

ALASKA LEGISLATURE COMMITTEE FILES 1987-1988 8672
4767 HJUD SB 322 (FILE 1)

339

1 within 28 days after the date the last compensation payment was is-
2 sued. A report shall also be filed with the board and sent to the
3 employee within 28 days after the date of issuing a payment increas-
4 ing, decreasing, resuming, or changing the type of compensation paid.
5 If the [EMPLOYER FAILS TO NOTIFY THE] board and the employee are not
6 notified within the 28 days prescribed by this subsection for report-
7 ing, the insurer or adjuster [EMPLOYER] shall pay a civil penalty of
8 \$100 for the first day plus \$10 for each day thereafter that the
9 [EMPLOYER FAILED TO GIVE] notice was not given. Total penalties under
10 this subsection [SECTION] may not exceed \$1,000 for a failure to file
11 a required report. Penalties assessed under this subsection are
12 eligible for reduction under (m) of this section. A penalty assessed
13 under this subsection after penalties have been reduced under (m) of
14 this section shall be increased by 25 percent and shall bear interest
15 at the rate established under AS 45.45.010.

16 *Subor* ^{*} Sec. 25. AS 23.30.155(d) is amended to read:

17 *OK* (d) If the employer controverts the right to compensation the
18 employer shall file with the board and send to the employee a notice
19 of controversion on or before the 21st day after the employer has
20 knowledge of the alleged injury or death. If the employer controverts
21 the right to compensation after payments have begun, the employer
22 shall file with the board and send to the employee a notice of con-
23 troversion within seven days after an installment of compensation
24 payable without an award is due. When payment of temporary disability
25 benefits is controverted solely on the grounds that another employer
26 or another insurer of the same employer may be responsible for all or
27 a portion of the benefits, the most recent employer or insurer who is
28 party to the claim and who may be liable shall make the payments
29 during the pendency of the dispute. When a final determination of

recreation of rights

1 liability is made, any reimbursement required, including interest at
2 the statutory rate, and all costs and attorneys' fees incurred by the
3 prevailing employer, shall be made within 14 days of the determina-
4 tion.

5 * Sec. 26. AS 23.30.155(f) is amended to read:

6 (f) If compensation payable under the terms of an award is not
7 paid within 14 days after it becomes due, there shall be added to that
8 unpaid compensation an amount equal to ²⁵ [20] percent ²⁵ of it, which
9 shall be paid at the same time as, but in addition to, the compensa-
10 tion, unless review of the compensation order making the award is had
11 as provided in AS 23.30.125 and an interlocutory injunction staying
12 payments is allowed by the court.

13 * Sec. 27. AS 23.30.155(m) is repealed and reenacted to read:

14 (m) Or or before March 1 of each year the insurer or adjuster
15 shall file a verified annual report on a form prescribed by the board
16 stating the total amount of all compensation by type, the number of
17 claims received and the percentage controverted, medical, and related
18 benefits, vocational rehabilitation expenses, legal fees, including a
19 ~~separate total for fees paid to attorneys and fees paid for the other~~
20 costs of litigation, and penalties paid on all claims during the
21 preceding calendar year. If the annual report is timely and complete
22 when received by the board and provides accurate information about
23 each category of payments, the commissioner shall review the timeli-
24 ness of the insurer's or adjuster's reports filed during the preceding
25 year under (c) of this section. If during the preceding year the
26 insurer or adjuster filed at least 99 percent of the reports on time,
27 the penalties assessed under (c) of this section shall be waived. If
28 during the preceding year the insurer or adjuster filed at least 97
29 percent of the reports on time, 75 percent of the penalties assessed

#9 or uninsured

1 under (c) of this section shall be waived. If during the preceding
2 year the insurer or adjuster filed 75 percent of the reports on time,
3 50 percent of the penalties assessed under (c) of this section shall
4 be waived. If during the preceding year the insurer's or adjuster's
5 reports have not been filed on time at least 95 percent of the time,
6 none of the penalties assessed under (c) of this section shall be
7 waived. The penalties that are not waived are due and payable when
8 the insurer or adjuster receives notification from the commissioner
9 regarding the timeliness of the reports. If the annual report is not
10 filed by March 1 of each year, the insurer or adjuster shall pay a
11 civil penalty of \$100 for the first day the annual report is late, and
12 \$10 for each additional day the report is late.

13 * Sec. 28. AS 23.30.155 is amended by adding new subsections to read.

14 (n) If the employer is self-insured, the requirements of (c) and
15 (m) of this section apply to the employer.

16 (o) The board shall promptly notify the division of insurance if
17 the board determines that the employer's insurer has frivolously or
18 unfairly ~~controverted~~ compensation due under this chapter. After
19 receiving notice from the board, the division of insurance shall
20 determine if the insurer has committed an unfair claim settlement
21 practice under AS 21.36.125.

22 (p) When an employer pays compensation due under this chapter to
23 an employee residing in this state, the payment must be made by check
24 or other negotiable instrument drawn on funds deposited in this state
25 or by certified check.

26 * Sec. 29. AS 23.30.175 is repealed and reenacted to read:

27 Sec. 23.30.175. RATES OF COMPENSATION. (a) The weekly rate of
28 compensation for disability or death may not exceed \$700 and initially
29 may not be less than \$110. However, if the board determines that the

Revised Annual

total ineffective

Amended #10

*Problem by
calculation.*

1 employee's spendable weekly wages are less than \$110 a week as com-
2 puted under AS 23.30.220, or less than \$154 a week in the case of an
3 employee who has furnished documentary proof of the employee's wages,
4 it shall issue an order adjusting the weekly rate of compensation to a
5 rate equal to the employee's spendable weekly wages. If the employer
6 can verify that the employee's spendable weekly wages are less than
7 \$154, the employer may adjust the weekly rate of compensation to a
8 rate equal to the employee's spendable weekly wages without an order
9 of the board. If the employee's spendable weekly wages are greater
10 than \$154, but 80 percent of the employee's spendable weekly wages is
11 less than \$154, the employee's weekly rate of compensation shall be
12 \$154. Prior payments made in excess of the adjusted rate shall be
13 deducted from the unpaid compensation in the manner the board deter-
14 mines. In any case, the employer shall pay timely compensation.

15 (b) The following rules apply to benefits payable to recipients
16 not residing in the state at the time compensation benefits are pay-
17 able:

18 (1) the weekly rate of compensation shall be calculated by
19 multiplying the recipient's weekly compensation rate calculated under
20 AS 23.30.180, 23.30.185, 23.30.190, 23.30.200, or 23.30.215, by the
21 ratio of the cost of living of the area in which the recipient resides
22 to the cost of living in this state;

23 (2) the calculation required by (1) of this subsection does
24 not apply if the recipient is absent from the state for medical or re-
25 habilitation services not reasonably available in the state;

26 (3) if the gross weekly earnings of the recipient and the
27 resulting compensation rate is determined under AS 23.30.220(a)(2),
28 the calculation required by this subsection applies only to the por-
29 tion of the recipient's weekly compensation rate attributable to wages

*board
may not*

*copy of
amending*

1 earned in the state;

2 (4) application of this subsection may not reduce the
3 weekly compensation rate to less than \$154 a week, except as provided
4 in (a) of this section.

5 (c) The board shall provide by regulation for the determination
6 and comparison of living costs for this state and the other areas in
7 which recipients reside and for the annual redetermination and com-
8 parison of these costs.

9 * Sec. 30. AS 23.30.180 is amended to read:

10 Sec. 23.30.180. PERMANENT TOTAL DISABILITY. In case of total
11 disability adjudged to be permanent 80 percent of the injured em-
12 ployee's spendable weekly wages shall be paid to the employee during
13 the continuance of the total disability. If a permanent partial
14 disability award has been made before a permanent total disability
15 determination, permanent total disability benefits must be reduced by
16 the amount of the permanent partial disability award, adjusted for
17 inflation, in a manner determined by the board. Loss of both hands,
18 or both arms, or both feet, or both legs, or both eyes, or of any two
19 of them, in the absence of conclusive proof to the contrary, consti-
20 tutes permanent total disability. In all other cases permanent total
21 disability is determined in accordance with the facts. In making this
22 determination the market for the employee's services shall be

- 23 (1) area of residence;
- 24 (2) area of last employment;
- 25 (3) the state of residence; and
- 26 (4) the State of Alaska.

27 * Sec. 31. AS 23.30.180 is amended by adding a new subsection to read:

28 (b) Failure to achieve remunerative employability as defined in
29 (AS 23.30.041(m)(7)) does not, by itself, constitute permanent total

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Handwritten note: "Hand down work" with an arrow pointing to line 23.

Handwritten note: "AS 23.30.041(m)(7) (p)"

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1 disability.

2 * Sec. 32. AS 23.30.185 is amended to read:

3 Sec. 23.30.185. COMPENSATION FOR TEMPORARY TOTAL DISABILITY. In
4 case of disability total in character but temporary in quality, 80
5 percent of the injured employee's spendable weekly wages shall be paid
6 to the employee during the continuance of the disability. Temporary
7 total disability benefits may not be paid for any period of disability
8 occurring after the date of medical stability. [Temporary total dis-
9 ability benefits may not be paid for more than two years regardless of
10 continuance of the disability.]

11 * Sec. 33. AS 23.30.190 is repealed and reenacted to read:

12 Sec. 23.30.190. COMPENSATION FOR PERMANENT PARTIAL IMPAIRMENT

13 (a) In case of impairment partial in character but permanent in
14 quality, and not resulting in permanent total disability, the compen-
15 sation is ~~\$240,000~~ ^{135,000} multiplied by the employee's percentage of net
16 permanent impairment of the whole person, and payable in a single lump
17 sum, except as otherwise provided in AS 23.30.041, but the compensa-
18 tion may not be discounted for any present value considerations. [The
19 percentage of net permanent impairment shall be determined by multi-
20 plying the employee's actual degree of permanent impairment by the
21 appropriate adjustment factor, as follows:

22	Degree of Actual Impairment	Adjustment Factor
23	0 - 5	0
24	6	0.060
25	7	0.120
26	8	0.180
27	9	0.240
28	10	0.300
29	11	0.333

#12
Delete text
line

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E-year

DISABILITY

135,000

five

1	12	0.366
2	13	0.399
3	14	0.432
4	15	0.465
5	16	0.495
6	17	0.540
7	18	0.585
8	19	0.630
9	20	0.675
10	21	0.680
11	22	0.688
12	23	0.696
13	24	0.704
14	25	0.712
15	26	0.740
16	27	0.765
17	28	0.790
18	29	0.815
19	30	0.840
20	31	0.880
21	32	0.910
22	33	0.940
23	34	0.970
24	35-100	1.000

25 (b) All determinations of the existence and degree of permanent
26 impairment shall be made strictly and solely under the whole person
27 determination as set out in the American Medical Association Guides to
28 the Evaluation of Permanent Impairment, except that an impairment
29 rating may not be rounded to the next five percent. The board shall

1 adopt a supplementary recognized schedule for injuries that cannot be
2 rated by use of the American Medical Association Guides.

3 (c) An employee with an actual permanent impairment as deter-
4 mined under (b) of this section may not receive less than \$250 for the
5 impairment.

6 (d) The impairment rating determined under (a) of this section
7 shall be reduced by a permanent impairment that existed before the
8 compensable injury. If the combination of a prior impairment rating
9 and a rating under (a) of this section would result in the employee
10 being considered permanently totally disabled, the prior rating does
11 not negate a finding of permanent total disability.

12 * Sec. 34. AS 23.30.200 is amended to read:

13 Sec. 23.30.200. TEMPORARY PARTIAL DISABILITY. In case of tempo-
14 rary partial disability resulting in decrease of earning capacity the
15 compensation shall be 80 percent of the difference between the injured
16 employee's spendable weekly wages before the injury and the wage-
17 earning capacity of the employee after the injury in the same or
18 another employment, to be paid during the continuance of the disabili-
19 ty, but not to be paid for more than two [FIVE] years. Temporary
20 partial disability benefits may not be paid for a period of disability
21 occurring after the date of medical stability.

22 * Sec. 35. AS 23.30.200 is amended by adding a new subsection to read:

23 (b) The wage-earning capacity of an injured employee is deter-
24 mined by the actual spendable weekly wage of the employee if the
25 actual spendable weekly wage fairly and reasonably represents the
26 wage-earning capacity of the employee. The board may, in the interest
27 of justice, fix the wage-earning capacity that is reasonable, having
28 due regard to the nature of the injury, the degree of physical impair-
29 ment, the usual employment, and other factors or circumstances in the

def part

1 case that may affect the capacity of the employee to earn wages in a
2 disabled condition, including the effect of disability as it may
3 naturally extend into the future.

4 * Sec. 36. AS 23.30.220(a) is amended to read:

5 (a) The spendable weekly wage of an injured employee at the time
6 of an injury is the basis for computing compensation. It is the
7 employee's gross weekly earnings minus payroll tax deductions. The
8 gross weekly earnings shall be calculated as follows:

9 (1) The gross weekly earnings are computed by dividing by
10 100 the gross earnings of the employee in the two calendar years
11 immediately preceding the injury.

12 (2) If the employee had no earnings during the two calendar
13 years preceding the injury or was voluntarily absent from the labor
14 market for 18 months or more of the two calendar years preceding the
15 injury [THE BOARD DETERMINES THAT THE GROSS WEEKLY EARNINGS AT THE
16 TIME OF THE INJURY CANNOT BE FAIRLY CALCULATED UNDER (1) OF THIS
17 SUBSECTION], the board shall [MAY] determine the employee's gross
18 weekly earnings for calculating compensation by considering the nature
19 of the employee's work and work history, but compensation may not
20 exceed the employee's projected gross weekly earnings at the time of
21 injury.

22 (3) If an employee when injured is a minor, an apprentice,
23 or a trainee in a formal training program, as determined by the board,
24 whose wages under normal conditions would increase during the period
25 of disability, the projected increase may be considered by the board
26 in computing the gross weekly earnings of the employee.

27 (4) If the employee is injured while performing duties as a
28 volunteer ambulance attendant, policeman, or fireman, the gross weekly
29 earnings for calculating compensation shall be the minimum gross

read amendment

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1 weekly earnings paid a full-time ambulance attendant, policeman, or
2 fireman employed in the political subdivision where the injury oc-
3 curred, or, if the political subdivision has no full-time ambulance
4 attendants, policemen, or firemen, at a reasonable figure previously
5 set by the political subdivision to make this determination but in no
6 case may the gross weekly earnings for calculating compensation be
7 less than the minimum wage computed on the basis of 40 hours work per
8 week.

9 Sec. 37. AS 23.30.225 is amended by adding a new subsection to read:

10 (c) If employer contributions to a qualified pension or profit
11 sharing plan have been included in the determination of gross earnings
12 and the employee is receiving pension or profit sharing payments,
13 weekly compensation benefits payable under this chapter shall be
14 reduced by the amount paid or payable to the injured worker under the
15 plan for any week or weeks during which compensation benefits are also
16 payable. The amount of the reduction may not in any week exceed the
17 increase in weekly compensation benefits brought about by the inclu-
18 sion of employer contributions to a qualified pension or profit shar-
19 ing plan in the determination of gross earnings.

20 * Sec. 38. AS 23.30 is amended by adding a new section to read:

21 Sec. 23.30.247. DISCRIMINATION PROHIBITED. (a) An employer may
22 not discriminate in hiring, promotion, or retention policies or prac-
23 tices against an employee who has in good faith filed a claim for or
24 received benefits under this chapter. An employer who violates this
25 section is liable to the employee for damages to be assessed by the
26 court in a private civil action.

27 (b) This section may not be construed to prevent an employer
28 from basing hiring, promotion, or retention policies or practices on
29 considerations of the employee's safety practices or the employee's

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- A circled 'D' with a checkmark.
- 'Pension Union worker' written vertically.

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- 'Be 2005' written diagonally.

1 physical and mental abilities; nor may this section be construed so as
2 to create employment rights not otherwise in existence.

3 (c) This section may not be construed to prohibit an employer
4 from requiring a prospective employee to fill out a preemployment
5 questionnaire or application regarding the person's prior health or
6 disability history as long as it is meant to either document written
7 notice for second injury fund reimbursement under AS 23.30.205(c) or
8 to determine whether the employee has the physical or mental capacity
9 to meet the documented physical or mental demands of the work.

10 * Sec. 39. AS 23.30.265(15) is amended to read:

11 *ok* (15) "gross earnings" means periodic payments, by an em-
12 ployer to an employee for employment before any authorized or lawfully
13 required deduction or withholding of money by the employer, including
14 compensation that is deferred at the option of the employee, and
15 excluding irregular bonuses, reimbursement of expenses, expense allow-
16 ances, and any benefit or payment to the employee that is not fully
17 taxable to the employee during the pay period, except that the total
18 amount of contributions made by an employer to a qualified pension or
19 profit sharing plan during the two plan years preceding the injury,
20 multiplied by the percentage of the employee's vested interest in the
21 plan at the time of injury, shall be included in the determination of
22 gross earnings; the value of room and board if taxable to the employee
23 may be considered in determining gross earnings; however, the value of
24 room and board that would raise an employee's gross weekly earning
25 above the state [ALASKA] average weekly wage at the time of injury may
26 not be considered;

27 * Sec. 40. AS 23.30.265(17) is amended to read:

28 (17) "injury" means accidental injury or death arising out
29 of and in the course of employment, and an occupational disease or

mental/mental

existing law substantial cause of

1 infection which arises naturally out of the employment or which natu-
 2 rally or unavoidably results from an accidental injury; "injury" [,
 3 AND] includes breakage or damage to eyeglasses, hearing aids, den-
 4 tures, or any prosthetic devices which function as part of the body
 5 and further includes an injury caused by the wilful act of a third
 6 person directed against an employee because of the employment: "in-
 7 jury" does not include mental injury caused by mental stress unless it
 8 is established that (A) the work stress was extraordinary and unusual
 9 in comparison to pressures and tensions experienced by individuals in
 10 a comparable work environment, and (B) the work stress was the predom-
 11 inant cause of the mental injury; the amount of work stress shall be
 12 measured by actual events rather than misperceptions by the employee;
 13 a mental injury is not considered to arise out of and in the course of
 14 employment if it results from a disciplinary action, work evaluation,
 15 job transfer, layoff, demotion, termination or similar action, taken
 16 in good faith by the employer;

mental stress

probably need work.

Cross issue predominant

#32
Adopted

* Sec. 41. AS 23.30.265 is amended by adding a new paragraph to read:

18 (34) "medical stability" means the date after which further
 19 objectively measurable improvement from the effects of the compensable
 20 injury is not reasonably expected to result from additional medical
 21 care or treatment, notwithstanding the possible need for additional
 22 medical care or the possibility of improvement or deterioration re-
 23 sulting from the passage of time; medical stability shall be presumed
 24 in the absence of objectively measurable improvement for a period of
 25 45 days; this presumption may be rebutted by clear and convincing
 26 evidence.

* Sec. 42. AS 23.30.210 is repealed.

and 23.30.265(28) are

* Sec. 43. TRANSITIONAL PROVISIONS. Notwithstanding AS 23.30.040(b), as amended by sec. 8 of this Act, and AS 23.30.155(m), as amended by

1 sec. 27 of this Act, on or before March 1, 1989, each employer that is
2 subject to those sections shall file a report and make the appropriate
3 contribution for all claims existing as of December 31, 1988. The period
4 covered in the report shall be from the date of the termination report or
5 the last anniversary report filed, if one has been filed, through Decem-
6 ber 31, 1988.

7 * Sec. 44. TEMPORARY RATE REDUCTION. Notwithstanding AS 21.39.030, an
8 insurer providing workers' compensation insurance in the state shall pro-
9 vide at least a six percent reduction in the premium rate charged within
10 the state for workers' compensation insurance, for the period beginning
11 July 1, 1988, and ending January 1, 1990.

12 * Sec. 45. TRANSITIONAL PROVISION. Notwithstanding AS 23.30.041(p), as
13 amended by sec. 9 of this Act, for the period from July 1, 1988, until
14 June 30, 1989, the term "rehabilitation specialist" as used in AS 23.30.041
15 includes a person who was actively employed for at least one year before
16 June 30, 1988, in providing rehabilitation services to an injured worker
17 receiving benefits under AS 23.30.

18 * Sec. 46. APPLICABILITY. Except for secs. 8, 25, 27, 28, 40, and 44
19 of this Act, this Act applies only to injuries sustained on or after
20 July 1, 1988.

21 * Sec. 47. Section 40 of this Act applies to injuries sustained on or
22 after the effective date of sec. 40 of this Act.

23 * Sec. 48. Sections 40 and 47 of this Act takes effect immediately
24 under AS 01.10.070(c).

25 * Sec. 49. Sections 1 - 39, and 41 - 46 of this Act take effect July 1,
26 1988.

Make it all effective at once

Issue whether to restrict

Rate reduction

*grand
mother
clause*

labor

Take

#1

5-1514P
Ford
5/3/88

Original sponsor: Labor and Commerce
Committee

1 IN THE SENATE

BY THE CONFERENCE COMMITTEE

2 CONFERENCE CS FOR SENATE BILL NO. 322

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 ensure 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.

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 the incentives 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.

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

7 (e) It is the intent of the legislature in amending AS 23.30.075(b)
8 and 23.30.155 that the division of workers' compensation, division of
9 insurance, and Department of Law strictly enforce the punishment authorized
10 under AS 23.30.075(b) and the reporting requirements and penalties for
11 noncompliance under AS 23.30.155. Strict enforcement is necessary because

12 (1) the state has failed to impose the punishment authorized
13 under AS 23.30.075(b) against those employers who fail to obtain workers'
14 compensation insurance or to qualify as a self-insurer; and

15 (2) there is a lack of specific data from the division of work-
16 ers' compensation and division of insurance to adequately assess the effi-
17 ciency and costs of the workers' compensation system.

18 * Sec. 2. AS 21.39.155 is amended by adding a new subsection to read:

19 (c) An insurer may impose a surcharge not to exceed 25 percent
20 of the premium for assigned risk pool insurance, except that a sur-
21 charge may not be applied to the first \$3,000 in premium in any policy
22 year.

23 * Sec. 3. AS 21.89 is amended by adding a new section to read:

24 Sec. 21.89.015. WORKPLACE SAFETY PROGRAM. An insurer who pro-
25 vides workers' compensation insurance in this state shall establish
26 and maintain a workplace safety rate reduction program, subject to the
27 approval of the division of insurance.

28 * Sec. 4. AS 23.30.005(h) is amended to read:

29 (h) The department shall [MAY] adopt [IDENTICAL] rules for all

1 panels, and procedures for the periodic selection, retention, and re-
2 moval of both rehabilitation specialists and physicians under AS 23.-
3 30.041 and 23.30.095, and shall [MAY] adopt regulations to carry out
4 the provisions of this chapter. Process and procedure under this
5 chapter shall be as summary and simple as possible. The department,
6 the board or a member of it may for the purposes of this chapter
7 subpoena witnesses, administer or cause to be administered oaths, and
8 may examine or cause to have examined the parts of the books and
9 records of the parties to a proceeding that relate [WHICH RELATED] to
10 questions in dispute. The superior court, on application of the
11 department, the board or any members of it, shall enforce the atten-
12 dance and testimony of witnesses and the production and examination of
13 books, papers, and records.

14 * Sec. 5. AS 23.30.020 is amended by adding a new subsection to read:

15 (b) An employee who knowingly makes a false statement as to the
16 employee's physical condition on an employment application or preem-
17 ployment questionnaire may not receive benefits under this chapter if

18 (1) the employer relied upon the false representation and
19 this reliance was a substantial factor in the hiring; and

20 (2) there was a causal connection between the false rep-
21 resentation and the injury to the employee.

22 * Sec. 6. AS 23.30.025 is amended by adding a new subsection to read:

23 (c) An insurer extending coverage required under this chapter by
24 specifying Alaska in the other states section or similar provision of
25 the insurance policy shall provide notice to the department under
26 AS 23.30.085.

27 * Sec. 7. AS 23.30.030 is amended by adding a new paragraph to read:

28 (8) An annual insurance premium that exceeds \$2,000 may be
29 paid on an installment basis of not fewer than two payments, if

1 requested by the insured. Premiums paid by installment must be struc-
 2 tured to reflect seasonal peaks in the basis of the premium. The
 3 insurer shall include this provision in the insurance policy in a
 4 manner that clearly informs the insured of the provision.

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

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

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

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

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

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

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

Sec. 23.30.041. REHABILITATION OF INJURED WORKERS. (a) The board shall select and employ a reemployment benefits administrator. The board may authorize the administrator to select and employ additional staff. The administrator is in the partially exempt service under AS 39.25.120.

(b) The administrator shall perform the following functions:

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

(2) recommend regulations for adoption by the board that establish performance and reporting criteria for rehabilitation specialists;

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

(4) review on an annual basis the performance of rehabilitation specialists to determine continued eligibility for delivery of rehabilitation services;

(5) submit to the department, on or before January 1 of each year, a report of reemployment benefits provided under this

1 section for the previous fiscal year; the report must include a gener-
2 al section, sections related to each rehabilitation specialist em-
3 ployed under this section, and a statistical summary of all reha-
4 bilitation cases, including

5 (A) the estimated and actual cost of each active
6 rehabilitation plan;

7 (B) the estimated and actual time of each rehabilita-
8 tion plan;

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

12 (D) the cost of reemployment benefits;

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

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

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

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

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

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

21 (2) other jobs that exist in the labor market that the
22 employee has held or received training for within 10 years before the
23 injury or that the employee has held following the injury for a period
24 long enough to obtain the skills to compete in the labor market,
25 according to specific vocational preparation codes as described in the
26 United States Department of Labor's "Selected Characteristics of Occu-
27 pations Defined in the Dictionary of Occupational Titles."

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

29 (1) the employer offers employment within the employee's

1 predicted post-injury physical capacities at a wage equivalent to at
2 least the state minimum wage under AS 23.10.065 or 75 percent of the
3 worker's gross hourly wages at the time of injury, whichever is great-
4 er, and the employment prepares the employee to be employable in other
5 jobs that exist in the labor market;

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

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

2 (g) Within 10 days after the employee receives the adminis-
3 trator's notification of eligibility for benefits, an employee who
4 desires to use these benefits shall give written notice to the em-
5 ployer of the employee's selection of a rehabilitation specialist who
6 shall provide a complete reemployment benefits plan. If the employer
7 disagrees with the employee's choice of rehabilitation specialist to
8 develop the plan and the disagreement cannot be resolved, then the
9 administrator shall assign a rehabilitation specialist. The employer
0 and employee each have one right of refusal of a rehabilitation spe-
1 cialist.

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

6 (1) a determination of the occupational goal in the labor
7 market;

8 (2) an inventory of the employee's technical skills, phys-
9 ical and intellectual capacities, academic achievement, emotional

1 condition and family support;

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

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

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

8 (6) the date the plan will commence;

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

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

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

16 (i) Reemployment benefits shall be selected from the following
17 in a manner that ensures remunerative employability in the shortest
18 possible time:

19 (1) on the job training;

20 (2) vocational training;

21 (3) academic training;

22 (4) self-employment; or

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

24 (j) The employee, rehabilitation specialist, and the employer
25 shall sign the reemployment benefits plan. If the employer and em-
26 ployee fail to agree on a reemployment plan, either party may submit a
27 reemployment plan for approval to the administrator; the adminis-
28 trator shall approve or deny a plan within 14 days after the plan is
29 submitted; within 10 days of the decision, either party may seek

1 review of the decision by requesting a hearing under AS 23.30.110; the
2 board shall uphold the decision of the administrator unless evidence
3 is submitted supporting an allegation of abuse of discretion on the
4 part of the administrator; the board shall render a decision within 30
5 days after completion of the hearing.

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

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

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

1 and location.

2 (n) After the employee has elected to participate in reemploy-
3 ment benefits, if the employer believes the employee has not coop-
4 erated the employer may terminate reemployment benefits on the date of
5 noncooperation. Noncooperation means unreasonable failure to

6 (1) keep appointments;

7 (2) maintain passing grades;

8 (3) attend designated programs;

9 (4) maintain contact with the rehabilitation specialist;

10 (5) cooperate with the rehabilitation specialist in devel-
11 oping a reemployment plan and participating in activities relating to
12 reemployability on a full-time basis;

13 (6) comply with the employee's responsibilities outlined in
14 the reemployment plan; or

15 (7) participate in any planned reemployment activity as
16 determined by the administrator.

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

28 (p) In this section

29 (1) "administrator" means the reemployment benefits

1 administrator under AS 23.30.041(a);

2 (2) "employability" means possessing the ability but not
3 necessarily the opportunity to engage in employment that is consistent
4 with the employee's physical status imposed by the compensable injury;

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

7 (A) area of residence;

8 (B) area of last employment;

9 (C) the state;

10 (D) other states;

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

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

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

25 (7) "remunerative employability" means having the skills
26 that allow a worker to be compensated with wages or other earnings
27 equivalent to at least 60 percent of the worker's gross hourly wages
28 at the time of injury; if the employment is outside the state, the
29 stated 60 percent shall be adjusted to account for the difference

1 between the applicable state average weekly wage and the Alaska aver-
2 age weekly wage.

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

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

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

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

1 [SAID] corporation or apply for a certificate of self-insurance, and
2 the person actively in charge of the business of the [SUCH] corpo-
3 ration shall be subject to the penalties prescribed in this subsection
4 [HEREIN] and shall be personally, jointly, and severally liable to-
5 gether with the corporation for the payment of all compensation or
6 other benefits for which the corporation is liable under this chapter
7 if the [SAID] corporation at that [SUCH] time is not insured or quali-
8 fied as a self-insurer.

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

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

1 ADMINISTERED BY THE SELECTION OF ANOTHER PHYSICIAN]. Upon procuring
2 the services of a physician, the injured employee shall give proper
3 notification of the selection to the employer within a reasonable time
4 after first being treated. Notice of a change in the attending physi-
5 cian shall be given before the change [IF FOR ANY REASON DURING THE
6 PERIOD WHEN MEDICAL CARE IS REQUIRED THE EMPLOYEE WISHES TO CHANGE TO
7 ANOTHER PHYSICIAN, THE EMPLOYEE MAY DO SO IN ACCORDANCE WITH REGU-
8 LATIONS ADOPTED BY THE BOARD].

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

10 (c) A claim for medical or surgical treatment, or treatment
11 requiring continuing and multiple treatments of a similar nature is
12 not valid and enforceable against the employer unless, within 14 days
13 following treatment, the physician or health care provider giving the
14 treatment or the employee receiving it furnishes to the employer and
15 the board notice of the injury and treatment, preferably on a form
16 prescribed by the board. The board shall, however, excuse the failure
17 to furnish notice within 14 days when it finds it to be in the inter-
18 est of justice to do so, and it may, upon application by a party in
19 interest, make an award for the reasonable value of the medical or
20 surgical treatment so obtained by the employee. When a claim is made
21 for a course of treatment requiring continuing and multiple treatments
22 of a similar nature, in addition to the notice, the physician or
23 health care provider shall furnish a written treatment plan if the
24 course of treatment will require more frequent outpatient visits than
25 the standard treatment frequency for the nature and degree of the
26 injury and the type of treatments. The treatment plan shall be furn-
27 ished to the employee and the employer within 14 days after treatment
28 begins. The treatment plan must include objectives, modalities,
29 frequency of treatments, and reasons for the frequency of treatments.

1 If the treatment plan is not furnished as required under this subsec-
2 tion, neither the employer nor the employee may be required to pay for
3 treatments that exceed the frequency standard. The board shall adopt
4 regulations establishing standards for frequency of treatment.

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

6 (e) The employee shall, after an injury, at reasonable times
7 during the continuance of the disability, if requested by the employer
8 or when ordered by the board, submit to an examination by a physician
9 or surgeon of the employer's choice authorized to practice medicine
10 under the laws of the jurisdiction in which the physician resides
11 [STATE IN WHICH THE EMPLOYEE MAY BE FOUND], furnished and paid for by
12 the employer. The employer may not make more than one change in the
13 employer's choice of a physician or surgeon without the written con-
14 sent of the employee. Referral to a specialist by the employer's
15 physician is not considered a change in physicians. An examination
16 requested by the employer not less than 14 days after injury, and
17 every 60 days thereafter, shall be presumed to be reasonable, and the
18 employee shall submit to the examination without further request or
19 order by the board. Unless medically appropriate, the physician shall
20 use existing diagnostic data to complete the examination. Facts
21 relative to the injury or claim communicated to or otherwise learned
22 by a physician or surgeon who may have attended or examined the em-
23 ployee, or who may have been present at an examination are not priv-
24 ileged, either in the hearings provided for in this chapter or an
25 action to recover damages against an employer who is subject to the
26 compensation provisions of this chapter. If an employee refuses to
27 submit to an [ANY] examination provided for in this section, the
28 employee's rights to compensation shall be suspended until the ob-
29 struction or refusal ceases, and the employee's compensation during

1 the period of suspension may, in the discretion of the board or the
2 court determining an action brought for the recovery of damages under
3 this chapter, be forfeited. The board in any case of death may re-
4 quire an autopsy at the expense of the party requesting the autopsy.
5 An autopsy may not be held without notice first being given to the
6 widow or widower or next of kin if they reside in the state or their
7 whereabouts can be reasonably ascertained, of the time and place of
8 the autopsy and reasonable time and opportunity given the widow or
9 widower or next of kin to have a representative present to witness the
10 autopsy. If adequate notice is not given, the findings from the
11 autopsy may be suppressed on motion made to the board or to the supe-
12 rior court, as the case may be.

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

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

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

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

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

29 (k) In the event of a medical dispute regarding determinations

1 of causation, medical stability, ability to enter a reemployment plan,
2 degree of impairment, functional capacity, the amount and efficacy of
3 the continuance of or necessity of treatment, or compensability be-
4 tween the employee's attending physician and the employer's independ-
5 ent medical evaluation, a second independent medical evaluation shall
6 be conducted by a physician or physicians selected by the board from a
7 list established and maintained by the board. The cost of the exami-
8 nation and medical report shall be paid by the employer. The report
9 of the independent medical examiner shall be furnished to the board
10 and to the parties within 14 days after the examination is concluded.
11 A person may not seek damages from an independent medical examiner
12 caused by the rendering of an opinion or providing testimony under
13 this subsection, except in the event of fraud or gross incompetence.

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

15 (a) The right to compensation for disability under this chapter
16 is barred unless a claim for it is filed within two years after the
17 employee has knowledge of the nature of the employee's disability and
18 its relation to the employment and after disablement. However, the
19 maximum time for filing the claim in any event other than arising out
20 of an occupational disease shall be four years from the date of in-
21 jury, and the right to compensation for death is barred unless a claim
22 therefor is filed within one year after the death, except that if
23 payment of compensation has been made without an award on account of
24 the injury or death, a claim may be filed within two years after the
25 date of the last payment of benefits under AS 23.30.180, 23.30.185,
26 23.30.190, 23.30.200, or 23.30.215. It is additionally provided that,
27 in the case of latent defects pertinent to and causing compensable
28 disability, the injured employee has full right to claim as shall be
29 determined by the board, time limitations notwithstanding.

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

2 (c) Before a hearing is scheduled, the party seeking a hearing
3 shall file a request for a hearing together with an affidavit stating
4 that the party has completed necessary discovery, obtained necessary
5 evidence, and is prepared for the hearing. An opposing party shall
6 have 10 days after the hearing request is filed to file a response.
7 If a party opposes the hearing request, the board or a board designee
8 shall within 30 days of the filing of the opposition conduct a pre-
9 hearing conference and set a hearing date. If opposition is not
10 filed, a hearing shall be scheduled no later than 60 days after the
11 receipt of the hearing request. The board shall give each party at
12 least 10 days' notice of the hearing, either personally or by cer-
13 tified mail. After a hearing has been scheduled, the parties may not
14 stipulate to change the hearing date or to cancel, postpone, or con-
15 tinue the hearing, except for good cause as determined by the board.
16 After completion of the hearing the board shall close the hearing
17 record. If a settlement agreement is reached by the parties less than
18 14 days before the hearing, the parties shall appear at the time of
19 the scheduled hearing to state the terms of the settlement agreement.
20 Within 30 days after the hearing record closes, the board shall file
21 its decision. If the employer controverts a claim on a board-pre-
22 scribed controversion notice and the employee does not request a
23 hearing within two years following the filing of the controversion
24 notice, the claim is denied.

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

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

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

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

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

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

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

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

1 employee within 28 days after the date of issuing a payment increas-
2 ing, decreasing, resuming, or changing the type of compensation paid.
3 If the [EMPLOYER FAILS TO NOTIFY THE] board and the employee are not
4 notified within the 28 days prescribed by this subsection for report-
5 ing, the insurer or adjuster [EMPLOYER] shall pay a civil penalty of
6 \$100 for the first day plus \$10 for each day thereafter that the
7 [EMPLOYER FAILED TO GIVE] notice was not given. Total penalties under
8 this subsection [SECTION] may not exceed \$1,000 for a failure to file
9 a required report. Penalties assessed under this subsection are
10 eligible for reduction under (m) of this section. A penalty assessed
11 under this subsection after penalties have been reduced under (m) of
12 this section shall be increased by 25 percent and shall bear interest
13 at the rate established under AS 45.45.010.

14 * Sec. 25. AS 23.30.155(d) is amended to read:

15 (d) If the employer controverts the right to compensation the
16 employer shall file with the board and send to the employee a notice
17 of controversion on or before the 21st day after the employer has
18 knowledge of the alleged injury or death. If the employer controverts
19 the right to compensation after payments have begun, the employer
20 shall file with the board and send to the employee a notice of con-
21 troversion within seven days after an installment of compensation
22 payable without an award is due. When payment of temporary disability
23 benefits is controverted solely on the grounds that another employer
24 or another insurer of the same employer may be responsible for all or
25 a portion of the benefits, the most recent employer or insurer who is
26 party to the claim and who may be liable shall make the payments
27 during the pendency of the dispute. When a final determination of
28 liability is made, any reimbursement required, including interest at
29 the statutory rate, and all costs and attorneys' fees incurred by the

1 prevailing employer, shall be made within 14 days of the determina-
2 tion.

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

4 (e) If any installment of compensation payable without an award
5 is not paid within seven days after it becomes due, as provided in (b)
6 of this section, there shall be added to the unpaid installment an
7 amount equal to 25 [20] percent of it. This additional amount shall
8 be paid at the same time as, and in addition to, the installment,
9 unless notice is filed under (d) of this section or unless the
10 nonpayment is excused by the board after a showing by the employer
11 that owing to conditions over which the employer had no control the
12 installment could not be paid within the period prescribed for the
13 payment.

14 * Sec. 27. AS 23.30.155(f) is amended to read:

15 (f) If compensation payable under the terms of an award is not
16 paid within 14 days after it becomes due, there shall be added to that
17 unpaid compensation an amount equal to 25 [20] percent of it which
18 shall be paid at the same time as, but in addition to, the compensa-
19 tion, unless review of the compensation order making the award is had
20 as provided in AS 23.30.125 and an interlocutory injunction staying
21 payments is allowed by the court.

22 * Sec. 28. AS 23.30.155(m) is repealed and reenacted to read:

23 (m) On or before March 1 of each year the insurer or adjuster
24 shall file a verified annual report on a form prescribed by the board
25 stating the total amount of all compensation by type, the number of
26 claims received and the percentage controverted, medical, and related
27 benefits, vocational rehabilitation expenses, legal fees, including a
28 separate total for fees paid to attorneys and fees paid for the other
29 costs of litigation, and penalties paid on all claims during the

1 preceding calendar year. If the annual report is timely and complete
2 when received by the board and provides accurate information about
3 each category of payments, the commissioner shall review the timeli-
4 ness of the insurer's or adjuster's reports filed during the preceding
5 year under (c) of this section. If during the preceding year the
6 insurer or adjuster filed at least 99 percent of the reports on time,
7 the penalties assessed under (c) of this section shall be waived. If
8 during the preceding year the insurer or adjuster filed at least 97
9 percent of the reports on time, 75 percent of the penalties assessed
10 under (c) of this section shall be waived. If during the preceding
11 year the insurer or adjuster filed 95 percent of the reports on time,
12 50 percent of the penalties assessed under (c) of this section shall
13 be waived. If during the preceding year the insurer's or adjuster's
14 reports have not been filed on time at least 95 percent of the time,
15 none of the penalties assessed under (c) of this section shall be
16 waived. The penalties that are not waived are due and payable when
17 the insurer or adjuster receives notification from the commissioner
18 regarding the timeliness of the reports. If the annual report is not
19 filed by March 1 of each year, the insurer or adjuster shall pay a
20 civil penalty of \$100 for the first day the annual report is late, and
21 \$10 for each additional day the report is late. If the annual report
22 is incomplete when filed, the insurer or adjuster shall pay a civil
23 penalty of \$1,000.

24 * Sec. 29. AS 23.30.155 is amended by adding new subsections to read:

25 (n) If the employer is self-insured or uninsured, the require-
26 ments of (c) and (m) of this section apply to the employer.

27 (o) The board shall promptly notify the division of insurance if
28 the board determines that the employer's insurer has frivolously or
29 unfairly controverted compensation due under this chapter. After

1 receiving notice from the board, the division of insurance shall
2 determine if the insurer has committed an unfair claim settlement
3 practice under AS 21.36.125.

4 * Sec. 30. AS 23.30.175 is repealed and reenacted to read:

5 Sec. 23.30.175. RATES OF COMPENSATION. (a) The weekly rate of
6 compensation for disability or death may not exceed \$700 and initially
7 may not be less than \$110. However, if the board determines that the
8 employee's spendable weekly wages are less than \$110 a week as com-
9 puted under AS 23.30.220, or less than \$154 a week in the case of an
10 employee who has furnished documentary proof of the employee's wages,
11 it shall issue an order adjusting the weekly rate of compensation to a
12 rate equal to the employee's spendable weekly wages. If the employer
13 can verify that the employee's spendable weekly wages are less than
14 \$154, the employer may adjust the weekly rate of compensation to a
15 rate equal to the employee's spendable weekly wages without an order
16 of the board. If the employee's spendable weekly wages are greater
17 than \$154, but 80 percent of the employee's spendable weekly wages is
18 less than \$154, the employee's weekly rate of compensation shall be
19 \$154. Prior payments made in excess of the adjusted rate shall be
20 deducted from the unpaid compensation in the manner the board deter-
21 mines. In any case, the employer shall pay timely compensation.

22 (b) The following rules apply to benefits payable to recipients
23 not residing in the state at the time compensation benefits are pay-
24 able:

25 (1) the weekly rate of compensation shall be calculated by
26 multiplying the recipient's weekly compensation rate calculated under
27 AS 23.30.180, 23.30.185, 23.30.190, 23.30.200, or 23.30.215, by the
28 ratio of the cost of living of the area in which the recipient resides
29 to the cost of living in this state;

1 (2) the calculation required by (1) of this subsection does
2 not apply if the recipient is absent from the state for medical or re-
3 habilitation services not reasonably available in the state;

4 (3) if the gross weekly earnings of the recipient and the
5 resulting compensation rate is determined under AS 23.30.220(a)(2),
6 the calculation required by this subsection applies only to the por-
7 tion of the recipient's weekly compensation rate attributable to wages
8 earned in the state;

9 (4) application of this subsection may not reduce the
10 weekly compensation rate to less than \$154 a week, except as provided
11 in (a) of this section.

12 (c) The board shall provide by regulation for the determination
13 and comparison of living costs for this state and the other areas in
14 which recipients reside and for the annual redetermination and com-
15 parison of these costs.

16 * Sec. 31. AS 23.30.180 is amended to read:

17 Sec. 23.30.180. PERMANENT TOTAL DISABILITY. In case of total
18 disability adjudged to be permanent 80 percent of the injured em-
19 ployee's spendable weekly wages shall be paid to the employee during
20 the continuance of the total disability. If a permanent partial
21 disability award has been made before a permanent total disability
22 determination, permanent total disability benefits must be reduced by
23 the amount of the permanent partial disability award, adjusted for
24 inflation, in a manner determined by the board. Loss of both hands,
25 or both arms, or both feet, or both legs, or both eyes, or of any two
26 of them, in the absence of conclusive proof to the contrary, consti-
27 tutes permanent total disability. In all other cases permanent total
28 disability is determined in accordance with the facts. In making this
29 determination the market for the employee's services shall be

- (1) area of residence;
- (2) area of last employment;
- (3) the state of residence; and
- (4) the State of Alaska.

* Sec. 32. AS 23.30.180 is amended by adding a new subsection to read:

(b) Failure to achieve remunerative employability as defined in AS 23.30.041(p) does not, by itself, constitute permanent total disability.

* Sec. 33. 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 percent of the injured employee's spendable weekly wages shall be paid to the employee during the continuance of the disability. Temporary total disability benefits may not be paid for any period of disability occurring after the date of medical stability.

* Sec. 34. AS 23.30.190 is repealed and reenacted to read:

Sec. 23.30.190. COMPENSATION FOR PERMANENT PARTIAL IMPAIRMENT.

(a) In case of impairment partial in character but permanent in quality, and not resulting in permanent total disability, the compensation is \$135,000 multiplied by the employee's percentage of permanent impairment of the whole person. 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 payable in a single lump sum, except as otherwise provided in AS 23.30.041, but the compensation may not be discounted for any present value considerations.

(b) All determinations of the existence and degree of permanent impairment shall be made strictly and solely under the whole person

1 determination as set out in the American Medical Association Guides to
2 the Evaluation of Permanent Impairment, except that an impairment
3 rating may not be rounded to the next five percent. The board shall
4 adopt a supplementary recognized schedule for injuries that cannot be
5 rated by use of the American Medical Association Guides.

6 (c) The impairment rating determined under (a) of this section
7 shall be reduced by a permanent impairment that existed before the
8 compensable injury. If the combination of a prior impairment rating
9 and a rating under (a) of this section would result in the employee
10 being considered permanently totally disabled, the prior rating does
11 not negate a finding of permanent total disability.

12 * Sec. 35. AS 23.30.200 is amended to read:

13 Sec. 23.30.200. TEMPORARY PARTIAL DISABILITY. In case of tempo-
14 rary partial disability resulting in decrease of earning capacity the
15 compensation shall be 80 percent of the difference between the injured
16 employee's spendable weekly wages before the injury and the wage-
17 earning capacity of the employee after the injury in the same or
18 another employment, to be paid during the continuance of the disabili-
19 ty, but not to be paid for more than five years. Temporary partial
20 disability benefits may not be paid for a period of disability occur-
21 ring after the date of medical stability.

22 * Sec. 36. AS 23.30.200 is amended by adding a new subsection to read:

23 (b) The wage-earning capacity of an injured employee is deter-
24 mined by the actual spendable weekly wage of the employee if the
25 actual spendable weekly wage fairly and reasonably represents the
26 wage-earning capacity of the employee. The board may, in the interest
27 of justice, fix the wage-earning capacity that is reasonable, having
28 due regard to the nature of the injury, the degree of physical impair-
29 ment, the usual employment, and other factors or circumstances in the

1 case that may affect the capacity of the employee to earn wages in a
2 disabled condition, including the effect of disability as it may
3 naturally extend into the future.

4 * Sec. 37. AS 23.30.220(a) is amended to read:

5 (a) The spendable weekly wage of an injured employee at the time
6 of an injury is the basis for computing compensation. It is the
7 employee's gross weekly earnings minus payroll tax deductions. The
8 gross weekly earnings shall be calculated as follows:

9 (1) The gross weekly earnings are computed by dividing by
10 100 the gross earnings of the employee in the two calendar years
11 immediately preceding the injury.

12 (2) If the employee was absent from the labor market for 18
13 months or more of the two calendar years preceding the injury [THE
14 BOARD DETERMINES THAT THE GROSS WEEKLY EARNINGS AT THE TIME OF THE
15 INJURY CANNOT BE FAIRLY CALCULATED UNDER (1) OF THIS SUBSECTION], the
16 board shall [MAY] determine the employee's gross weekly earnings for
17 calculating compensation by considering the nature of the employee's
18 work and work history, but compensation may not exceed the employee's
19 gross weekly earnings at the time of injury.

20 (3) If an employee when injured is a minor, an apprentice,
21 or a trainee in a formal training program, as determined by the board,
22 whose wages under normal conditions would increase during the period
23 of disability, the projected increase may be considered by the board
24 in computing the gross weekly earnings of the employee.

25 (4) If the employee is injured while performing duties as a
26 volunteer ambulance attendant, policeman, or fireman, the gross weekly
27 earnings for calculating compensation shall be the minimum gross
28 weekly earnings paid a full-time ambulance attendant, policeman, or
29 fireman employed in the political subdivision where the injury

1 occurred, or, if the political subdivision has no full-time ambulance
2 attendants, policemen, or firemen, at a reasonable figure previously
3 set by the political subdivision to make this determination but in no
4 case may the gross weekly earnings for calculating compensation be
5 less than the minimum wage computed on the basis of 40 hours work per
6 week.

7 * Sec. 38. AS 23.30.225 is amended by adding a new subsection to read:

8 (c) If employer contributions to a qualified pension or profit
9 sharing plan have been included in the determination of gross earnings
10 and the employee is receiving pension or profit sharing payments,
11 weekly compensation benefits payable under this chapter shall be
12 reduced by the amount paid or payable to the injured worker under the
13 plan for any week or weeks during which compensation benefits are also
14 payable. The amount of the reduction may not in any week exceed the
15 increase in weekly compensation benefits brought about by the inclu-
16 sion of employer contributions to a qualified pension or profit shar-
17 ing plan in the determination of gross earnings.

18 * Sec. 39. AS 23.30.244 is amended to read:

19 Sec. 23.30.244. CIVIL DEFENSE AND DISASTER RELIEF FORCES AS
20 STATE EMPLOYEES. A resident of Alaska temporarily engaged in a civil
21 defense or disaster relief function in another state or country under
22 [THE PROVISION OF] AS 26.23.130 or as a volunteer in this state is
23 considered an employee of the state for purposes of this chapter.

24 * Sec. 40. AS 23.30 is amended by adding a new section to read:

25 Sec. 23.30.247. DISCRIMINATION PROHIBITED. (a) An employer may
26 not discriminate in hiring, promotion, or retention policies or prac-
27 tices against an employee who has in good faith filed a claim for or
28 received benefits under this chapter. An employer who violates this
29 section is liable to the employee for damages to be assessed by the

1 court in a private civil action.

2 (b) This section may not be construed to prevent an employer
3 from basing hiring, promotion, or retention policies or practices on
4 considerations of the employee's safety practices or the employee's
5 physical and mental abilities; nor may this section be construed so as
6 to create employment rights not otherwise in existence.

7 (c) This section may not be construed to prohibit an employer
8 from requiring a prospective employee to fill out a preemployment
9 questionnaire or application regarding the person's prior health or
10 disability history as long as it is meant to either document written
11 notice for second injury fund reimbursement under AS 23.30.205(c) or
12 to determine whether the employee has the physical or mental capacity
13 to meet the documented physical or mental demands of the work.

14 * Sec. 41. AS 23.30.265(15) is amended to read:

15 (15) "gross earnings" means periodic payments, by an em-
16 ployer to an employee for employment before any authorized or lawfully
17 required deduction or withholding of money by the employer, including
18 compensation that is deferred at the option of the employee, and
19 excluding irregular bonuses, reimbursement of expenses, expense allow-
20 ances, and any benefit or payment to the employee that is not fully
21 taxable to the employee during the pay period, except that the total
22 amount of contributions made by an employer to a qualified pension or
23 profit sharing plan during the two plan years preceding the injury,
24 multiplied by the percentage of the employee's vested interest in the
25 plan at the time of injury, shall be included in the determination of
26 gross earnings; the value of room and board if taxable to the employee
27 may be considered in determining gross earnings; however, the value of
28 room and board that would raise an employee's gross weekly earning
29 above the state [ALASKA] average weekly wage at the time of injury may

1 not be considered;

2 * Sec. 42. AS 23.30.265(17) is amended to read:

3 (17) "injury" means accidental injury or death arising out
4 of and in the course of employment, and an occupational disease or
5 infection which arises naturally out of the employment or which natu-
6 rally or unavoidably results from an accidental injury; "injury" [,
7 AND] includes breakage or damage to eyeglasses, hearing aids, den-
8 tures, or any prosthetic devices which function as part of the body
9 and further includes an injury caused by the wilful act of a third
10 person directed against an employee because of the employment; "in-
11 jury" does not include mental injury caused by mental stress unless it
12 is established that (A) the work stress was extraordinary and unusual
13 in comparison to pressures and tensions experienced by individuals in
14 a comparable work environment, and (B) the work stress was the predom-
15 inant cause of the mental injury; the amount of work stress shall be
16 measured by actual events; a mental injury is not considered to arise
17 out of and in the course of employment if it results from a disciplin-
18 ary action, work evaluation, job transfer, layoff, demotion, termina-
19 tion or similar action, taken in good faith by the employer;

20 * Sec. 43. AS 23.30.265 is amended by adding a new paragraph to read:

21 (34) "medical stability" means the date after which further
22 objectively measurable improvement from the effects of the compensable
23 injury is not reasonably expected to result from additional medical
24 care or treatment, notwithstanding the possible need for additional
25 medical care or the possibility of improvement or deterioration re-
26 sulting from the passage of time; medical stability shall be presumed
27 in the absence of objectively measurable improvement for a period of
28 45 days; this presumption may be rebutted by clear and convincing
29 evidence.

1 * Sec. 44. AS 23.30.210 and 23.30.265(28) are repealed.

2 * Sec. 45. TRANSITIONAL PROVISIONS. Notwithstanding AS 23.30.040(b),
3 as amended by sec. 8 of this Act, and AS 23.30.155(m), as amended by
4 sec. 28 of this Act, on or before March 1, 1989, each employer that is
5 subject to those sections shall file a report and make the appropriate
6 contribution for all claims existing as of December 31, 1988. The period
7 covered in the report shall be from the date of the termination report or
8 the last anniversary report filed, if one has been filed, through
9 December 31, 1988.

10 * Sec. 46. TEMPORARY RATE REDUCTION; FUTURE FILINGS. (a) Notwith-
11 standing AS 21.39.030, workers' compensation rates filed by rating organi-
12 zations for use in the state may not be increased before January 1, 1990.

13 (b) Rate filings made after December 31, 1988, must fully reflect the
14 legal effect of changes made to the workers' compensation system by this
15 Act.

16 * Sec. 47. TRANSITIONAL PROVISION. Notwithstanding AS 23.30.041(p), as
17 enacted by sec. 10 of this Act, for the period from July 1, 1988, until
18 June 30, 1989, the term "rehabilitation specialist" as used in AS 23.30.041
19 includes a person who was actively employed for at least one year before
20 June 30, 1988, in providing rehabilitation services to an injured worker
21 receiving benefits under AS 23.30.

22 * Sec. 48. APPLICABILITY. Except for secs. 8, 25, 28, 29, 42, and 46
23 of this Act, this Act applies only to injuries sustained on or after
24 July 1, 1988.

25 * Sec. 49. Section 2 of this Act applies to assigned risk pool
26 insurance policies that are entered into or renewed on or after July 1,
27 1988.

28 * Sec. 50. Section 42 of this Act applies to injuries sustained on or
29 after the effective date of sec. 42 of this Act.

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* Sec. 51. Sections 42 and 50 of this Act take effect immediately under AS 01.10.070(c).

* Sec. 52. Sections 1 - 41, and 43 - 49 of this Act take effect July 1, 1988.

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(b) 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 and 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.

Section 1
Version A
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 - 17:

Delete "The legislature declares that the workers' compensation laws must not be construed by the courts in favor of any party. It is the specific intent of the legislature that workers' compensation cases be decided on their merits, except when otherwise provided by statute."

Section 1
Version B

A M E N D M E N T

Offered in the HOUSE

By Sund

TO: HCS CSSB 322(L&C)

Page 1, lines 15 - 21:

Delete all material and insert:

"be fairly and impartially construed by the courts. In order to achieve that goal, it is the intent of the legislature that the preponderance of the evidence standard be used in determining the compensability of a workers' compensation claim. "Preponderance of the evidence" means evidence that when weighed with that opposed to it, has more convincing force and a greater probability of truth. When weighing the evidence, the test is not the relative number of witnesses, but the relative convincing force of the evidence."

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"

Section 2

By Sund

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.

Section 5

A M E N D M E N T

Offered in the HOUSE

By Sund

TO: HCS CSSB 322(L&C)

Page 3, line 15:

Delete "knowingly"

Insert "intentionally"

A M E N D M E N T

Section
445

Offered in the HOUSE

By Sund

TO: HCS CSSB 322(L&C)

Page 3, lines 10 - 13:

Delete all material. - *Amendment already passed*

Insert a new subsection to read:

"(m) The department shall prescribe a written notice to be provided by an employer to a prospective employee, that advises the employee of the risk of loss of workers' compensation benefits under AS 23.30.020(b) if the employee makes a false employment application."

Page 3, line 15:

Delete "An"

Insert "If an employer furnishes a prospective employee with a written job description that indicates the physical and mental demands of the job and provides the employee with a written notice prescribed by the department that describes the risk of loss of workers' compensation benefits if the employee files a false employment application, an"

Section 10

A M E N D M E N T

Offered in the HOUSE

By Sund

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

A M E N D M E N T

Offered in the HOUSE

By Sund

TO: HCS CSSB 322(L&C)

Page 8, line 1:

Delete "of injury"

Section 13

A M E N D M E N T

Offered in the HOUSE

By Sund

TO: HCS CSSB 322(L&C)

Page 14, line 21:

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

Insert "to provide all medical and related benefits"

Page 14, line 25, after "[":

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

← pick explain

Section 14
AMENDMENT version A

Offered in the HOUSE

By Sund

TO: HCS CSSB 322(L&C)

Page 15, line 6:

Delete "amended"

Insert "repealed and reenacted"

Page 15, lines 7 - 27:

Delete all material and insert:

"(c) A claim for treatment is not valid and enforceable against the employer unless

(1) if the claim is for medical or surgical treatment, the physician giving the treatment or the employee receiving it furnishes to the employer and the board notice of the injury and treatment within 14 days after the treatment is received; the board shall excuse the failure to furnish notice within 14 days when the board finds it to be in the interests of justice to do so, and the board may, upon application of a party in interest, make an award for the reasonable value of the medical or surgical treatment obtained by the employee; and

(2) if a claim is for a course of treatment requiring continuing and multiple treatments of a similar nature, the treatments are carried out under a written treatment plan prescribed before the commencement of the course of treatment and the plan is completed and

signed by the attending physician and mailed to the employer within one week of the beginning of treatment; the treatment plan must include objectives, modalities, and frequency of treatment; the initial treatment plan may not include more than 20 outpatient visits in the first 60 days; if more than 20 outpatient visits are required within the first 60 days, or more than four outpatient visits a month after the first 60 days, the physician shall document the need for services in excess of the guidelines in the written treatment plan."

Section 14
Version B

A M E N D M E N T

Offered in the HOUSE

By Sund

TO: HCS CSSB 322(L&C)

Page 15, line 6:

Delete "amended"

Insert "repealed and reenacted"

Page 15, lines 7 - 27:

Delete all material and insert:

"(c) A claim for treatment is not valid and enforceable against the employer unless

(1) if the claim is for medical or surgical treatment, the physician giving the treatment or the employee receiving it furnishes to the employer and the board notice of the injury and treatment within 14 days after the treatment is received; the board shall excuse the failure to furnish notice within 14 days when the board finds it to be in the interests of justice to do so, and the board may, upon application of a party in interest, make an award for the reasonable value of the medical or surgical treatment obtained by the employee; and

(2) if a claim is for a course of treatment requiring continuing and multiple treatments of a similar nature, the treatments are carried out under a written treatment plan prescribed before the commencement of the course of treatment and the plan is completed and

signed by the attending physician and mailed to the employer within one week of the beginning of treatment; the treatment plan must include objectives, modalities, and frequency of treatment."

Section 14
Version C

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 of a similar nature are [IS]"

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

Delete all material.

Section 18

A M E N D M E N T

Offered in the HOUSE

By Sund

TO: HCS CSSB 322(L&C)

Page 18, lines 8 - 11:

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

Sections 32-33-34

5-1514Lee
Ford

TO replace
earlier amendment

AMENDMENT #12

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"

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

Delete all material through page 27, line 24.

Page 28, line 19:

Delete "two [FIVE]"

Insert "five"

Page 33, line 23:

Delete "takes"

Insert "take"

SB 322 - Workers - Comp

Page 1
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p 32
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- 1) Section 1 (e); it is the legislature's intent to enforce the law. iws
- 2) Section ²³ - 21.89.015; delete the workplace safety program; it may increase short term rates and may have no effect. iws
- 3) Section ¹⁷ - 23.30.075(b); increasing the fine for not carrying compensation insurance; \$10,000 is excessive. iws
- 4) Section ¹⁸ - 23.30.095(k); the board's IME should have a more weighted opinion than either of the biased medical opinions.
- 5) Section ²⁰ - 23.30.110(c); the language for scheduling the hearing needs tightening; re-insert the "all, all, fully".
- 6) Sections ²⁵ & ²⁶; fines of 25% or \$100 whichever is less; the minimum of \$100 can be excessive on smaller payments; delete the "or \$100, whichever is less". iws
- 7) Section ²⁷ - 23.30.155(m); penalty of \$1,000 if insurer does not fully complete the form; could be excess as written; change to "may be fined up to \$1,000". iws
- 8) Section ²⁸ - 23.30.155(p); payments must be on in state banks; this won't solve the problem being addressed. iws
- 9) Section ³¹ - 23.30.220(a)2; to determine the weekly wage of someone out of work the previous 2 years; the original language better fits the intent of this section.
- 10) Section ⁴⁰ - 23.30.265(17); the stress section; re-insert the phrase "rather than misperceptions by the employee"; this is needed to tighten this section.
- 11) Section ⁴⁴; mandatory rate reduction; delete mandated reduction; accept the 5.7% reduction; insert language to prevent increases for 18 months. iws
- 12) Assigned risk pool amendment adopted 4/25; delete this section; if this is workable, it will likely increase overall costs. iws

#7 - NO! Increase litigation on assessment of penalties that should be mandatory!

~~#10 - NO! Increase litigation~~

~~over~~

TO: HOUSE JUDICIARY COMMITTEE MEMBERS

FROM: Shari Kochman

DATE: April 19, 1988

RE: Proposed amendments to HCS CSSB 322 (L&C)

Attached is a new amendment packet that includes all newly drafted amendments as of the meeting of April 18, 7:00 p.m., and all previously drafted amendments that have not been addressed. Please replace your former amendment packets with this packet.

Note: The attached amendments are not numbered, but are in order by bill section.

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, a 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.

Section 1
Version A
A M E N D M E N T

Offered in the HOUSE

By Sur

TO: HCS CSSB 322(L&C)

Page 1, lines 14 - 17:

Delete "The legislature declares that the workers' compensation must not be construed by the courts in favor of any party. It is specific intent of the legislature that workers' compensation case decided on their merits, except when otherwise provided by statute."

Section 1
version B

A M E N D M E N T

Offered in the HOUSE

By Sund

TO: HCS CSSB 322(L&C)

Page 1, lines 15 - 21:

Delete all material and insert:

"be fairly and impartially construed by the courts. In order to achieve that goal, it is the intent of the legislature that the preponderance of the evidence standard be used in determining the compensability of a workers' compensation claim. "Preponderance of evidence" means evidence that when weighed with that opposed to it has more convincing force and a greater probability of truth. When weighing the evidence, the test is not the relative number of witnesses, but the relative convincing force of the evidence."

Sec. 1
Version C

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.

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"

Section 2

By Sund

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.

Section 5

A M E N D M E N T

Offered in the HOUSE

By Sund

TO: HCS CSSB 322(L&C)

Page 3, line 15:

Delete "knowingly"

Insert "intentionally"

A M E N D M E N T

Section
4 & 5

Offered in the HOUSE

By Sur

TO: HCS CSSB 322(L&C)

Page 3, lines 10 - 13:

Delete all material. - *Amendment already passed*

Insert a new subsection to read:

"(m) The department shall prescribe a written notice to provided by an employer to a prospective employee, that advises t employee of the risk of loss of workers' compensation benefits unc AS 23.30.020(b) if the employee makes a false employment application

Page 3, line 15:

Delete "An"

Insert "If an employer furnishes a prospective employee with a writt job description that indicates the physical and mental demands of the and provides the employee with a written notice prescribed by the depart ment that describes the risk of loss of workers' compensation benefits the employee files a false employment application, an"

Sec. 7

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."

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

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

Offered in the HOUSE

By Sun

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" ??

← please explain

Section 14
AMENDMENT version A

Offered in the HOUSE

By S

TO: HCS CSSB 322(L&C)

Page 15, line 6:

Delete "amended"

Insert "repealed and reenacted"

Page 15, lines 7 - 27:

Delete all material and insert:

"(c) A claim for treatment is not valid and enforceable against the employer unless

(1) if the claim is for medical or surgical treatment, physician giving the treatment or the employee receiving it furnishes notice to the employer and the board notice of the injury and treatment within 14 days after the treatment is received; the board shall excuse the failure to furnish notice within 14 days when the board finds it to be in the interests of justice to do so, and the board may, upon application of a party in interest, make an award for the reasonable value of the medical or surgical treatment obtained by the employee and

(2) if a claim is for a course of treatment requiring continuing and multiple treatments of a similar nature, the treatments are carried out under a written treatment plan prescribed before the commencement of the course of treatment and the plan is completed and

-1- (Continued)

4/18/88

signed by the attending physician and mailed to the employer within one week of the beginning of treatment; the treatment plan must include objectives, modalities, and frequency of treatment; the initial treatment plan may not include more than 20 outpatient visits in the first 60 days; if more than 20 outpatient visits are required within the first 60 days, or more than four outpatient visits a month after the first 60 days, the physician shall document the need for services in excess of the guidelines in the written treatment plan."

Section 14
Version B

A M E N D M E N T

Offered in the HOUSE

By Su

TO: HCS CSSB 322(L&C)

Page 15, line 6:

Delete "amended"

Insert "repealed and reenacted"

Page 15, lines 7 - 27:

Delete all material and insert:

"(c) A claim for treatment is not valid and enforceable against the employer unless

(1) if the claim is for medical or surgical treatment, physician giving the treatment or the employee receiving it furnishes notice to the employer and the board notice of the injury and treatment within 14 days after the treatment is received; the board shall excuse the failure to furnish notice within 14 days when the board finds it to be in the interests of justice to do so, and the board may, upon the application of a party in interest, make an award for the reasonable value of the medical or surgical treatment obtained by the employee and

(2) if a claim is for a course of treatment requiring continuing and multiple treatments of a similar nature, the treatments are carried out under a written treatment plan prescribed before commencement of the course of treatment and the plan is completed

(continued)

signed by the attending physician and mailed to the employer within one week of the beginning of treatment; the treatment plan must include objectives, modalities, and frequency of treatment."

Section 14
Version C

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 of a similar nature are [IS]"

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

Delete all material.

Section 18

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."

Sec 18

A M E N D M E N T

[Handwritten signature]

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."

Sec 18

AMENDMENT

[Handwritten signature]

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"

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."

A M E N D M E N T

~~AMENDMENT~~

Offered in the HOUSE

By

TO: HCS CSSB 322(L&C)

Sec 24-25-26

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

ON HCS

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 installment
amount equal to ⁵⁰~~25~~ [20] percent of it ^{or \$200} or \$100, whichever amount
greater. This additional amount shall be paid at the same time

ADOPTED

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 "~~\$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"

Approved

En Hcd

Don HCO

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"

Sec. 27

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."