 ployer within one week of the beginning of treatment. The treatment
22 plan must include objectives, modalities, and frequency of treatment.
23 The initial treatment plan may not include more than 20 visits in the
24 first 60 days. If more than 20 visits are required within the first
25 60 days, or more than four visits a month after the first 60 days, the
26 physician shall document the need for services in excess of the guide-
27 lines in the written treatment plan.

28 * Sec. 15. AS 23.30.095(e) is amended to read:

29 (e) The employee shall, after an injury, at reasonable times

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Chiropractor*

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Plan

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*escape
clause*

1 during the continuance of the disability, if requested by the employer
2 or when ordered by the board, submit to an examination by a physician
3 or surgeon of the employer's choice authorized to practice medicine
4 under the laws of the jurisdiction in which the physician resides
5 [STATE IN WHICH THE EMPLOYEE MAY BE FOUND], furnished and paid for by
6 the employer. The employer may not make more than one change in the
7 employer's choice of a physician or surgeon without the written con-
8 sent of the employee. Referral to a specialist by the employer's
9 physician is not considered a change in physicians. An examination
10 requested by the employer not less than 14 days after injury, and
11 every 60 days thereafter, shall be presumed to be reasonable, and the
12 employee shall submit to the examination without further request or
13 order by the board. Unless medically appropriate, the physician shall
14 use existing diagnostic data to complete the examination. Facts
15 relative to the injury or claim communicated to or otherwise learned
16 by a physician or surgeon who may have attended or examined the em-
17 ployee, or who may have been present at an examination are priv-
18 ileged, either in the hearings provided for in this chapter or an
19 action to recover damages against an employer who is subject to the
20 compensation provisions of this chapter. If an employee refuses to
21 submit to an [ANY] examination provided for in this section, the
22 employee's rights to compensation shall be suspended until the ob-
23 struction or refusal ceases, and the employee's compensation during
24 the period of suspension may, in the discretion of the board or the
25 court determining an action brought for the recovery of damages under
26 this chapter, be forfeited. The board in any case of death may re-
27 quire an autopsy at the expense of the party requesting the autopsy.
28 An autopsy may not be held without notice first being given to the
29 widow or widower or next of kin if they reside in the state or their

1 whereabouts can be reasonably ascertained, of the time and place of
2 the autopsy and reasonable time and opportunity given the widow or
3 widower or next of kin to have a representative present to witness the
4 autopsy. If adequate notice is not given, the findings from the
5 autopsy may be suppressed on motion made to the board or to the supe-
6 rior court, as the case may be

7 * Sec. 16. AS 23.30.095(f) is amended to read:

8 (f) All fees and other charges for medical treatment or service
9 [ARE LIMITED TO THE CHARGES THAT PREVAIL IN THE SAME COMMUNITY FOR
10 SIMILAR TREATMENT OF INJURED PERSONS OF LIKE STANDARD OF LIVING AND]
11 shall be subject to regulation by the board but may not exceed usual,
12 customary, and reasonable fees for the treatment or service in the
13 community in which it is rendered, as determined by the board. An
14 employee may not be required to pay a fee or charge for medical treat-
15 ment or service.

16 * Sec. 17. AS 23.30.095(j) is repealed and reenacted to read:

17 (j) The board may appoint a medical services review committee,
18 or contract with an existing organization in the state or another
19 state, to assist and advise the board in matters involving the appro-
20 priateness, necessity, and cost of medical and related services pro-
21 vided under this chapter.

22 * Sec. 18. AS 23.30.095 is amended by adding a new subsection to read:

23 (k) In the event of a medical dispute regarding determinations
24 of causation, medical stability, ability to enter a reemployment plan,
25 degree of impairment, functional capacity, the amount and efficacy of
26 the continuance of or necessity of treatment, or compensability be-
27 tween the employee's attending physician and the employer's indepen-
28 dent medical evaluation, a second independent medical evaluation shall
29 be conducted by a physician or physicians selected by the board from a

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See Brown amendment - qualified in field of injury

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1 list established and maintained by the board. A physician selected by
 2 the board under this subsection shall be qualified in the same spe-
 3 cialty as the treating physician selected by the employee, unless the
 4 board or the board's panel agrees unanimously on a case by case basis
 5 to approve a different selection. The cost of the examination and
 6 medical report shall be paid by the employer. The report of the in-
 7 dependent medical examiner shall be furnished to the board and to the
 8 parties within 14 days after the examination is concluded. The opini-
 9 on of the independent medical examiner shall, in the absence of clear
 10 and convincing objective evidence to the contrary, be presumed to be
 11 correct. A person may not seek damages from an independent medical
 12 examiner caused by the rendering of an opinion or providing testimony
 13 under this subsection, except in the event of fraud or gross incompe-
 14 tence.

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* Sec. 19. AS 23.30.105(a) is amended to read:

(a) The right to compensation for disability under this chapter
 is barred unless a claim for it is filed within two years after the
 employee has knowledge of the nature of the employee's disability and
 its relation to the employment and after disablement. However, the
 maximum time for filing the claim in any event other than arising out
 of an occupational disease shall be four years from the date of in-
 jury, and the right to compensation for death is barred unless a claim
 therefor is filed within one year after the death, except that if
 payment of compensation has been made without an award on account of
 the injury or death, a claim may be filed within two years after the
 date of the last payment of benefits under AS 23.30.180, 23.30.185,
 23.30.190, 23.30.200, or 23.30.215. It is additionally provided that,
 in the case of latent defects pertinent to and causing compensable
 disability, the injured employee has full right to claim as shall be

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1 determined by the board, time limitations notwithstanding.

2 * Sec. 20. AS 23.30.110(c) is repealed and reenacted to read:

hearing

3 (c) Before a hearing is scheduled, the party seeking a hearing
4 shall file a request for a hearing together with an affidavit stating
5 that the party has completed all necessary discovery, obtained all
6 necessary evidence, and is fully prepared for the hearing. An oppos-

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7 ing party shall have 10 days after the hearing request is filed to
8 file a response. If a party opposes the hearing request, the board or
9 a board designee shall within 30 days of the filing of the opposition
10 conduct a prehearing conference and set a hearing date. If opposition

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11 is not filed, a hearing shall be scheduled no later than 60 days after
12 the receipt of the hearing request. The board shall give each party
13 at least 10 days' notice of the hearing, either personally or by
14 certified mail. After a hearing has been scheduled, a continuance may

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continuance*

15 not be granted. After completion of the hearing the board shall close
16 the hearing record. Evidence or arguments filed after the conclusion
17 of the hearing may not be considered by the board, unless the board

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18 determines that good cause exists for failure to complete the hearing
19 at the scheduled time. If a settlement agreement is reached by the
20 parties less than 14 days before the hearing, the parties shall appear
21 at the time of the scheduled hearing to state the terms of the settle-

22 ment agreement. Within 30 days after the hearing record closes, the
23 board shall file its decision. If the employer controverts a claim on
24 a board-prescribed controversion notice and the employee does not
25 request a hearing within two years following the filing of the con-
26 troversion notice, the claim is denied.

27 * Sec. 21. AS 23.30.120 is amended by adding a new subsection to read:

28 (c) The presumption of compensability established in (a) of this
29 section does not apply to a mental injury resulting from work-related

Shaw

See 40

employee must prove stress injury

~~Sec 1~~ (b)

1 stress.

2 * Sec. 22. AS 23.30.125 is amended by adding a new subsection to read:

3 (f) Subject to an employer's or employee's burden of proof, a
4 finding of fact made by the board as a part of a compensation order is
5 conclusive unless the court specifically finds that a reasonable
6 person could not have reached the conclusion made by the board.

7 * Sec. 23. AS 23.30.130(a) is amended to read:

8 (a) Upon its own initiative, or upon the application of any
9 party in interest on the ground of a change in conditions, including,
10 for the purposes of AS 23.30.175, a change in residence, or because of
11 a mistake in its determination of a fact, the board may, before one
12 year after the date of the last payment of compensation benefits under
13 AS 23.30.180, 23.30.185, 23.30.190, 23.30.200, or 23.30.215, whether
14 or not a compensation order has been issued, or before one year after
15 the rejection of a claim, review a compensation case under [IN ACCOR-
16 DANCE WITH] the procedure prescribed in respect of claims in AS 23.-
17 30.110. Under [IN ACCORDANCE WITH] AS 23.30.110 the board may issue a
18 new compensation order which terminates, continues, reinstates, in-
19 creases, or decreases the compensation, or award compensation.

See 19

20 * Sec. 24. AS 23.30.155(c) is amended to read:

21 (c) The insurer or adjuster [EMPLOYER] shall notify the board
22 and the employee on a form prescribed by the board that the payment of
23 compensation has begun or has been increased, decreased, suspended,
24 terminated, resumed, or changed in type. An initial report shall be
25 filed with the board and sent to the employee within 28 days after the
26 date of issuing the first payment of compensation. If at any time 21
27 days or more pass and no compensation payment is issued, a report
28 notifying the board and the employee of the termination or suspension
29 of compensation shall be filed with the board and sent to the employee