

ALASKA LEGISLATURE COMMITTEE FILES 1987-1988 86/2
4769 HJUD SB 322 (FILE 2)

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HOUSE LABOR AND COMMERCE COMMITTEE

REPRESENTATIVE DAVE DONLEY, CHAIRMAN

ISSUE	HB 352/SB 322	CURRENT LAW	PUBLIC TESTIMONY	PROPOSED (Senate) CS
(7) MEDICAL Cont'd. "Independent Medical Exams" IME's	AS 23.30.095(e) is amended to provide that an employers request for an IME within 14 days of injury and every 30 days thereafter is reasonable and that a worker is non-cooperative if they refuse to submit to an IME.	"refusal to submit to any exam".	Several participants expressed concern that employers would abuse the non-cooperation provisions to force workers to comply with unnecessary and painful tests. Suggested amendments included providing that only "reasonable" exams shall be required if they are the accepted method to detect the degree of injury and are related to the actual injury being examined. Fairbanks United suggested deleting this amended language altogether.	AS 23.30.095(e) is further amended to add the phrase "unless medically necessary, the physician shall use existing diagnostic data to complete the examination".
"Medical Fees"	AS 23.30.095(f) is amended to require that medical fees shall not exceed "usual, customary, and reasonable fees" for treatment or services in the community as determined by the Board	Fees limited to "charges that prevail in the same community for similar treatment of injured persons with a like standard of living."	This section was strongly supported by participants, including the Alaska Medical Association.	AS 23.30.095(f) is amended by adding language that makes it clear than an employee cannot be required to pay for medical services.
"Medical review Committee"	AS 23.30.095(j) is repealed and reenacted to authorize the Board to appoint or contract with a medical review committee or anyone to assist and advise them on medical issues.	Board shall adopt and use a schedule to determine the existence and degree of a permanent impairment consistent with the AMA guide lines.	Some participants expressed concern that this would allow the Board to hire "outsiders" and that they should be limited to advisory boards and committees that are located in Alaska. Fairbanks United testified that this section should remain as it is in current law.	

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<p>2) <u>MEDICAL</u> Cont'd.</p> <p>"Second IME"</p>	<p>AS 23.30.095(k) provides that when there is a conflict between the employers' IME and the employees' treating physician, the Board will select a physician from the rotating roster to perform a second IME whose opinion will be presumed to be correct unless rebutted by clear and convincing evidence.</p> <p>AS 23.30.095(k) cont'd Second IME is immune from civil liability for their opinion except in cases of fraud.</p>	<p>Current law is silent on this question but current practice is for the Board to try and weigh the various opinions of physicians and make a judgment as to who is correct. This practice requires the Board to basically make a medical decision without the proper training and experience to do so.</p>	<p>Members of the public and some physicians objected to the second IME's opinion having the presumption of correctness and suggested that all three physicians opinions (treating, physician, employer's IME, and Boards' IME) should have the same weight and be judged by the Board on an equal basis. Fairbanks United suggested an independent multi-discipline panel of Board certified physicians should be used to provide an independent exam.</p> <p>Several participants expressed concern that the "fraud" standard was too restrictive and impossible to prove and suggested that the section include "fraud, <u>misrepresentation</u>, and gross negligence"</p>	<p>AS 23.30.095(k) is further amended to provide that a person may not seek damages against the second IME except for "fraud or gross incompetence".</p>
<p>3) <u>Stress</u> <u>Claims</u></p>	<p>AS 23.30.120 (c) is amended to provide that the presumption of compensability under workers' comp does not apply to mental injuries caused by "stress"</p> <p>AS 23.265 (17) provides that a compensable injury does not include mental injury caused by stress unless (a) the stress was unusual and extraordinary compared to other workers doing the same or similar job and (b) work related stress was the predominant cause of the injury measured by actual events and not by an employees perception of events.</p>	<p>Current law is silent on the question of "stress" claims and the Courts have ruled in at least one case that an employees perception of events may be grounds for a stress claim and that the injury does not have to depend on an objective analysis of actual events.</p> <p>In addition, there is a presumption of compensability whenever an injury is job-related.</p>	<p>The majority of public testimony supported making an exception to the "presumption of compensability" in "stress" claims because (1) stress claims are becoming more frequent and (2) an employer can not defend against a "stress" claim, particularly when it can be based on a workers' <u>perception</u> of events.</p> <p>Some members of the public and at least one Senator expressed concern that some stress injuries resulting from racial or sexual harrasment may be precluded under the definition.</p> <p>Fairbanks United suggested using a "preponderance of evidence" test in this section and requested a better definition of "mental injury".</p>	<p>AS 23.30.125(f) is amended to provide that a finding of facts by the Board in a "stress" injury case is conclusive "unless the court <u>specifically finds that a reasonable person could not have reached the conclusion made by the Board.</u>"</p>

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(9) Payments of benefits in a conflict.

AS 23.30.155(d) is amended to provide that when there is a conflict over which employer/carrier is obligated to pay, but there is no conflict over whether the injury at question is compensable, the last employer shall immediately pay benefits to the workers. The employer or carrier ultimately deemed responsible will reimburse the payee with interest.

Public testimony supported this change.

AS 23.30.155(c) is amended to provide that an insurer/adjuster (employer) is responsible for submitting certain reports to the Board. Several other changes are included to make the section consistent with this change.

AS 23.30.155(c) is further amended to provide a penalties section for violation of this section.

AS 23.30.155(m) is amended to require the reports to be submitted by an insurer or adjuster as opposed to the employer.

AS 23.30.155(m) is further amended to add a penalty provision for failure to submit reports so that "if the annual report is not filed by March 1 of each year, the insurer or adjuster shall pay a civil penalty of \$100 for the first day the annual report is late, and \$10 for each additional day the report is late".

AS 23.30.155 is amended by adding a new subsection (n) to provide that the notification and penalty sections don't apply to self-insureds.

(10) Rates of Compensation

AS 23.30.175(a) provides that weekly compensation benefits may not be more than \$700 or less than \$154/week for employees with a previous wage history and not less than \$110/week for workers without a wage history (or accurate history).

AS 23.30.175(a) provides that weekly compensation benefits may not be more than \$1,100 or less than \$110/week unless the Board determines that the workers' spendable weekly wage before the injury was less, in which case the \$110/week may be decreased.

Generally, the public supported this change when they understood it. Several people said they didn't understand why the higher limit was lowered by \$400 and the lower limit was raised by \$44. (Majority of workers are on the low end of the scale with less than 5% qualifying for weekly benefits in excess of \$700/week.)

AS 23.30.175 (a) is amended by adding language "if the employer can verify that the employee's spendable weekly wages are less than \$154, the employer may adjust the weekly rate of compensation to the employee's weekly spendable wages without an order of the Board".

Fairbanks United supported this change but asked that someone monitor injured workers to see if they opt out of disability in order to collect unemployment benefits, which may be greater.

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(11) <u>Adjustment of benefits by COLA</u>	AS 23.30.175 (b) (1-4) provides that weekly benefits for workers not residing in Alaska be adjusted by the COLA of their resident state.	AS 23.30.175(c) provides that benefits of workers not residing in Alaska be adjusted by the difference between the average weekly wage for a particular craft/job within the jurisdiction of the state where the worker now resides and the average weekly wage for the same or similar job in Alaska.	Generally, public testimony supported this change although there was some concern expressed about an accurate and reliable source of COLA information.	AS 23.30.175 (b)(1) is amended to read "...by the ratio of the cost of living of the area in which the recipient resides to the cost of living in this state." AS 23.30.175(b)(3) is amended to read "if the <u>gross</u> (average) weekly earnings (wage) of the recipient.....".
(12) <u>Permanent Total Disability payments (PTD)</u>	AS 23.30.180 (a) is amended to include a definition of "market for employee's services" as (1) area of residence (2) are of last employment and (3) the state. AS 23.30.180(b) provides that failure to achieve remunerative employability under AS 23.30.041 (m) does not, in itself, constitute PTD.	AS 23.30 180(a) provides that PTD payments shall be 80% of the injured workers spendable weekly wage for the continuance of the disability.	Several participants objected to the expanded definition of labor market and expressed concern that it would force workers' to leave their home and communities if there was any job in the state that they could qualify for.	AS 23.30.180 is amended by adding a new sentence to prevent a person from improperly receiving both PPD and PTD payments. AS 23.30.180 (3) is amended to read the "state (area) of residence" and a new (4) is added to read " <u>the state of Alaska</u> ".
(13) <u>Total Temporary Disability payments (TTD)</u>	AS 23.30.185 if amended to provide that TTD benefits will not be paid after medical stability and shall not exceed two years in any case.		Participants asked that the section be amended to allow for TTD benefits after medical stability and in excess of two years under unusual or extenuating circumstances.	

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(14) <u>Permanent Partial Disability Payment (PPD)</u>	AS 23.30.190(a) repeals the current method of computing PPD and replaces it with a formula to determine benefits based on a "whole man" value of \$240,000 adjusted by the percentage of net impairment, payable in a lump sum.	AS 23.30.190 (a) provides that compensation for PPD is 80% of workers spendable weekly wage plus any TTD and IPD benefits to be paid as follows - (1) through (18) lists compensation by body part, (19) provides that in addition to comp, the Board may award up to \$10,000 for disfigurement or loss of use or functions of body parts not listed in the schedule, (21) provides that benefits be based on loss of each body part when there a loss of more than one.	There was substantial public testimony that his change in the method for determining PPD was (1) arbitrary and unfair, (2) it would increase litigation because the sliding scale used to determine benefits by the percentage of disability was poorly constructed so that a worker with a 10% disability would receive half the benefits that a worker with an 11% disability would receive, (3) the lower levels were too low and did not constitute fair compensation, (4) scheduling injuries in this manner provides no mechanism for judging the effect of a permanent disability on the actual job a worker held (for instance, an attorney with a 40% disability may suffer less ill effects in seeking reemployment than a heavy construction worker with a 15% disability.)	AS 23.30.190 (a) is amended to adjust the sliding scale by adding a new schedule of adjustment factors to smooth out the curve.
"Whole Man" Value	AS 23.30.190(b) provides that the determination of the percent of disability will be based on AMA guidelines and shall not be rounded to the next five percent. Also provides that the Board may adopt a supplemental guideline for rating injuries not included under AMA guidelines.	AS 23.30.190(b) provides that the total comp under this section cannot exceed \$60,000.	Fairbanks United asked that the <u>may</u> in (b) be changed to <u>shall</u> .	AS 23.30.190(b) is amended to read that the Board "may adopt (and use a supplemental) a <u>supplementary recognized schedule for injuries that cannot be rated by use of the AMA guide.</u>
Lower limit on Compensation for PPD	AS 23.30.190 (c) provides that an injured worker will not receive less than \$250.00			
"Combination of prior and current injuries"	AS 23.30.190(d) provides that an impairment rating is reduced by any permanent impairment that existed before the compensated injury although, if the total of the past and current injury equal PTD the Board is not precluded from making a determination of PTD.	AS 23.30.205 (a)and(b) addresses the circumstance of a combination of prior and current injuries and provides that benefits shall be paid out of the second injury fund after 104 weeks. (c) through (f) of this section provide for reporting requirements to the second injury fund, defines what constitutes a pre-existing condition and provides guidelines for reporting when proper notice was not given.		

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(15) Temporary Partial Disability payments (TPD)	AS 23.30.200 provides that TPD benefits may not be paid in excess of 2 years.	TTP Benefits may not be paid in excess of five years and are calculated under AS 23.30.200.	Some participants expressed concern that the 2 year cut-off may be too soon in some unusual circumstances and that the language should be amended to allow for that.	
"Determining wage earning capacity and spendable weekly wages).	AS 23.30.200 is amended by including a new (b) to read that the wage-earning capacity of a worker is determined by the actual spendable weekly wage of the employee if it fairly and reasonably represents the wage-earning capacity of the employee. The Board may, in the interest of justice, fix the wage-earning capacity that is reasonable, having due regard to the nature of the injury the degree of impairment, usual employment, and other factors or circumstances.	AS 23.30.200 provides that TPD benefits shall be 80% of the difference between the injured workers SWW before injury and their wage-earning capacity after injury. AS 23.30.210 provides a method for determining the wage-earning capacity of a worker by actual SWW if the SWW fairly and reasonably represents the true wage-earning capacity. If not, the Board may set the wage earning capacity	Several participants testified that conflicts over the determination of spendable weekly wage cause a substantial amount of litigation.	
	AS 23.30.220(a)(2) is amended to allow the Board the ability to set the SWW if the employee had no earnings during the preceding calendar year or was voluntarily absent from the labor market for 18 months or more of the two preceding calendar years. However, in no case may the compensation exceed the employee's earnings at the time of injury	AS 23.30.220(a)(2) authorizes the Board to set the SWW if they determine that the gross weekly earnings at the time of injury cannot be fairly calculated under AS 23.30.229(a)(1).	Some participants expressed concern that the language in this section could result in an unfair determination of a workers' SWW if they had no (or inadequate) work history and had only worked part of a week when they were injured. Since this section prohibits a workers' benefits from exceeding their weekly wage, the concern is that their SWW will be based on the partial work week at the time of injury.	The Senate CS amends this section to provide that the SWW may be based on the <u>projected</u> weekly wage of the worker at the time of injury.

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(16) <u>Determination of gross earnings.</u>	AS 23.30.225 includes a new section requiring that vested pension and profit sharing benefits be included as part of a workers' wage for the purposes of determining gross earnings.	Vested benefits are not considered in determining gross earnings under current law.	Participants supported this change although some expressed concern that only vested benefits were included. This section was included in the bill in response to the Hagland decision.	*
(17) <u>Discrimination</u>	AS 23.30.247 (a) prohibits an employer from discriminating against a worker who has filed a workers' compensation claim in the past.	Current law is silent on the question of discrimination for previous filings.	Participants supported this change although some expressed concern over how it would be implemented and enforced and whether it would actually protect workers from retribution for filing compensation claims.	
(18) <u>Medical Stability</u>	AS 23.30.265(24) defines "medical stability" as the date after which further objectively measurable improvements from the incapacity caused by the injury do not reasonably expected result from additional care or treatment, notwithstanding additional care or the possibility of improvement or deterioration resulting from the passage of time. Medical stability is presumed in the absence of improvement for a period of 45 days. The finding of medical stability may be rebutted with clear and convincing evidence.		There was some public testimony in opposition to this definition because of fear that it did not adequately address a situation where continuing treatment may prevent further problems or deterioration but will not produce any additional positive healing results. Fairbanks United asked for a better definition of medical stability.	

OTHER ISSUES:

1. Mandated rate decrease - Several participants asked the Committee to include language in the bill that would mandate a rate decrease for workers' compensation premiums for the second half of 1988 by at least 10%.
2. Unemployment Compensation - Several participants suggested amending the proposed bills to provide that an injured worker who was eligible for unemployment compensation can collect unemployment benefits when their workers' compensation benefits are exhausted and they have still been unable to find employment.
3. Mandated reporting requirements - Numerous participants, particularly legislators, expressed dismay at the lack of usable statistical data on Alaska's workers compensation system. A change proposed in AS 23.30.040(b) (HB 352) would require all information related to paid claims in Alaska (costs of claim benefit by type such as PPD or TPD, payments for medical and rehab services, payments for legal fees for both employer/ee etc.) to be submitted annually (instead of annually on the date of the injury, as it is under current law).
4. On-going task force - Several participants, including Fairbanks United, asked that a group or task force be appointed to make an on-going study of Alaska's workers' compensation system to monitor the current system, the effects of newly adopted legislation, and to make recommendations for future changes.
5. "All states rider" - Several participants complained that non-resident firms (particularly in the construction industry) are not required to pay Alaska workers' compensation rates because they have purchased an "all states rider" on their home state policy which covers them for Alaska compensation at a cost considerably less than what resident firms must pay. Several participants asked that pending legislation be amended to specifically require that all companies with employees working in Alaska must pay the same rates for workers' compensation premiums (by classification and risk type) as Alaskan businesses do and that a stiff penalty clause should be included for companies who are found to be in violation of the requirement for Alaska workers' compensation.
6. "Alaska money" - Some participants complained that they receive workers' compensation benefits by checks drawn on "outside" banks which results in constant delays in getting their checks credited locally. They asked for a requirement under law that compensation benefits be paid by checks drawn on local banks.

5-1514X ✓
Ford
4/20/88

Original sponsor: Labor and Commerce
Committee

1 IN THE SENATE

BY THE JUDICIARY COMMITTEE

2 HOUSE CS FOR CS FOR SENATE BILL NO. 322 (Judiciary)

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 21.89 is amended by adding a new section to read:

19 Sec. 21.89.015. WORKPLACE SAFETY PROGRAM. An insurer who pro-
20 vides worker' compensation insurance in this state shall establish and
21 maintain a workplace safety rate reduction program available to all
22 insureds. The program must include

23 (1) a reduction in future workers' compensation premiums
24 based on the insured's documented and successful implementation of a
25 safety program; and

26 (2) consulting services available to the insured to estab-
27 lish a workplace safety program.

28 * Sec. 3. 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. 4. 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. 5. 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. 6. 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. 7. 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

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

* Sec. 8. 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. 9. 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

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

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

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

26 (1) a determination of the occupational goal in the labor
27 market;

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

condition and family support;

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

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

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

7 (6) the date the plan will commence;

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

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

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

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

18 (1) on the job training;

19 (2) vocational training;

20 (3) academic training;

21 (4) self-employment; or

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

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

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

and location.

1
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. 10. 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. 11. 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. 12. 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 provided 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. 13. 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 giving the treatment or the employ-
14 ee receiving it furnishes to the employer and the board notice of the
15 injury and treatment, preferably on a form prescribed by the board.
16 The board shall, however, excuse the failure to furnish notice within
17 14 days when it finds it to be in the interest of justice to do so,
18 and it may, upon application by a party in interest, make an award for
19 the reasonable value of the medical or surgical treatment so obtained
20 by the employee. A written treatment plan requiring continuing and
21 multiple treatments of a similar nature must include objectives,
22 modalities, and frequency of treatment. The physician shall document
23 the need for services in excess of the guidelines in the written
24 treatment plan.

25 * Sec. 14. AS 23.30.095(e) is amended to read:

26 (e) The employee shall, after an injury, at reasonable times
27 during the continuance of the disability, if requested by the employer
28 or when ordered by the board, submit to an examination by a physician
29 or surgeon of the employer's choice authorized to practice medicine

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

1 autopsy. If adequate notice is not given, the findings from the
2 autopsy may be suppressed on motion made to the board or to the supe-
3 rior court, as the case may be.

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

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

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

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

19 * Sec. 17. AS 23.30.095 is amended by adding a new subsection to read:

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

1 and to the parties within 14 days after the examination is concluded.
2 A person may not seek damages from an independent medical examiner
3 caused by the rendering of an opinion or providing testimony under
4 this subsection, except in the event of fraud or gross incompetence.

5 * Sec. 18. AS 23.30.105(a) is amended to read:

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

21 * Sec. 19. AS 23.30.110(c) is repealed and reenacted to read:

22 (c) Before a hearing is scheduled, the party seeking a hearing
23 shall file a request for a hearing together with an affidavit stating
24 that the party has completed necessary discovery, obtained necessary
25 evidence, and is prepared for the hearing. An opposing party shall
26 have 10 days after the hearing request is filed to file a response.
27 If a party opposes the hearing request, the board or a board designee
28 shall within 30 days of the filing of the opposition conduct a pre-
29 hearing conference and set a hearing date. If opposition is not

1 filed, a hearing shall be scheduled no later than 60 days after the
2 receipt of the hearing request. The board shall give each party at
3 least 10 days' notice of the hearing, either personally or by cer-
4 tified mail. After a hearing has been scheduled, the parties may not
5 stipulate to change the hearing date or to cancel, postpone, or con-
6 tinue the hearing, except for good cause as determined by the board.
7 After completion of the hearing the board shall close the hearing
8 record. If a settlement agreement is reached by the parties less than
9 14 days before the hearing, the parties shall appear at the time of
10 the scheduled hearing to state the terms of the settlement agreement.
11 Within 30 days after the hearing record closes, the board shall file
12 its decision. If the employer controverts a claim on a board-pre-
13 scribed controversion notice and the employee does not request a
14 hearing within two years following the filing of the controversion
15 notice, the claim is denied.

16 * Sec. 20. AS 23.30.120 is amended by adding a new subsection to read:

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

20 * Sec. 21. AS 23.30.125 is amended by adding a new subsection to read:

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

25 * Sec. 22. AS 23.30.130(a) is amended to read:

26 (a) Upon its own initiative, or upon the application of any
27 party in interest on the ground of a change in conditions, including,
28 for the purposes of AS 23.30.175, a change in residence, or because of
29 a mistake in its determination of a fact, the board may, before one

1 year after the date of the last payment of compensation benefits under
2 AS 23.30.180, 23.30.185, 23.30.190, 23.30.200, or 23.30.215, whether
3 or not a compensation order has been issued, or before one year after
4 the rejection of a claim, review a compensation case under [IN ACCOR-
5 DANCE WITH] the procedure prescribed in respect of claims in AS 23.-
6 30.110. Under [IN ACCORDANCE WITH] AS 23.30.110 the board may issue a
7 new compensation order which terminates, continues, reinstates, in-
8 creases, or decreases the compensation, or award compensation.

9 * Sec. 23. AS 23.30.155(c) is amended to read:

10 (c) The insurer or adjuster [EMPLOYER] shall notify the board
11 and the employee on a form prescribed by the board that the payment of
12 compensation has begun or has been increased, decreased, suspended,
13 terminated, resumed, or changed in type. An initial report shall be
14 filed with the board and sent to the employee within 28 days after the
15 date of issuing the first payment of compensation. If at any time 21
16 days or more pass and no compensation payment is issued, a report
17 notifying the board and the employee of the termination or suspension
18 of compensation shall be filed with the board and sent to the employee
19 within 28 days after the date the last compensation payment was is-
20 sued. A report shall also be filed with the board and sent to the
21 employee within 28 days after the date of issuing a payment increas-
22 ing, decreasing, resuming, or changing the type of compensation paid.
23 If the [EMPLOYER FAILS TO NOTIFY THE] board and the employee are not
24 notified within the 28 days prescribed by this subsection for report-
25 ing, the insurer or adjuster [EMPLOYER] shall pay a civil penalty of
26 \$100 for the first day plus \$10 for each day thereafter that the
27 [EMPLOYER FAILED TO GIVE] notice was not given. Total penalties under
28 this subsection [SECTION] may not exceed \$1,000 for a failure to file
29 a required report. Penalties assessed under this subsection are

1 eligible for reduction under (m) of this section. A penalty assessed
2 under this subsection after penalties have been reduced under (m) of
3 this section shall be increased by 25 percent and shall bear interest
4 at the rate established under AS 45.45.010.

5 * Sec. 24. AS 23.30.155(d) is amended to read:

6 (d) If the employer controverts the right to compensation the
7 employer shall file with the board and send to the employee a notice
8 of controversion on or before the 21st day after the employer has
9 knowledge of the alleged injury or death. If the employer controverts
10 the right to compensation after payments have begun, the employer
11 shall file with the board and send to the employee a notice of con-
12 troversion within seven days after an installment of compensation
13 payable without an award is due. When payment of temporary disability
14 benefits is controverted solely on the grounds that another employer
15 or another insurer of the same employer may be responsible for all or
16 a portion of the benefits, the most recent employer or insurer who is
17 party to the claim and who may be liable shall make the payments
18 during the pendency of the dispute. When a final determination of
19 liability is made, any reimbursement required, including interest at
20 the statutory rate, and all costs and attorneys' fees incurred by the
21 prevailing employer, shall be made within 14 days of the determina-
22 tion.

23 * Sec. 25. AS 23.30.155(e) is amended to read:

24 (e) If any installment of compensation payable without an award
25 is not paid within seven days after it becomes due, as provided in (b)
26 of this section, there shall be added to the unpaid installment an
27 amount equal to 50 [20] percent of it or \$300, whichever amount is
28 greater. This additional amount shall be paid at the same time as,
29 and in addition to, the installment, unless notice is filed under (d)

1 of this section or unless the nonpayment is excused by the board after
2 a showing by the employer that owing to conditions over which the
3 employer had no control the installment could not be paid within the
4 period prescribed for the payment.

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 50 [20] percent or \$300 which-
9 ever is greater of it, which shall be paid at the same time as, but in
10 addition to, the compensation, unless review of the compensation order
11 making the award is had as provided in AS 23.30.125 and an interlocu-
12 tory injunction staying payments is allowed by the court.

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

14 (m) On 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

1 of this section or unless the nonpayment is excused by the board after
2 a showing by the employer that owing to conditions over which the
3 employer had no control the installment could not be paid within the
4 period prescribed for the payment.

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 50 [20] percent or \$300 which-
9 ever is greater of it, which shall be paid at the same time as, but in
10 addition to, the compensation, unless review of the compensation order
11 making the award is had as provided in AS 23.30.125 and an interlocu-
12 tory injunction staying payments is allowed by the court.

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

14 (m) On 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

1 under (c) of this section shall be waived. If during the preceding
2 year the insurer or adjuster filed 95 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. If the annual report
13 is incomplete when filed, the insurer or adjuster shall pay a civil
14 penalty of \$1,000.

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

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

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

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

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

28 Sec. 23.30.175. RATES OF COMPENSATION. (a) The weekly rate of
29 compensation for disability or death may not exceed \$700 and initially

1 may not be less than \$110. However, if the board determines that the
2 employee's spendable weekly wages are less than \$110 a week as com-
3 puted under AS 23.30.220, or less than \$154 a week in the case of an
4 employee who has furnished documentary proof of the employee's wages,
5 it shall issue an order adjusting the weekly rate of compensation to a
6 rate equal to the employee's spendable weekly wages. If the employer
7 can verify that the employee's spendable weekly wages are less than
8 \$154, the employer may adjust the weekly rate of compensation to a
9 rate equal to the employee's spendable weekly wages without an order
10 of the board. If the employee's spendable weekly wages are greater
11 than \$154, but 80 percent of the employee's spendable weekly wages is
12 less than \$154, the employer's weekly rate of compensation shall be
13 \$154. Prior payments made in excess of the adjusted rate shall be
14 deducted from the unpaid compensation in the manner the board deter-
15 mines. In any case, the employer shall pay timely compensation.

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

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

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

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

1 portion of the recipient's weekly compensation rate attributable to
2 wages earned in the state;

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

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

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

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

24 (1) area of residence;

25 (2) area of last employment;

26 (3) the state of residence; and

27 (4) the State of Alaska.

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

29 (b) Failure to achieve remunerative employability as defined in

1 AS 23.30.041(p) does not, by itself, constitute permanent total dis-
2 ability.

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

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

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

11 Sec. 23.30.190. COMPENSATION FOR PERMANENT PARTIAL IMPAIRMENT.

12 (a) In case of impairment partial in character but permanent in
13 quality, and not resulting in permanent total disability, the compen-
14 sation is \$135,000 multiplied by the employee's percentage of perma-
15 nent impairment of the whole person. The percentage of permanent
16 impairment of the whole person is the percentage of impairment to the
17 particular body part, system, or function converted to the percentage
18 of impairment to the whole person as provided under (b) of this sec-
19 tion. The compensation is payable in a single lump sum, except as
20 otherwise provided in AS 23.30.041, but the compensation may not be
21 discounted for any present value considerations.

22 (b) All determinations of the existence and degree of permanent
23 impairment shall be made strictly and solely under the whole person
24 determination as set out in the American Medical Association Guides to
25 the Evaluation of Permanent Impairment, except that an impairment
26 rating may not be rounded to the next five percent. The board shall
27 adopt a supplementary recognized schedule for injuries that cannot be
28 rated by use of the American Medical Association Guides.

29 (c) An employee with an actual permanent impairment as

1 determined under (b) of this section may not receive less than \$250
2 for the impairment.

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

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

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

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

20 (b) The wage-earning capacity of an injured employee is deter-
21 mined by the actual spendable weekly wage of the employee if the
22 actual spendable weekly wage fairly and reasonably represents the
23 wage-earning capacity of the employee. The board may, in the interest
24 of justice, fix the wage-earning capacity that is reasonable, having
25 due regard to the nature of the injury, the degree of physical impair-
26 ment, the usual employment, and other factors or circumstances in the
27 case that may affect the capacity of the employee to earn wages in a
28 disabled condition, including the effect of disability as it may
29 naturally extend into the future.

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

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

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

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

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

(4) If the employee is injured while performing duties as a volunteer ambulance attendant, policeman, or fireman, the gross weekly earnings for calculating compensation shall be the minimum gross weekly earnings paid a full-time ambulance attendant, policeman, or fireman employed in the political subdivision where the injury occurred, or, if the political subdivision has no full-time ambulance attendants, policemen, or firemen, at a reasonable figure previously

1 set by the political subdivision to make this determination but in no
 2 case may the gross weekly earnings for calculating compensation be
 3 less than the minimum wage computed on the basis of 40 hours work per
 4 week.

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

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

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

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

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

28 (c) This section may not be construed to prohibit an employer
 29 from requiring a prospective employee to fill out a preemployment

1 questionnaire or application regarding the person's prior health or
2 disability history as long as it is meant to either document written
3 notice for second injury fund reimbursement under AS 23.30.205(c) or
4 to determine whether the employee has the physical or mental capacity
5 to meet the documented physical or mental demands of the work.

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

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

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

24 (17) "injury" means accidental injury or death arising out
25 of and in the course of employment, and an occupational disease or
26 infection which arises naturally out of the employment or which natu-
27 rally or unavoidably results from an accidental injury; "injury" [,
28 AND] includes breakage or damage to eyeglasses, hearing aids, den-
29 tures, or any prosthetic devices which function as part of the body

1 and further includes an injury caused by the wilful act of a third
2 person directed against an employee because of the employment; "in-
3 jury" does not include mental injury caused by mental stress unless it
4 is established that (A) the work stress was extraordinary and unusual
5 in comparison to pressures and tensions experienced by individuals in
6 a comparable work environment, and (B) the work stress was the predom-
7 inant cause of the mental injury; the amount of work stress shall be
8 measured by actual events; a mental injury is not considered to arise
9 out of and in the course of employment if it results from a disciplin-
10 ary action, work evaluation, job transfer, layoff, demotion, termina-
11 tion or similar action, taken in good faith by the employer;

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

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

22 * Sec. 42. AS 23.30.210 and 23.30.265(28) are repealed.

23 * Sec. 43. TRANSITIONAL PROVISIONS. Notwithstanding AS 23.30.040(b),
24 as amended by sec. 7 of this Act, and AS 23.30.155(m), as amended by
25 sec. 27 of this Act, on or before March 1, 1989, each employer that is
26 subject to those sections shall file a report and make the appropriate
27 contribution for all claims existing as of December 31, 1988. The period
28 covered in the report shall be from the date of the termination report or
29 the last anniversary report filed, if one has been filed, through

December 31, 1988.

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

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

13 * Sec. 46. APPLICABILITY. Except for secs. 7, 24, 27, 28, 40, and 44
14 of this Act, this Act applies only to injuries sustained on or after Ju-
15 ly 1, 1988.

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

18 * Sec. 48. Sections 40 and 47 of this Act take effect immediately under
19 AS 01.10.070(c).

20 * Sec. 49. Sections 1 - 39, and 41 - 46 of this Act take effect July 1,
21 1988.

5-1514X ✓
Ford
4/26/88

Original sponsor: Labor and Commerce
Committee

1 IN THE SENATE

BY THE JUDICIARY COMMITTEE

2 HOUSE CS FOR CS FOR SENATE BILL NO. 322 (Judiciary)

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 not impose a surcharge for assigned risk pool
20 insurance unless the insured has received an experience modification
21 debit. After the insured has received an experience modification
22 debit, the insurer may impose a surcharge if the percentage of the
23 surcharge does not exceed the percentage applied as an experience
24 modification debit or 25 percent of the premium developed after appli-
25 cation of the experience modification factor, whichever is less.

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

27 Sec. 21.89.015. WORKPLACE SAFETY PROGRAM. An insurer who pro-
28 vides workers' compensation insurance in this state shall establish
29 and maintain a workplace safety rate reduction program available to

1 all insureds. The program must include

2 (1) a reduction in future workers' compensation premiums
3 based on the insured's documented and successful implementation of a
4 safety program; and

5 (2) consulting services available to the insured to estab-
6 lish a workplace safety program; an insurer may charge a fee separate
7 from the premium for services requested under this paragraph.

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

9 (h) The department shall [MAY] adopt [IDENTICAL] rules for all
10 panels, and procedures for the periodic selection, retention, and re-
11 moval of both rehabilitation specialists and physicians under AS 23.-
12 30.041 and 23.30.095, and shall [MAY] adopt regulations to carry out
13 the provisions of this chapter. Process and procedure under this
14 chapter shall be as summary and simple as possible. The department,
15 the board or a member of it may for the purposes of this chapter
16 subpoena witnesses, administer or cause to be administered oaths, and
17 may examine or cause to have examined the parts of the books and
18 records of the parties to a proceeding that relate [WHICH RELATED] to
19 questions in dispute. The superior court, on application of the
20 department, the board or any members of it, shall enforce the atten-
21 dance and testimony of witnesses and the production and examination of
22 books, papers, and records.

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

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

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

29 (2) there was a causal connection between the false

1 representation and the injury to the employee.

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

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

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

8 (8) An annual insurance premium that exceeds \$2,000 may be
9 paid on an installment basis of not fewer than two payments, if re-
10 quested by the insured. Premiums paid by installment must be struc-
11 tured to reflect seasonal peaks in the basis of the premium. The
12 insurer shall include this provision in the insurance policy in a
13 manner that clearly informs the insured of the provision.

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

15 (b) If an employee suffers a compensable injury that results in
16 temporary total disability, temporary partial disability, permanent
17 partial disability, or permanent total disability, the employer or
18 insurance carrier shall contribute to the second injury fund. The
19 contribution shall be made annually at the time of the report filing
20 required by AS 23.30.155(m) [BY ONE YEAR FROM THE DATE OF THE INJURY
21 OR ON TERMINATION OF THE EMPLOYEE'S CLAIM, WHICHEVER IS SOONER. IF
22 THE CLAIM IS NOT TERMINATED WITHIN ONE YEAR, SUBSEQUENT CONTRIBUTIONS
23 SHALL BE MADE YEARLY UNTIL THE TERMINATION OF THE EMPLOYEE'S CLAIM].
24 The amount of the contribution is the product of the compensation to
25 which the employee is entitled for temporary total disability, tempo-
26 rary partial disability, permanent partial disability, or permanent
27 total disability and the applicable contribution rate set out in
28 column A of this subsection. Payment need not be made to the second
29 injury fund if the total contribution under this subsection is less

1 than \$20. By December 15 of each year the commissioner shall deter-
 2 mine and make available to the public the applicable contribution rate
 3 for the following calendar year according to the reserve rate of the
 4 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
5	50	75
4	75	100
3	100	125
2	125	150
1	150	175
0	175	

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

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

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

21 Sec. 23.30.041. REHABILITATION OF INJURED WORKERS. (a) The
 22 board shall select and employ a reemployment benefits administrator.
 23 The board may authorize the administrator to select and employ addi-
 24 tional staff. The administrator is in the partially exempt service
 25 under AS 39.25.120.

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

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

29 (2) recommend regulations for adoption by the board that

1 establish performance and reporting criteria for rehabilitation spe-
2 cialists;

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

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

8 (5) submit to the department, on or before January 1 of
9 each year, a report of reemployment benefits provided under this
10 section for the previous fiscal year; the report must include a gener-
11 al section, sections related to each rehabilitation specialist em-
12 ployed under this section, and a statistical summary of all reha-
13 bilitation cases, including

14 (A) the estimated and actual cost of each active
15 rehabilitation plan;

16 (B) the estimated and actual time of each rehabilita-
17 tion plan;

18 (C) a status report on all individuals completing or
19 terminating a reemployment benefits program including a return to
20 work date;

21 (D) the cost of reemployment benefits;

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

24 (7) promote awareness among physicians, adjusters, injured
25 workers, employers, employees, attorneys, training providers, and
26 rehabilitation specialists of the reemployment program established in
27 this subsection.

28 (c) If an employee suffers a compensable injury that may perma-
29 nently preclude an employee's return to the employee's occupation at

1 the time of injury, the employee or employer may request an eligibil-
2 ity evaluation for reemployment benefits. The employee shall request
3 an eligibility evaluation within 90 days after the employee gives the
4 employer notice of injury unless the administrator determines the
5 employee has an unusual and extenuating circumstance that prevents the
6 employee from making a timely request. The administrator shall, on a
7 rotating and geographic basis, select a rehabilitation specialist from
8 the list maintained under (b)(6) of this section to perform the eli-
9 gibility evaluation.

10 (d) Within 30 days after the referral by the administrator, the
11 rehabilitation specialist shall perform the eligibility evaluation and
12 issue a report of findings. The administrator may grant up to an
13 additional 30 days for performance of the eligibility evaluation upon
14 notification of unusual and extenuating circumstances and the re-
15 habilitation specialist's request. Within 14 days after receipt of
16 the report from the rehabilitation specialist, the administrator shall
17 notify the parties of the employee's eligibility for reemployment
18 preparation benefits. Within 10 days after the decision, either party
19 may seek review of the decision by requesting a hearing under AS 23.-
20 30.110. The hearing shall be held within 30 days after it is re-
21 quested. The board shall uphold the decision of the administrator
22 except for abuse of discretion on the administrator's part.

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

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

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

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

9 (1) the employer offers employment within the employee's
10 predicted post-injury physical capacities at a wage equivalent to at
11 least the state minimum wage under AS 23.10.065 or 75 percent of the
12 worker's gross hourly wages at the time of injury, whichever is great-
13 er, and the employment prepares the employee to be employable in other
14 jobs that exist in the labor market;

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

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

21 (g) Within 10 days after the employee receives the adminis-
22 trator's notification of eligibility for benefits, an employee who
23 desires to use these benefits shall give written notice to the em-
24 ployer of the employee's selection of a rehabilitation specialist who
25 shall provide a complete reemployment benefits plan. If the employer
26 disagrees with the employee's choice of rehabilitation specialist to
27 develop the plan and the disagreement cannot be resolved, then the
28 administrator shall assign a rehabilitation specialist. The employe
29 and employee each have one right of refusal of a rehabilitation

1 specialist.

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
10 condition and family support;

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

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

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

17 (6) the date the plan will commence;

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

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

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

25 (i) Reemployment benefits shall be selected from the following
26 in a manner that ensures remunerative employability in the shortest
27 possible time:

28 (1) on the job training;

29 (2) vocational training;

- 1 (3) academic training;
2 (4) self-employment; or
3 (5) a combination of (1) - (4) of this subsection.

4 (j) The employee, rehabilitation specialist, and the employer
5 shall sign the reemployment benefits plan. If the employer and em-
6 ployee fail to agree on a reemployment plan, either party may submit a
7 reemployment plan for approval to the administrator; the adminis-
8 trator shall approve or deny a plan within 14 days after the plan is
9 submitted; within 10 days of the decision, either party may seek
10 review of the decision by requesting a hearing under AS 23.30.110; the
11 board shall uphold the decision of the administrator unless evidence
12 is submitted supporting an allegation of abuse of discretion on the
13 part of the administrator; the board shall render a decision within 30
14 days after completion of the hearing.

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

1 reemployment plan.

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

5 (m) Only a rehabilitation specialist may accept case assignments
6 as a case manager and sign eligibility determinations and reemployment
7 plans. A person who is not a rehabilitation specialist may perform
8 rehabilitation casework if the work is performed under the direct
9 supervision of a rehabilitation specialist employed in the same firm
10 and location.

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

15 (1) keep appointments;

16 (2) maintain passing grades;

17 (3) attend designated programs;

18 (4) maintain contact with the rehabilitation specialist;

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

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

24 (7) participate in any planned reemployment activity as
25 determined by the administrator.

26 (o) Upon the request of either party, the administrator shall
27 decide whether the employee has not cooperated as provided under (n)
28 of this section. A hearing before the administrator shall be held
29 within 30 days after it is requested. The administrator shall issue a

1 decision within 14 days after the hearing. Within 10 days after the
2 administrator files the decision, either party may seek review of the
3 decision by requesting a hearing under AS 23.30.110; the board shall
4 uphold the decision of the administrator unless evidence is submitted
5 supporting an allegation of abuse of discretion on the part of the
6 administrator; the board shall render a decision within 30 days after
7 completion of the hearing.

8 (p) In this section

9 (1) "administrator" means the reemployment benefits admin-
10 istrator under AS 23.30.041(a);

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

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

16 (A) area of residence;

17 (B) area of last employment;

18 (C) the state;

19 (D) other states;

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

24 (5) "physical demands" means the physical requirements of
25 the job such as strength, including positions such as standing, walk-
26 ing, sitting, and movement of objects such as lifting, carrying,
27 pushing, pulling, climbing, balancing, stooping, kneeling, crouching,
28 crawling, reaching, handling, fingering, feeling, talking, hearing, or
29 seeing;

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

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

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

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

1 employee.

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

3 (b) If an [AN] employer [WHO] fails to insure and keep insured
4 employees subject to this chapter or fails to obtain a certificate of
5 self-insurance from the board, upon conviction the court shall impose
6 a fine of \$10,000 and may impose a sentence of [, IS PUNISHABLE BY A
7 FINE OF NOT MORE THAN \$1,000, OR BY] imprisonment for not more than
8 one year [, OR BY BOTH]. If an employer is a corporation, all persons
9 who, at the time of the injury or death, had authority to insure the
10 [SAID] corporation or apply for a certificate of self-insurance, and
11 the person actively in charge of the business of the [SUCH] corpo-
12 ration shall be subject to the penalties prescribed in this subsection
13 [HEREIN] and shall be personally, jointly, and severally liable to-
14 gether with the corporation for the payment of all compensation or
15 other benefits for which the corporation is liable under this chapter
16 if the [SAID] corporation at that [SUCH] time is not insured or quali-
17 fied as a self-insurer.

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

19 (a) The employer shall furnish medical, surgical, and other
20 attendants or treatment, nurse and hospital service, medicine, crutch-
21 es, and apparatus for the period which the nature of the injury or the
22 process of recovery requires, not exceeding two years from and after
23 the date of injury to the employee. However, if the condition requir-
24 ing the treatment, apparatus, or medicine is a latent one, the two-
25 year period runs from the time the employee has knowledge of the
26 nature of the employee's disability and its relationship to the em-
27 ployment and after disablement. It shall be additionally provided
28 that, if continued treatment or care or both beyond the two-year
29 period is indicated, the injured employee has the right of review by

1 the board. The board may authorize continued treatment or care or
2 both as the process of recovery may require. When medical care is
3 required, the injured employee may designate a licensed physician to
4 provide all medical and related benefits. The employee may not make
5 more than one change in the employee's choice of attending physician
6 without the written consent of the employer. Referral to a specialist
7 by the employee's attending physician is not considered a change in
8 physicians [INSIDE THE STATE TO RENDER THE CARE EXCEPT IN CASES WHERE,
9 IN THE JUDGMENT OF THE BOARD, CARE OR TREATMENT OR BOTH CAN BEST BE
10 ADMINISTERED BY THE SELECTION OF ANOTHER PHYSICIAN]. Upon procuring
11 the services of a physician, the injured employee shall give proper
12 notification of the selection to the employer within a reasonable time
13 after first being treated. Notice of a change in the attending physi-
14 cian shall be given before the change [IF FOR ANY REASON DURING THE
15 PERIOD WHEN MEDICAL CARE IS REQUIRED THE EMPLOYEE WISHES TO CHANGE TO
16 ANOTHER PHYSICIAN, THE EMPLOYEE MAY DO SO IN ACCORDANCE WITH REGU-
17 LATIONS ADOPTED BY THE BOARD].

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

19 (c) A claim for medical or surgical treatment, or treatment
20 requiring continuing and multiple treatments of a similar nature is
21 not valid and enforceable against the employer unless, within 14 days
22 following treatment, the physician or health care provider giving the
23 treatment or the employee receiving it furnishes to the employer and
24 the board notice of the injury and treatment, preferably on a form
25 prescribed by the board. The board shall, however, excuse the failure
26 to furnish notice within 14 days when it finds it to be in the inter-
27 est of justice to do so, and it may, upon application by a party in
28 interest, make an award for the reasonable value of the medical or
29 surgical treatment so obtained by the employee. When a claim is made

1 for a course of treatment requiring continuing and multiple treatments
2 of a similar nature, in addition to the notice, the physician or
3 health care provider shall furnish a written treatment plan if the
4 course of treatment will require more frequent outpatient visits than
5 the standard treatment frequency for the nature and degree of the
6 injury and the type of treatments. The treatment plan shall be furn-
7 ished to the employee and the employer within 14 days after treatment
8 begins. The treatment plan must include objectives, modalities,
9 frequency of treatments, and reasons for the frequency of treatments.
10 If the treatment plan is not furnished as required under this subsec-
11 tion, neither the employer nor the employee may be required to pay for
12 treatments that exceed the frequency standard. The board shall adopt
13 regulations establishing standards for frequency of treatment.

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

15 (e) The employee shall, after an injury, at reasonable times
16 during the continuance of the disability, if requested by the employer
17 or when ordered by the board, submit to an examination by a physician
18 or surgeon of the employer's choice authorized to practice medicine
19 under the laws of the jurisdiction in which the physician resides
20 [STATE IN WHICH THE EMPLOYEE MAY BE FOUND], furnished and paid for by
21 the employer. The employer may not make more than one change in the
22 employer's choice of a physician or surgeon without the written con-
23 sent of the employee. Referral to a specialist by the employer's
24 physician is not considered a change in physicians. An examination
25 requested by the employer not less than 14 days after injury, and
26 every 60 days thereafter, shall be presumed to be reasonable, and the
27 employee shall submit to the examination without further request or
28 order by the board. Unless medically appropriate, the physician shall
29 use existing diagnostic data to complete the examination. Facts

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1 relative to the injury or claim communicated to or otherwise learned
2 by a physician or surgeon who may have attended or examined the em-
3 ployee, or who may have been present at an examination are not priv-
4 ileged, either in the hearings provided for in this chapter or an
5 action to recover damages against an employer who is subject to the
6 compensation provisions of this chapter. If an employee refuses to
7 submit to an [ANY] examination provided for in this section, the
8 employee's rights to compensation shall be suspended until the ob-
9 struction or refusal ceases, and the employee's compensation during
10 the period of suspension may, in the discretion of the board or the
11 court determining an action brought for the recovery of damages under
12 this chapter, be forfeited. The board in any case of death may re-
13 quire an autopsy at the expense of the party requesting the autopsy.
14 An autopsy may not be held without notice first being given to the
15 widow or widower or next of kin if they reside in the state or their
16 whereabouts can be reasonably ascertained, of the time and place of
17 the autopsy and reasonable time and opportunity given the widow or
18 widower or next of kin to have a representative present to witness the
19 autopsy. If adequate notice is not given, the findings from the
20 autopsy may be suppressed on motion made to the board or to the supe-
21 rior court, as the case may be.

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

23 (f) All fees and other charges for medical treatment or service
24 [ARE LIMITED TO THE CHARGES THAT PREVAIL IN THE SAME COMMUNITY FOR
25 SIMILAR TREATMENT OF INJURED PERSONS OF LIKE STANDARD OF LIVING AND]
26 shall be subject to regulation by the board but may not exceed usual,
27 customary, and reasonable fees for the treatment or service in the
28 community in which it is rendered, as determined by the board. An
29 employee may not be required to pay a fee or charge for medical

CORRECTION

**THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY**

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community in which it is rendered, as determined by the board. An
employee may not be required to pay a fee or charge for medical

treatment or service.

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

(j) The board may appoint a medical services review committee, or contract with an existing organization in the state or another state, to assist and advise the board in matters involving the appropriateness, necessity, and cost of medical and related services provided under this chapter.

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

(k) In the event of a medical dispute regarding determinations of causation, medical stability, ability to enter a reemployment plan, degree of impairment, functional capacity, the amount and efficacy of the continuance of or necessity of treatment, or compensability between the employee's attending physician and the employer's independent medical evaluation, a second independent medical evaluation shall be conducted by a physician or physicians selected by the board from a list established and maintained by the board. The cost of the examination and medical report shall be paid by the employer. The report of the independent medical examiner shall be furnished to the board and to the parties within 14 days after the examination is concluded. A person may not seek damages from an independent medical examiner caused by the rendering of an opinion or providing testimony under this subsection, except in the event of fraud or gross incompetence.

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

(a) The right to compensation for disability under this chapter is barred unless a claim for it is filed within two years after the employee has knowledge of the nature of the employee's disability and its relation to the employment and after disablement. However, the maximum time for filing the claim in any event other than arising out of an occupational disease shall be four years from the date of

1 injury, and the right to compensation for death is barred unless a
2 claim therefor is filed within one year after the death, except that
3 if payment of compensation has been made without an award on account
4 of the injury or death, a claim may be filed within two years after
5 the date of the last payment of benefits under AS 23.30.180, 23.30.-
6 185, 23.30.190, 23.30.200, or 23.30.215. It is additionally provided
7 that, in the case of latent defects pertinent to and causing com-
8 pensable disability, the injured employee has full right to claim as
9 shall be determined by the board, time limitations notwithstanding.

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

11 (c) Before a hearing is scheduled, the party seeking a hearing
12 shall file a request for a hearing together with an affidavit stating
13 that the party has completed necessary discovery, obtained necessary
14 evidence, and is prepared for the hearing. An opposing party shall
15 have 10 days after the hearing request is filed to file a response.
16 If a party opposes the hearing request, the board or a board designee
17 shall within 30 days of the filing of the opposition conduct a pre-
18 hearing conference and set a hearing date. If opposition is not
19 filed, a hearing shall be scheduled no later than 60 days after the
20 receipt of the hearing request. The board shall give each party at
21 least 10 days' notice of the hearing, either personally or by cer-
22 tified mail. After a hearing has been scheduled, the parties may not
23 stipulate to change the hearing date or to cancel, postpone, or con-
24 tinue the hearing, except for good cause as determined by the board.
25 After completion of the hearing the board shall close the hearing
26 record. If a settlement agreement is reached by the parties less than
27 14 days before the hearing, the parties shall appear at the time of
28 the scheduled hearing to state the terms of the settlement agreement.
29 Within 30 days after the hearing record closes, the board shall file

1 its decision. If the employer controverts a claim on a board-pre-
2 scribed controversion notice and the employee does not request a
3 hearing within two years following the filing of the controversion
4 notice, the claim is denied.

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

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

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

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

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

15 (a) Upon its own initiative, or upon the application of any
16 party in interest on the ground of a change in conditions, including,
17 for the purposes of AS 23.30.175, a change in residence, or because of
18 a mistake in its determination of a fact, the board may, before one
19 year after the date of the last payment of compensation benefits under
20 AS 23.30.180, 23.30.185, 23.30.190, 23.30.200, or 23.30.215, whether
21 or not a compensation order has been issued, or before one year after
22 the rejection of a claim, review a compensation case under [IN ACCOR-
23 DANCE WITH] the procedure prescribed in respect of claims in AS 23.-
24 30.110. Under [IN ACCORDANCE WITH] AS 23.30.110 the board may issue a
25 new compensation order which terminates, continues, reinstates, in-
26 creases, or decreases the compensation, or award compensation.

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

28 (c) The insurer or adjuster [EMPLOYER] shall notify the board
29 and the employee on a form prescribed by the board that the payment of

1 compensation has begun or has been increased, decreased, suspended,
2 terminated, resumed, or changed in type. An initial report shall be
3 filed with the board and sent to the employee within 28 days after the
4 date of issuing the first payment of compensation. If at any time 21
5 days or more pass and no compensation payment is issued, a report
6 notifying the board and the employee of the termination or suspension
7 of compensation shall be filed with the board and sent to the employee
8 within 28 days after the date the last compensation payment was is-
9 sued. A report shall also be filed with the board and sent to the
10 employee within 28 days after the date of issuing a payment increas-
11 ing, decreasing, resuming, or changing the type of compensation paid.
12 If the [EMPLOYER FAILS TO NOTIFY THE] board and the employee are not
13 notified within the 28 days prescribed by this subsection for report-
14 ing, the insurer or adjuster [EMPLOYER] shall pay a civil penalty of
15 \$100 for the first day plus \$10 for each day thereafter that the
16 [EMPLOYER FAILED TO GIVE] notice was not given. Total penalties under
17 this subsection [SECTION] may not exceed \$1,000 for a failure to file
18 a required report. Penalties assessed under this subsection are
19 eligible for reduction under (m) of this section. A penalty assessed
20 under this subsection after penalties have been reduced under (m) of
21 this section shall be increased by 25 percent and shall bear interest
22 at the rate established under AS 45.45.010.

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

24 (d) If the employer controverts the right to compensation the
25 employer shall file with the board and send to the employee a notice
26 of controversion on or before the 21st day after the employer has
27 knowledge of the alleged injury or death. If the employer controverts
28 the right to compensation after payments have begun, the employer
29 shall file with the board and send to the employee a notice of

1 controversion within seven days after an installment of compensation
2 payable without an award is due. When payment of temporary disability
3 benefits is controverted solely on the grounds that another employer
4 or another insurer of the same employer may be responsible for all or
5 a portion of the benefits, the most recent employer or insurer who is
6 party to the claim and who may be liable shall make the payments
7 during the pendency of the dispute. When a final determination of
8 liability is made, any reimbursement required, including interest at
9 the statutory rate, and all costs and attorneys' fees incurred by the
10 prevailing employer, shall be made within 14 days of the determina-
11 tion.

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

13 (e) If any installment of compensation payable without an award
14 is not paid within seven days after it becomes due, as provided in (b)
15 of this section, there shall be added to the unpaid installment an
16 amount equal to 25 [20] percent of it or \$100, whichever amount is
17 greater. This additional amount shall be paid at the same time as,
18 and in addition to, the installment, unless notice is filed under (d)
19 of this section or unless the nonpayment is excused by the board after
20 a showing by the employer that owing to conditions over which the
21 employer had no control the installment could not be paid within the
22 period prescribed for the payment.

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

24 (f) If compensation payable under the terms of an award is not
25 paid within 14 days after it becomes due, there shall be added to that
26 unpaid compensation an amount equal to 25 [20] percent of it or \$100,
27 whichever is greater, which shall be paid at the same time as, but in
28 addition to, the compensation, unless review of the compensation order
29 making the award is had as provided in AS 23.30.125 and an interlocu-

1 tory injunction staying payments is allowed by the court.

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

3 (m) On or before March 1 of each year the insurer or adjuster
4 shall file a verified annual report on a form prescribed by the board
5 stating the total amount of all compensation by type, the number of
6 claims received and the percentage controverted, medical, and related
7 benefits, vocational rehabilitation expenses, legal fees, including a
8 separate total for fees paid to attorneys and fees paid for the other
9 costs of litigation, and penalties paid on all claims during the
10 preceding calendar year. If the annual report is timely and complete
11 when received by the board and provides accurate information about
12 each category of payments, the commissioner shall review the timeli-
13 ness of the insurer's or adjuster's reports filed during the preceding
14 year under (c) of this section. If during the preceding year the
15 insurer or adjuster filed at least 99 percent of the reports on time,
16 the penalties assessed under (c) of this section shall be waived. If
17 during the preceding year the insurer or adjuster filed at least 97
18 percent of the reports on time, 75 percent of the penalties assessed
19 under (c) of this section shall be waived. If during the preceding
20 year the insurer or adjuster filed 95 percent of the reports on time,
21 50 percent of the penalties assessed under (c) of this section shall
22 be waived. If during the preceding year the insurer's or adjuster's
23 reports have not been filed on time at least 95 percent of the time,
24 none of the penalties assessed under (c) of this section shall be
25 waived. The penalties that are not waived are due and payable when
26 the insurer or adjuster receives notification from the commissioner
27 regarding the timeliness of the reports. If the annual report is not
28 filed by March 1 of each year, the insurer or adjuster shall pay a
29 civil penalty of \$100 for the first day the annual report is late, and

1 \$10 for each additional day the report is late. If the annual report
2 is incomplete when filed, the insurer or adjuster shall pay a civil
3 penalty of \$1,000.

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

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

7 (o) The board shall promptly notify the division of insurance if
8 the board determines that the employer's insurer has frivolously or
9 unfairly controverted compensation due under this chapter. After
10 receiving notice from the board, the division of insurance shall
11 determine if the insurer has committed an unfair claim settlement
12 practice under AS 21.36.125.

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

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

17 Sec. 23.30.175. RATES OF COMPENSATION. (a) The weekly rate of
18 compensation for disability or death may not exceed \$700 and initially
19 may not be less than \$110. However, if the board determines that the
20 employee's spendable weekly wages are less than \$110 a week as com-
21 puted under AS 23.30.220, or less than \$154 a week in the case of an
22 employee who has furnished documentary proof of the employee's wages,
23 it shall issue an order adjusting the weekly rate of compensation to a
24 rate equal to the employee's spendable weekly wages. If the employer
25 can verify that the employee's spendable weekly wages are less than
26 \$154, the employer may adjust the weekly rate of compensation to a
27 rate equal to the employee's spendable weekly wages without an order
28 of the board. If the employee's spendable weekly wages are greater
29 than \$154, but 80 percent of the employee's spendable weekly wages is

1 less than \$154, the employee's weekly rate of compensation shall be
2 \$154. Prior payments made in excess of the adjusted rate shall be
3 deducted from the unpaid compensation in the manner the board deter-
4 mines. In any case, the employer shall pay timely compensation.

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

8 (1) the weekly rate of compensation shall be calculated by
9 multiplying the recipient's weekly compensation rate calculated under
10 AS 23.30.180, 23.30.185, 23.30.190, 23.30.200, or 23.30.215, by the
11 ratio of the cost of living of the area in which the recipient resides
12 to the cost of living in this state;

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

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

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

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

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

29 Sec. 23.30.180. PERMANENT TOTAL DISABILITY. In case of total

1 disability adjudged to be permanent 80 percent of the injured em-
2 ployee's spendable weekly wages shall be paid to the employee during
3 the continuance of the total disability. If a permanent partial
4 disability award has been made before a permanent total disability
5 determination, permanent total disability benefits must be reduced by
6 the amount of the permanent partial disability award, adjusted for
7 inflation, in a manner determined by the board. Loss of both hands,
8 or both arms, or both feet, or both legs, or both eyes, or of any two
9 of them, in the absence of conclusive proof to the contrary, consti-
10 tutes permanent total disability. In all other cases permanent total
11 disability is determined in accordance with the facts. In making this
12 determination the market for the employee's services shall be

13 (1) area of residence;

14 (2) area of last employment;

15 (3) the state of residence; and

16 (4) the State of Alaska.

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

18 (b) Failure to achieve remunerative employability as defined in
19 AS 23.30.041(p) does not, by itself, constitute permanent total dis-
20 ability.

21 * Sec. 33. AS 23.30.185 is amended to read:

22 Sec. 23.30.185. COMPENSATION FOR TEMPORARY TOTAL DISABILITY. In
23 case of disability total in character but temporary in quality, 80
24 percent of the injured employee's spendable weekly wages shall be paid
25 to the employee during the continuance of the disability. Temporary
26 total disability benefits may not be paid for any period of disability
27 occurring after the date of medical stability.

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

29 Sec. 23.30.190. COMPENSATION FOR PERMANENT PARTIAL IMPAIRMENT.

1 (a) In case of impairment partial in character but permanent in
2 quality, and not resulting in permanent total disability, the compen-
3 sation is \$135,000 multiplied by the employee's percentage of perma-
4 nent impairment of the whole person. The percentage of permanent
5 impairment of the whole person is the percentage of impairment to the
6 particular body part, system, or function converted to the percentage
7 of impairment to the whole person as provided under (b) of this sec-
8 tion. The compensation is payable in a single lump sum, except as
9 otherwise provided in AS 23.30.041, but the compensation may not be
10 discounted for any present value considerations.

11 (b) All determinations of the existence and degree of permanent
12 impairment shall be made strictly and solely under the whole person
13 determination as set out in the American Medical Association Guides to
14 the Evaluation of Permanent Impairment, except that an impairment
15 rating may not be rounded to the next five percent. The board shall
16 adopt a supplementary recognized schedule for injuries that cannot be
17 rated by use of the American Medical Association Guides.

18 (c) The impairment rating determined under (a) of this section
19 shall be reduced by a permanent impairment that existed before the
20 compensable injury. If the combination of a prior impairment rating
21 and a rating under (a) of this section would result in the employee
22 being considered permanently totally disabled, the prior rating does
23 not negate a finding of permanent total disability.

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

25 Sec. 23.30.200. TEMPORARY PARTIAL DISABILITY. In case of tempo-
26 rary partial disability resulting in decrease of earning capacity the
27 compensation shall be 80 percent of the difference between the injured
28 employee's spendable weekly wages before the injury and the wage-
29 earning capacity of the employee after the injury in the same or

1 another employment, to be paid during the continuance of the disabili-
2 ty, but not to be paid for more than five years. Temporary partial
3 disability benefits may not be paid for a period of disability occur-
4 ring after the date of medical stability.

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

6 (b) The wage-earning capacity of an injured employee is deter-
7 mined by the actual spendable weekly wage of the employee if the
8 actual spendable weekly wage fairly and reasonably represents the
9 wage-earning capacity of the employee. The board may, in the interest
10 of justice, fix the wage-earning capacity that is reasonable, having
11 due regard to the nature of the injury, the degree of physical impair-
12 ment, the usual employment, and other factors or circumstances in the
13 case that may affect the capacity of the employee to earn wages in a
14 disabled condition, including the effect of disability as it may
15 naturally extend into the future.

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

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

21 (1) The gross weekly earnings are computed by dividing by
22 100 the gross earnings of the employee in the two calendar years
23 immediately preceding the injury.

24 (2) If the employee was absent from the labor market for 18
25 months or more of the two calendar years preceding the injury [THE
26 BOARD DETERMINES THAT THE GROSS WEEKLY EARNINGS AT THE TIME OF THE
27 INJURY CANNOT BE FAIRLY CALCULATED UNDER (1) OF THIS SUBSECTION], the
28 board shall [MAY] determine the employee's gross weekly earnings for
29 calculating compensation by considering the nature of the employee's

1 work and work history, but compensation may not exceed the employee's
2 projected gross weekly earnings at the time of injury.

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

8 (4) If the employee is injured while performing duties as a
9 volunteer ambulance attendant, policeman, or fireman, the gross weekly
10 earnings for calculating compensation shall be the minimum gross
11 weekly earnings paid a full-time ambulance attendant, policeman, or
12 fireman employed in the political subdivision where the injury oc-
13 curred, or, if the political subdivision has no full-time ambulance
14 attendants, policemen, or firemen, at a reasonable figure previously
15 set by the political subdivision to make this determination but in no
16 case may the gross weekly earnings for calculating compensation be
17 less than the minimum wage computed on the basis of 40 hours work per
18 week.

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

20 (c) If employer contributions to a qualified pension or profit
21 sharing plan have been included in the determination of gross earnings
22 and the employee is receiving pension or profit sharing payments,
23 weekly compensation benefits payable under this chapter shall be
24 reduced by the amount paid or payable to the injured worker under the
25 plan for any week or weeks during which compensation benefits are also
26 payable. The amount of the reduction may not in any week exceed the
27 increase in weekly compensation benefits brought about by the inclu-
28 sion of employer contributions to a qualified pension or profit shar-
29 ing plan in the determination of gross earnings.

1 * Sec. 39. AS 23.30 is amended by adding a new section to read:

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

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

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

20 * Sec. 40. AS 23.30.265(15) is amended to read:

21 (15) "gross earnings" means periodic payments, by an em-
22 ployer to an employee for employment before any authorized or lawfully
23 required deduction or withholding of money by the employer, including
24 compensation that is deferred at the option of the employee, and
25 excluding irregular bonuses, reimbursement of expenses, expense allow-
26 ances, and any benefit or payment to the employee that is not fully
27 taxable to the employee during the pay period, except that the total
28 amount of contributions made by an employer to a qualified pension or
29 profit sharing plan during the two plan years preceding the injury,

1 multiplied by the percentage of the employee's vested interest in the
2 plan at the time of injury, shall be included in the determination of
3 gross earnings; the value of room and board if taxable to the employee
4 may be considered in determining gross earnings; however, the value of
5 room and board that would raise an employee's gross weekly earning
6 above the state [ALASKA] average weekly wage at the time of injury may
7 not be considered;

8 * Sec. 41. AS 23.30.265(17) is amended to read:

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

26 * Sec. 42. AS 23.30.265 is amended by adding a new paragraph to read:

27 (34) "medical stability" means the date after which further
28 objectively measurable improvement from the effects of the compensable
29 injury is not reasonably expected to result from additional medical

1 care or treatment, notwithstanding the possible need for additional
2 medical care or the possibility of improvement or deterioration re-
3 sulting from the passage of time; medical stability shall be presumed
4 in the absence of objectively measurable improvement for a period of
5 45 days; this presumption may be rebutted by clear and convincing
6 evidence.

7 * Sec. 43. AS 23.30.210 and 23.30.265(28) are repealed.

8 * Sec. 44. TRANSITIONAL PROVISIONS. Notwithstanding AS 23.30.040(b),
9 as amended by sec. 8 of this Act, and AS 23.30.155(m), as amended by
10 sec. 28 of this Act, on or before March 1, 1989, each employer that is
11 subject to those sections shall file a report and make the appropriate
12 contribution for all claims existing as of December 31, 1988. The period
13 covered in the report shall be from the date of the termination report or
14 the last anniversary report filed, if one has been filed, through
15 December 31, 1988.

16 * Sec. 45. TEMPORARY RATE REDUCTION; FUTURE FILINGS. (a) Notwith-
17 standing AS 21.39.030, an insurer providing workers' compensation insurance
18 in the state shall provide at least a six percent reduction in the premium
19 rate charged within the state for workers' compensation insurance, for the
20 period beginning July 1, 1988, and ending January 1, 1990.

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

24 * Sec. 46. TRANSITIONAL PROVISION. Notwithstanding AS 23.30.041(p), as
25 enacted by sec. 10 of this Act, for the period from July 1, 1988, until
26 June 30, 1989, the term "rehabilitation specialist" as used in AS 23.30.041
27 includes a person who was actively employed for at least one year before
28 June 30, 1988, in providing rehabilitation services to an injured worker
29 receiving benefits under AS 23.30.

1 * Sec. 47. APPLICABILITY. Except for secs. 8, 25, 28, 29, 41, and 45
2 of this Act, this Act applies only to injuries sustained on or after
3 July 1, 1988.

4 * Sec. 48. Section 41 of this Act applies to injuries sustained on or
5 after the effective date of sec. 41 of this Act.

6 * Sec. 49. Sections 41 and 48 of this Act take effect immediately under
7 AS 01.10.070(c).

8 * Sec. 50. Sections 1 - 40, and 42 - 47 of this Act take effect July 1,
9 1988.

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TO: Rep. Sund
FROM: Shari Kochman
DATE: April 30, 1988
RE: PTD changes in SB 322

Present law - AS 23.30.180

Present law does not specifically address location of potential work in determining whether to declare an injured worker as Permanently Totally Disabled (PTD) (statute attached).

Present practice

The Workers' Comp Board tends to look at two work areas in determining whether someone is PTD:

- 1) Place of residence
- 2) Place of work at injury

The Board uses that criteria to address the following type of scenario:

Someone working on the pipeline gets injured and returns to Wrangell, declaring that home. The worker then requests a similar job in Wrangell or PTD benefits. There are obviously no pipeline related jobs in Wrangell. To prevent this potential abuse of the system, the Board also takes into consideration the work location in reemploying the worker.

Alaska is prone to "traveling workers." The system would be hardpressed to find comparable employment in declared locations of residences.

Jackie told of a case in which someone was injured on the pipeline, then moved to a remote area of Washington state; declared it home; and insisted on comparable work there or PTD benefits.

Stats

The Division did not have the time to pull complete stats on the number and amount of PTD cases per year and how they are settled.

However, Jackie McClintock said there are very few such cases -- perhaps two or three per year.

Don Koch, of the Division of Insurance, said that in a two year period, PTD (including related medical benefits) costs total about 8% of the costs of the entire system.

Results - Litigation

Most PTD cases are litigated and get settled as opposed to ending in actual PTD life benefits (80% of spendable weekly wages for life).

Jackie said that declaring PTD is often a tool to force litigation and subsequent settlements (compromise and release - C&R).

Reason for limits in bill

In determining PTD, the bill requires the Board to consider:

- 1) area of residence
- 2) area of last employment
- 3) state of residence
- 4) state of Alaska

Important to note is that there was a trade-off here between Labor and Management.

Present statute does not require that any job subsequent to injury reach a minimum threshold of pay. It just required the availability of "suitable gainful employment" - definition of which is attached.

The bill requires that post-injury jobs pay at least 60% of pre-injury wages. In other words, management asked for the broadened areas of potential work in return for which labor asked for a minimum wage standard. The following scenario explains why: (Based on true story).

Scenario:

A heavy equipment operator in Fairbanks, who makes a very healthy wage, is injured and unable to return to the same type of work. The only local job that the employer's insurance company can find for him is menial work at a local pizza parlor which pays around minimum wage. The insurer holds that that job withstands the "suitable gainful employment" standard. Neither the Board nor the rehab administrator agreed. However, this is the type of problem that the bill is trying to address.

Finally:

The real question comes down to the purpose of the Workers' Comp system -- to guarantee "employment" or to guarantee "employability."

Compare it to unemployment. What would a person do if the logging/mining/etc. job in their remote home simply dried up? Would he/she move elsewhere to find employment? Should Workers' Comp be treated any differently?

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medicine and prosthetic devices, physical rehabilitation, and treatment for the fitting and training for use of such devices as may reasonably be required which arises out of or is necessitated by an injury, and transportation charges to the nearest point where adequate medical facilities are available;

(21) "parent" includes stepparents and parents by adoption, parents-in-law, and a person who for more than three years before the death of the deceased employee stood in the place of a parent to the employee, if dependent on the injured employee;

(22) "payroll taxes" means

(A) the amount that would be withheld under withholding tables in effect on the January 1 preceding the injury under the Internal Revenue Code of 1954 as amended and regulations issued under the code, as though the employee had claimed the maximum number of dependents for actual dependency, blindness, and old age to which the employee is entitled on the date on which the employee is injured; and

(B) the amount that is or would be deducted or withheld as of the January 1 preceding the injury under the Social Security Act of 1935 as amended from the amount of earnings of the employee at the time of the injury as if the earnings were earned at the beginning of the calendar year in which the employee was injured and regardless of whether the amount was actually withheld or the earnings were subject to withholding;

(23) "physician" includes doctors of medicine, surgeons, chiropractors, osteopaths, dentists, and optometrists;

(24) "prosthetic devices" includes but is not limited to eye glasses, hearing aids, dentures, and such other devices and appliances, and the repair or replacement of the devices necessitated by ordinary wear and arising out of an injury;

(25) "regularly organized volunteer fire department" means a volunteer fire department registered with the state fire marshal which has official recognition and financial support from the political subdivision where it is situated;

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

(27) "self-insurer" means an employer who, instead of insuring liability under this chapter as it provides, elects to pay directly the compensation provided for, and who has furnished to the board satisfactory proof of the employer's financial ability to make the direct payments;

(28) "suitable gainful employment" means employment that is reasonably attainable in light of an individual's age, education, previous occupation, and injury, and that offers an opportunity to restore the individual as soon as practical to a remunerative occupation and as nearly as possible to the individual's gross weekly earnings as determined at the time of injury;

Obligations under the contract. *Wien Air Alaska v. Arant*, Sup. Ct. Op. No. 1796 (File Nos. 3620, 3717), 592 P.2d 352 (1979).

Items in this section although they relate to an unknown average weekly wage in effect at the date of injury. *Wien Air Alaska v. Arant*, Sup. Ct. Op. No. 1796 (File Nos. 3620, 3717), 592 P.2d 352 (1979).

Amendment. — The entire section was amended by the State Workmen's Compensation Act of 1975, approved by Congress and signed by the Governor. Its recommendation on its finding that the compensation laws were not adequate and fair. *Wien Air Alaska v. Arant*, File Nos. 3620, 3717, 592 P.2d 352 (1979).

Prior to 1975. — A method of calculating percentages of average weekly wage since the maximum limitation. *Wien Air Alaska v. Arant*, Sup. Ct. Op. No. 1796 (File Nos. 3620, 3717), 592 P.2d 352 (1979).

Second column in table specify what shall apply to. *Wien Air Alaska v. Arant*, Sup. Ct. Op. No. 1796 (File Nos. 3620, 3717), 592 P.2d 352 (1979).

Third column in table serve a timing effective date of May 22, 1975, is to insure that all claims arising after that date are subject to the new provisions. *Wien Air Alaska v. Arant*, Sup. Ct. Op. No. 1796 (File Nos. 3620, 3717), 592 P.2d 352 (1979).

May 22, 1975, increasing rates in subsection (a). *Wien Air Alaska v. Arant*, Sup. Ct. Op. No. 1796 (File Nos. 3620, 3717), 592 P.2d 352 (1979).

Increasing after until 1977 claims arising and until the percentage increases, but

the average weekly wage also changes, periodically until 1981, with fluctuations in the state's average weekly wage. *Wien Air Alaska v. Arant*, Sup. Ct. Op. No. 1796 (File Nos. 3620, 3717), 592 P.2d 352 (1979).

Effect of 1977 amendment. — The 1977 amendment still gives recipients an increasing percentage, but an increasing percentage relative to the same amount, i.e., the weekly wage in effect at the date of injury. *Wien Air Alaska v. Arant*, Sup. Ct. Op. No. 1796 (File Nos. 3620, 3717), 592 P.2d 352 (1979).

Effect of "in effect on the date of injury" language in subsection (a). — The 1977 amendment adding the phrase "in effect on the date of injury" in subsection (a) of this section merely fixed the average weekly wage for benefits computation at the level existing at the time of death or a disability. It did not limit the application of the rate percentages to that existing at the time of death or disability. *Seward Marine Servs., Inc. v. Anderson*, Sup. Ct. Op. No. 2486 (File No. 5791), 643 P.2d 493 (1982).

Subsection (a) of this section requires calculation of maximum rates at an increasing percentage of the state's average weekly wage for injuries or death occurring after August 31, 1977, though the average weekly wage is frozen at that "in effect on the date of injury." *Seward Marine Servs., Inc. v. Anderson*, Sup. Ct. Op. No. 2486 (File No. 5791), 643 P.2d 493 (1982).

Whether the 1977 amendment was intended to clarify or change the prior law is unclear. If it was intended as a clarification, it governs the maximum limitation on all awards. If it was a change in policy, it governs the limitation only for injuries occurring after August 31, 1977, the effective date of the amendment. *Wien Air Alaska v. Arant*, Sup. Ct. Op. No. 1796 (File Nos. 3620, 3717), 592 P.2d 352 (1979).

Sec. 23.30.180. Permanent total disability. In case of total disability adjudged to be permanent 80 percent of the injured employee's spendable weekly wages shall be paid to the employee during the continuance of the total disability. Loss of both hands, or both arms, or both feet, or both legs, or both eyes, or of any two of them, in the absence of conclusive proof to the contrary, constitutes permanent total disability. In all other cases permanent total disability is determined in accordance with the facts. (§ 7(1) ch 193 SLA 1959; am § 3 ch 83 SLA 1975; am § 5 ch 70 SLA 1983)

Compensation under prior law. — See *London v. Fairbanks Mun. Util., Employers Group*, Sup. Ct. Op. No. 635 (File No. 1155), 473 P.2d 639 (1970).

Recovery of money for permanent total disability would not preclude subsequent compensation for temporary total disability. *London v. Fairbanks Mun. Util., Employers Group*, Sup. Ct. Op. No. 635 (File No. 1155), 473 P.2d 639 (1970).

It was improper for the board to presume that the amount of compensation afforded to a totally disabled worker should limit in scope the recovery available to one who is partially disabled. *London v. Fairbanks Mun. Util., Employers Group*, Sup. Ct. Op. No. 635 (File No. 1155), 473 P.2d 639 (1970).

Deductibility of money paid under employment contract from temporary disability award. — Money paid to defendant under provision of a contract of employment requiring payment of wages or earnings for remainder of fishing season, regardless of any disability incurred in the meantime, could not be deducted from the award for temporary disability where the contract was not introduced in evidence by plaintiff. *Libby, McNeill & Libby v. Alaska Indus. Bd.*, 12 Alaska 584 (1950), aff'd, 13 Alaska 401, 191 F.2d 262 (9th Cir. 1951), cert. denied, 13 Alaska 582, 342 U.S. 913, 72 S. Ct. 359, 96 L. Ed. 683 (1952).

Applied in *J.B. Warrack Co. v. Roan*, Sup. Ct. Op. No. 366 (File No. 684), 418 P.2d 986 (1966); *Hood v. State*, Sup. Ct. Op. No. 1559 (File No. 3289), 574 P.2d 811 (1978).

Quoted in *Bradley v. Mercer*, Sup. Ct. Op. No. 1424 (File No. 3057), 563 P.2d 880 (1977).

Cited in *Ketchikan Gateway Borough v. Saling*, Sup. Ct. Op. No. 2006 (File No. 3020), 604 P.2d 590 (1979).

1 disability adjudged to be permanent 80 percent of the injured em-
2 ployee's spendable weekly wages shall be paid to the employee during
3 the continuance of the total disability. If a permanent partial
4 disability award has been made before a permanent total disability
5 determination, permanent total disability benefits must be reduced by
6 the amount of the permanent partial disability award, adjusted for
7 inflation, in a manner determined by the board. Loss of both hands,
8 or both arms, or both feet, or both legs, or both eyes, or of any two
9 of them, in the absence of conclusive proof to the contrary, consti-
10 tutes permanent total disability. In all other cases permanent total
11 disability is determined in accordance with the facts. In making this
12 determination the market for the employee's services shall be

13 (1) area of residence;

14 (2) area of last employment;

15 (3) the state of residence; and

16 (4) the State of Alaska.

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

18 (b) Failure to achieve remunerative employability as defined in
19 AS 23.30.041(p) does not, by itself, constitute permanent total dis-
20 ability.

21 * Sec. 33. AS 23.30.185 is amended to read:

22 Sec. 23.30.185. COMPENSATION FOR TEMPORARY TOTAL DISABILITY. In
23 case of disability total in character but temporary in quality, 80
24 percent of the injured employee's spendable weekly wages shall be paid
25 to the employee during the continuance of the disability. Temporary
26 total disability benefits may not be paid for any period of disability
27 occurring after the date of medical stability.

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

29 Sec. 23.30.190. COMPENSATION FOR PERMANENT PARTIAL IMPAIRMENT.



SKILL
RESPONSIBILITY
INTEGRITY

THE ALASKA CHAPTER*

ASSOCIATED GENERAL CONTRACTORS OF AMERICA, INC.

BOX 92500 • ANCHORAGE, ALASKA 99509
TELEPHONE (907) 561-5354



3201 SPENARD ROAD
ANCHORAGE
WILLIAM E. SCHNEIDER
EXECUTIVE DIRECTOR

January 15, 1988

Senator Tim Kelly
Chairman, Senate Labor & Commerce Committee
Alaska State Legislature
P.O. Box V (M.S. 3100)
Juneau, AK 99811

Dear Senator Kelly:

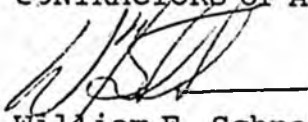
On behalf of the membership of the Associated General Contractors of Alaska, we strongly support the recommendations of the Management/Labor ADHOC Committee For Workers' Compensation Reform.

Your efforts in this critical area are appreciated by all of those individuals who make their living in the construction industry.

We encourage you and your fellow senators to expeditiously pass this legislation.

Sincerely,

ASSOCIATED GENERAL
CONTRACTORS OF ALASKA


William E. Schneider
Executive Director



National
Council
on Compensation
Insurance

Stanley V. Sparks
Director
Government, Consumer
and Industry Affairs

April 5, 1988

APR 5 1988

Honorable Paul Roller
Director of Insurance
State of Alaska
Department of Commerce and Economic Development
Division of Insurance
State Office Building - 9th Floor
Pouch D
Juneau, Alaska 99811

Re: Senate Bill 322

Dear Director Roller:

The Alaska Classification and Rating Committee met via telephone conference call on April 4, 1988 to discuss the progress of the workers compensation insurance reform legislation which is pending in Juneau. By unanimous decision the Committee in effect acknowledged that the potential overall cost savings contained in the existing version of SB 322 amounted to 5.7 percent. Accordingly, if the bill is enacted in its present form, the Committee will direct NCCI to file a law amendment rate filing in Alaska which provides for an overall rate decrease of 5.7 percent on new, renewal and outstanding policies effective as of July 1, 1988.

The Committee wishes to make it clear that such a mid-term rate adjustment would not in any way interfere or preclude the normal review of Alaska experience and the making of an appropriate 1/1/89 rate filing based upon that experience.

Sincerely,

Stanley V. Sparks
Director
Government, Consumer
and Industry Affairs

SVS/gls

cc: Alaska Classification and Rating Committee
Don Koch
R. Fein
M. Mulvaney



SKILL
RESPONSIBILITY
INTEGRITY

THE ALASKA CHAPTER

ASSOCIATED GENERAL CONTRACTORS OF AMERICA, INC.

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TELEPHONE (907) 561-5354



3201 SPENARD ROAD
ANCHORAGE
WILLIAM E. SCHNEIDER
EXECUTIVE DIRECTOR

January 15, 1988

Representative Dave Donley
Chairman, House Labor & Commerce Committee
Alaska State Legislature
P.O. Box V (M.S. 3100)
Juneau, AK 99811

Dear Representative Donley:

On behalf of the membership of the Associated General Contractors of Alaska, we strongly support the recommendations of the Management/Labor ADHOC Committee For Workers' Compensation Reform.

Your efforts in this critical area are appreciated by all of those individuals who make their living in the construction industry.

We encourage you and your fellow representatives to expeditiously pass this legislation.

Sincerely,

ASSOCIATED GENERAL
CONTRACTORS OF ALASKA

William E. Schneider
Executive Director



JIM CARROLL
President

**FAIRBANKS BUILDING
& CONSTRUCTION TRADES COUNCIL
AFL-CIO**

North of the 63rd Parallel
315 5th Avenue
Fairbanks, Alaska 99701-4888
(907) 456-4248
(807) 456-1208



JOHN GIUCHICI
Secretary/Treasurer

January 14, 1988

Bob Anders
Labor and Management Ad Hoc Committee

Dear Bob,

The Fairbanks Building and Construction Trades Council voted to endorse your workers compensation bill. We have some concerns about some areas of the bill but, feel in the long run it will be beneficial to lowering the high insurance rates.

Fraternally Yours

J.N. Carroll
President

WESTERN ALASKA BUILDING and CONSTRUCTION TRADES COUNCIL

AFFILIATED WITH

A.F.L. - C.I.O.

BUILDING AND CONSTRUCTION TRADES DEPARTMENT

Phillip A. Thingstad

PRESIDENT

407 Denali Street

ADDRESS

ANCHORAGE, ALASKA 99501

January 14, 1988

SECRETARY

407 Denali Street

ADDRESS

ANCHORAGE, ALASKA 99501

Alaska State Legislators

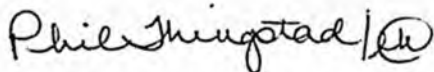
Dear Ladies and Gentlemen,

This letter accompanies a proposed piece of legislation, one in which alot of time and effort was put into by both Labor and Management in an attempt to help close the loopholes and solve many of the problems of the Workers Compensation Law.

The Bi-partisan work put into this proposal was extensive and a very good product was the result, one in which all appear to be happy with as it will help the workers as well as the employers. The only people who oppose such legislation are the "Out of State" insurance companies and the lawyers, both of whom make a great deal of money off the current ambiguous law.

The Western Alaska Building and Construction Trades supports, with great enthusiasm, this possible revamping of the Workers Compensation Law.

Sincerely,



Phil Thingstad
President
Western Alaska Building
and Construction Trades

PT/lk
Attachment